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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28.03.2023+ LPA 357/2020 & CM APPL. 30365/2020, CM APPL. 30368/2020**SAHARA MEDICAL STORE**

..... Appellant

Through: Mr Sujoy Gaur and Mr Suyash Gaur, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advs.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The appellant has filed the intra-court appeal impugning an order dated 15.07.2020 passed by the learned Single Judge rejecting the petition, *W.P.(C) 3378/2020* captioned *Sahara Medical Store v. Union of India and Others*, filed by the appellant.

2. The appellant had filed the aforementioned petition impugning the order dated 05.05.2020 (hereafter '**the impugned order**'), that debarred the petitioner from participating in any proceedings for the empanelment of an Authorized Local Chemist (hereafter '**ALC**') Meerut for a period of three years, that is, till 04.05.2023. The appellant prayed that it be allowed to submit bids for empanelment as an ALC, for supplying drugs to the respondents. In addition, the appellant also claimed compensation for being blacklisted and being debarred from

participating in any dealings with the concerned authorities.

3. The learned Single Judge found that no case was made out for setting aside the impugned order and rejected the petition.

4. The limited controversy that requires to be addressed by this Court is whether the impugned order blacklisting the appellant is liable to be set aside and whether the learned Single Judge has erred in rejecting the appellant's plea in this regard.

Factual Context

5. The appellant is engaged in the business of running a chemist store and carries on the business under the name and style of Sahara Medical Store, Meerut, Uttar Pradesh. The appellant was appointed as an ALC for supply of indented medicines to Wellness Centers operated under the Central Government Health Scheme (hereafter '**CGHS**'), pursuant to tenders invited in 2017.

6. On 09.09.2019, respondent no.3 (Additional Director, CGHS, Meerut) received a complaint from the Joint Secretary, Government of India, CGHS, New Delhi alleging distribution of expired medicines by CGHS, Meerut. Allegedly, one Smt. Padma Devi, CGHS Beneficiary ID 3543646 had been issued expired drugs. Immediately on receipt of the said complaint, respondent no.3 issued an Office Order dated 09.09.2019 constituting a Grievance Redressal Committee comprising of Dr V.P. Singh, CMO as a Chairman and Dr. Anil Kumar, CMO (SAG), and Dr. Aneeta Aren, CMO (SAG) as members, to examine the complaint of one Sh. Amit Sahu son of Smt. Padma Devi. The appellant was called upon to appear before the Grievance Redressal Committee

and he did so on 16.09.2019 at 03:00 p.m. The appellant also submitted its reply to the allegations.

7. The Grievance Redressal Committee submitted a report on 17.09.2019, *inter alia*, stating that “*Injection Nandrolane Decanote 25 MG was neither prescribed/indented nor supplied by the Authorized local chemist in the name of Smt. Padma Devi (Beneficiary ID 3543646)*”. It is the appellant’s case that it had supplied medicines to the Wellness Center and had no direct interaction with the CGHS beneficiaries.

8. After receipt of the report, respondent no.3 directed that penalty be imposed on the appellant and the same be deducted while processing its bill. The appellant was also cautioned and directed to be “*more vigilant and careful and not to repeat such kind of incidence in future*”.

9. Thereafter, on 13.11.2019, inspection was carried out by one Dr. D.C. Joshi, Advisor at CGHS Wellness Centre, Abu lane and he found certain discrepancies regarding variations in batch numbers in I.P. voucher; variations in company name; rate variation and expiry dates. The appellant was called upon to submit its explanation for such negligence within a period of five days. The appellant was also called upon to show cause as to why a penalty of 10% of the performance guarantee furnished by it, should not be imposed for failure to comply with the terms and conditions of the ALC tenders in case the explanation was found to be unsatisfactory.

10. The appellant immediately responded to the said notice, *inter alia*, explaining that inadvertently by relying on memory, old batch numbers and expiry dates were fed in the computer, resulting in a

mismatch. However, the rates recovered are never more than the MRP. The appellant also disputed that it had supplied expired medicine and contended that there was no reason to do so because the manufacturers readily accept return of expired medicines and replace it.

