

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16676 of 2018

Medipol Pharmaceutical India Private Limited, having its office at 128/5 Swiss House, Vishwas Nagar, Police Station- Farash Bazaar, Delhi 110032 through its Branch Manager namely Binod Kumar Mandal, Son of Sri Gauri Shankar Mandal, resident of village – Kendua Lawar, Post Office -Jhajha, Police Station-Sono, District-Jamui, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health & Welfare, Government of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Bihar Medical Services and Infrastructure Corporation Limited through its Managing Director, Department of Health, Government of Bihar, 5th Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
3. The Managing Director, the Bihar Medical Services and Infrastructure Corporation Limited through its Managing Director, Department of Health, Government of Bihar, 5th Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
4. The General Manager (F & A), the Bihar Medical Services and Infrastructure Corporation Limited through its Managing Director, Department of Health, Government of Bihar, 5th Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
5. The General Manager (Procurement), the Bihar Medical Services and Infrastructure Corporation Limited through its Managing Director, Department of Health, Government of Bihar, 5th Biscomaun Bhawan, Gandhi Maidan, Patna-800001.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Satyvrat Verma, Advocate Mr.Shashank Chandra, Advocate Mr.Aakash, Advocate
For the Respondent/s	:	Mr.Nagendra Kumar, AC to AAG-9
For the BMSICL	:	Mr.Prabhat Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 15-02-2019 Heard learned counsel for the petitioner, learned counsel representing Bihar Medical Services and Infrastructure Corporation Limited (In short 'BMSICL') and learned counsel for the State.

The petitioner is aggrieved by the Letter No. 951 dated 30.07.2018 whereby the petitioner has been black listed



for the 4th time on the same charges. The petitioner has further prayed for quashing of the show cause notice dated 15.06.2018 which was served upon the petitioner on 21.06.2018 on the grounds, inter alia that the petitioner was sought to be proceeded against on non est charges.

Although in course of argument Mr. Satyvratt Verma, learned counsel representing the petitioner has raised a number of grounds for setting aside the impugned order as contained in Annexure-21 to the writ application but ultimately, as this Court found that only one ground may be sufficient for the present to quash the impugned order, learned counsel for the State was called upon to answer as to whether on perusal of the impugned order he can show to this Court that the reply dated 13.07.2018 submitted on behalf of the petitioner against the show cause notice has been considered and the impugned order has been passed upon applying an independent mind to the reply of the petitioner.

An application of independent mind by the authorities of the BMSICL was ordered by this Court while disposing of the earlier writ application being C.W.J.C. No. 17483 of 2016 on 08.03.2018. Learned counsel for the State has, however, after reading some of the paragraphs at page 4 and 5 of the impugned



order could not demonstrate that the reply dated 13.07.2018 submitted by the petitioner has been looked into much less considered by the Managing Director, BMSICL, Patna while passing the impugned order.

Learned counsel for the petitioner submits that initially, when the petitioner was proceeded against and the order of black listing was passed, the petitioner's firm was black listed for a period of two years but then when the matter was remanded by this Court because the order of black listing suffered from violation of principles of natural justice, the same authority black listed the petitioner for a period of five years. Learned counsel has demonstrated that even the charges such as supply of substandard quality of medicine which is a subject matter of an independent proceeding has been clubbed now with the present proceeding and the impugned order has been passed taking note of the said charge also.

As this Court has noted hereinabove, for the present in the admitted position of this case where there is no consideration at all to the reply dated 13.07.2018 submitted by the petitioner and the impugned order has been passed by simply saying that the show cause has been gone into and there transpires no new fact, therefore, there is no need of repetition



of the same facts which have already been considered earlier, in the opinion of this Court, the Managing Director, BMSICL, Patna has not complied with the principles of natural justice, it is not an independent application of mind and the impugned order suffers from non-consideration of the materials available on the record. For the sake of convenience and ready reference the Court would take note of the only one paragraph of the impugned order in which the whole submission of the petitioner in his reply dated 13.07.2018 has been rejected. Paragraph-xvi reads as under :-

“xvi-After going through the reply of Medipol dated 13.07.2018 to the Show Cause notice of BMSICL dated 15.06.2018 threadbare and after giving cautious, serious and judicious consideration to the facts and evidences pertaining to this matter, it transpires that no new fact has been brought to the notice of BMSICL, and the same is merely a repetition of the same facts which have already been considered in detail by BMSICL earlier. Hence, the reply of Medipol dated 13.07.2018 is not found fit to be considered on facts as well as in law.”

In the aforesaid facts and circumstance of the case, the impugned order is held to be bad in law for non-consideration of the reply of the petitioner and non-application of an independent mind. It is, thus, set aside and the matter is once again remanded



to the Managing Director, BMSICL, Patna to consider the reply of the petitioner in the light of the observations and directions of this Court in its order dated 08.03.2018 passed in C.W.J.C. No. 17483 of 2016. It has to be an independent application of mind and save and except the Board of Directors of the BMSICL no other authority will be entitled to take any view in the matter.

Other arguments as per pleading on behalf of the petitioner shall remain open.

This writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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