

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1327 of 2020

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M/s Laborate Pharmaceuticals India Limited a company registered under the Indian Companies Act, 1956 having its registered Office at E- 11, Industrial Area, Panipat, Haryana through its Manager Legal and authorised signatory Hemant Mehta, Son of Sh. M.L. Mehta, R/o 50-R, Model Town, Panipat.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-Cum-Principal Secretary, Department of Health, Vikas Bhawan, New Secretariat, Government of Bihar, Patna.
2. The Bihar Medical Services and Infrastructure Corporation Limited, 4th Floor, Bihar State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna, through its Managing Directorl.
3. The Managing Director, Bihar Medical Services and Infrastructure Corporation Limited, Bihar State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ravi Prakash, Advocate Mr. Sanchay Srivastava, Advocate Mr. Sourav Suman, Advocate Mr. Aalekh Anand, Advocate Mr. Arpit Anand, Advocate Mr. Sushant Srivastava, Advocate
For the Respondent/s	:	Mr.Birju Prasad (G.P.13) Mr. Ajit Anand, AC to GP-13
For the Respondent nos. 2 and 3	:	Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- (i) That the present writ application is being filed for issuance of appropriate writ(s)/ order(s)/ direction(s) in the nature of *Certiorari* quashing and setting aside the Order Dated 28.04.2016 passed by the Respondent No. 2 (hereinafter referred as the "*Impugned Order*"), whereby the payment of the amount

to the Petitioner pursuant to work having been completed and supplies made by the Petitioner has been wrongly withheld by the concerned Respondent(s) citing completely extraneous reasons.

- (ii) That the present writ application is being filed for issuance of appropriate writ(s)/ order(s)/ direction(s) in the nature of *Mandamus* directing the Respondent authorities to make payment of outstanding dues in tune of Rupees 7,79,11,893.00 against the Drugs and Medicines supplied by the Petitioner – under the Tender No. BMSICL/Drugs/01/2013 dated 18.02.2013 read with Letter of Intent dated on 24.09.2013.
- (iii) That the present writ application is being filed for issuance of appropriate writ(s)/ order(s)/ direction(s) in the nature of *Mandamus* to the Respondent authorities to make payment of interest on the due amount from the date it became due.
- (iv) That the present writ application is being filed for issuance of appropriate writ(s)/ order(s)/ direction(s) in the nature of *Mandamus* directing the Respondent authorities that till the disposal of the present writ application they either deposit the amount outstanding dues of the petitioner in an Escrow account or in the alternative be directed create a Fixed deposit and submit the same to this Hon'ble Court.
- (v) And for issuance of any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

Having perused the impugned order dated 28th of April, 2016 passed by the Managing Director of BMSICL, pursuant to and in terms of order dated 03.12.2015 passed by this Court in C.W.J.C. No. 7581 of 2015 titled as M/s Laborate Pharmaceuticals India Ltd. Vs. The State of Bihar, we are of the considered view that the order needs to be quashed, for the simple reason that the authorities moved on the premise that the matter was pending adjudication before Hon'ble the Supreme Court.

The relevant portion of the impugned order is extracted as under:-

“7. As has been alleged in the matter of SLP (civil) no. 21643/2014 pending in the Hon'ble Supreme Court, there are a number of products of Laborate whose rates have been alleged to be higher than that of SHSB.

8. In view of the fact that M/s Laborate Pharmaceuticals India Ltd. Is showcaused by BMSICL and also the fact that payment to all such firms (including Laborate) whose rate of drugs are higher than that of SHSB has been withheld till the cases pending in the Hon'ble Supreme Court are decided, payment to Laborate will continue to remain withheld. It is further clarified that based on the final outcome of the sub-judice matters in the Hon'ble Supreme Court, a decision will be taken by BMSICL on payment to Laborate for dues pending, if any.”

In this regard our attention is invited to the order dated 22nd of November, 2016 passed by Hon'ble the Apex Court (Page-408, Annexure-30).

Evidently, the Special Leave Petition stood disposed of in terms thereof with the following directions:-

“In the result, we dispose of this petition with the direction that the Government of Bihar shall expeditiously but not later than two months from today examine at an appropriate level the reports submitted by the two committees set up by it together with the reports/comments of the Vigilance Department to take a final view on the following two aspects:

(i) Whether any criminal action is called for against any official of the Government and the suppliers and in case any action is indeed considered necessary to take such action without further loss of time.

(ii) Whether any administrative action besides the one that has already been taken is called for against any one of the officers involved in the making of purchase.

The parties are left to bear their own costs.”

In the attending facts and circumstances, while quashing the order dated 28.04.2016 (Annexure- 29 page 401), we direct the **respondent no. 2, namely, The Bihar Medical Services and Infrastructure Corporation Limited, 4th Floor, Bihar State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna, through its Managing Director** to pass a fresh order after complying with the principles of natural justice.

Needful be done within a period of three months from the date of presentation of a copy of this order.

Liberty reserved to the petitioner to approach the Court, should the need so arise subsequently.

Needless to add, we have not expressed any opinion on merits. All issues are left open.

The writ petition stands disposed of in the aforesaid terms.

Interlocutory application(s), if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/Ishika-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	