

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.02.2020
CORAM :
The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4297 of 2019
and C.M.P.No.27110 of 2019

M/s.Zee Laboratories
47, Gondpur Industrial Area,
Paonta sahib 173025, District: Sirmour,
Himachal Pradesh. : Appellant/Petitioner

-vs-

Tamil Nadu Medical Services
Corporation Ltd.,
No.417, Pantheon Road, II Floor,
Egmore, Chennai 600 008,
Rep. by its General Manager. : Respondent/Respondent

Appeal filed under Clause 15 of the Letters Patent against
the order dated 20.02.2019 in W.P.No.27911 of 2018 on the file
of this Court.

Prayer in W.P.No.27911 of 2018: Writ Petition filed under
Article 226 of the Constitution of India for issuance of a Writ
of Certiorari to call for the records relating to the impugned
order in Ref.No.DIC056/TNMSC/QC/2016-17 dated 12.12.2017 passed
by the respondent herein and to quash the same.

For Appellant : Mr.P.Subramanian

For Respondent : Mr.V.Kadhirvelu,
Spl.G.P. (H.Edn.)

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and learned Special
Government Pleader for the respondent.

2.An order of blacklisting came to be challenged by the
appellant on the ground that the said order had been passed on
the strength of a report received from the Director of Central

Drugs Laboratory that was called for by the Drug Inspector and without confronting the appellant with the said report, the impugned order had been passed.

3.Learned counsel submits that the allegation of spurious drug is still awaiting finality in the criminal proceedings initiated and therefore, to immediately blacklisting the appellant was unjustified.

4.Learned counsel for the State submits that an order of blacklisting had been passed after giving notice and extending all information to the appellant, whereafter the impugned order had been passed and consequently, the said allegation is unfounded, inasmuch as the appellant has not even chosen to challenge the preliminary enquiry report, which has been received from the Central Drugs Laboratory concerning the spurious nature of the drug supplied by him.

5.These are essentially questions of fact and this cannot be a matter of judicial review, but so far as the blacklisting is concerned, it will be by now well settled that an order of blacklisting can be passed only after giving an opportunity of hearing. Learned counsel rightly contends that principles of administrative law imply that the opportunity should not be an empty formality and therefore, in the event the appellant has not been given information about the report received from the Director, the same may prejudice his case.

6.We are extracting hereinunder the relevant paragraph of the order impugned in the writ petition, where it has been stated that the report had been obtained by the Drug Inspector from the Director of Central Drugs Laboratory, which has been made the basis of the passing of the order:-

"TNMSC Ltd has enquired about the sample to the concern Drugs Inspector and she has replied that, the sample has been submitted to Central drugs Labouratory for analysis. Now, The Drugs Inspector, Villivakkam range has provided the Form-2 No.2-1/2017-SS/CC-21/2738 of Director Incharge, Central Drugs Laboratory. The Director Incharge, CDL, stated that the sample does not conform to USP with respect to the test for Identification and assay/content of Risperidone. Further, The Director Incharge, CDL has stated that the sample is found to contain Ondansetron and the sample is deemed to be Spurious under Section 17-B of the Drugs and Cosmetics Act and Rules"

7.Without entering into the merits of the claim of the appellant and keeping in view the aforesaid fact, it would be appropriate to allow a post-decisional hearing in the matter and

for that, it will be open to the appellant to move a representation before the Competent Authority of the respondent Corporation, who shall consider this aspect of the matter and pass an appropriate order in accordance with law. The appellant shall be provided a copy of the said report, which has been received from the Director, as indicated above. No further order is required in respect of the other grievances of the appellant, the redressal whereof can be sought before the appropriate forum.

The Writ Appeal is disposed of with the above observation. No costs. Consequently, C.M.P.No.27110 of 2019 is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

sra

To

The General Manager,
Tamil Nadu Medical Services
Corporation Ltd.,
No.417, Pantheon Road, II Floor,
Egmore, Chennai 600 008.

+1cc to Mr.P.Subramanian, Advocate, SR.No.15463.

W.A.No.4297 of 2019

CP (CO)
CSR: 17.03.2020

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