11. Thereafter, on 30.01.2020, respondent no.3 issued a letter, *inter alia*, stating that the petitioner's explanation received on 18.11.2019 was found to be unsatisfactory and hence it was decided to impose penalty by encashment of 10% performance guarantee with the warning that in case of repetition of violation of the terms and conditions of the empanelment, the appellant would be liable to be suspended and its entire performance guarantee would be forfeited.

12. Thereafter, respondent no.3 addressed a letter to the appellant's bank. It referred to the performance bank guarantee furnished by the appellant in the sum of ₹5,38,000/- and invoked the same to the extent of 10%, that is, ₹53,800/-. Thereafter, the appellant's bank (Union Bank of India) forwarded a demand draft for a sum of ₹53,800/- in favour of respondent no.3.

13. On 20.01.2020, the respondents set out the schedule for inviting fresh tenders. It was decided that the notice inviting tenders be published on 21.01.2020 and the last date of bidding would be scheduled as 11.02.2020.

14. On 24.04.2020, the Additional DDG Hq. (competent authority) sent a letter to respondent no.3 to take action against the appellant in terms of Clause 12.4(b) for supplying expired medicines. The subject of the said letter indicates that the same was in regard to the complaint of Mr Amit Sahu. This was followed by another letter dated 29.04.2020

sent by the competent authority directing respondent no.3 to take action against the appellant in terms of Clause 12.4(a) of the tender documents, which provided for debarring a firm for a period of three years besides other legal action as per law. Thereafter, on 30.04.2020, respondent no.3 sent a letter directing the appellant to stop the supply of indented medicines to CGHS Wellness Centers with effect from 01.05.2020. This was followed by communication of the impugned order debarring the petitioner for a period of three years from participating in any dealings with the respondents.

Submissions

15. Mr Gaur, learned counsel appearing for the appellant submitted that there was no merit in the allegation that it had supplied any expired medicine to the Wellness Center. He further submitted that even in cases where it was found that the medicines are expired, the concerned officials of the respondent are required to return the same for being exchanged with unexpired medicines.

16. Further, he submitted that the appellant had already suffered its punishment in respect of complaint made by Mr Sahu regarding the supply of expired medicines to his mother, Smt Padma Devi (Beneficiary ID No. 3543646). He submitted that the appellant could not be punished for the same allegation twice. Lastly, he submitted that the appellant was not issued any show cause notice calling upon him to show cause why he should not be debarred. Thus, the impugned order was passed in violation of the principles of natural justice; therefore, it is liable to be set aside.

17. Mr Jetly, learned counsel appearing for the respondents

submitted that the facts in the present case clearly indicate that the appellant had supplied expired medicine. He also referred to a letter dated 19.09.2019, whereby the appellant had admitted that it had supplied the medicine Nondrolone Decanoate in dosage of 25 mg instead of 50 mg and further expressed regret in that regard. He submitted that the appellant had admitted his mistake and therefore, there was no requirement for issuing any show cause notice. However, he did not dispute that no show cause notice was issued to the appellant specifically calling upon him to show cause why he should not be debarred/blacklisted.

Reasons and Conclusion

18. At the outset, it is relevant to observe that the impugned order debarring/blacklisting the appellant for a period of three years was issued pursuant to a complaint made by one Mr Amit Sahu regarding supply of expired medicine to his mother, Smt. Padma Devi. On the said complaint being forwarded to respondent no.3, respondent no.3 had constituted a Grievance Redressal Committee. The Committee had since submitted its report. Although the said report dated 17.09.2019 appears to have exonerated the appellant, respondent no.3 imposed punishment on the appellant in terms of the letter dated 17.09.2019. The contents of the said letter are set out below:

“Dated 17.09.2019

To

M/S Sahara Medical Store,
Sahapeer Gate,
Meerut

Sub: **Complaint of Sh. Amit Sahu regarding supply of expiry date injection Nandrolone Decanoate 50 MG.**

You are hereby warned to be careful while supplying indent medicine in this case you were supposed to supply injection Nandrolone Decanoate 50 MG as prescribed to Smt. Padma Devi, however you has supplied injection Nandrolone Decanoate 25 MG, which is a gross violation of terms and condition of ALC.

A penalty as per terms and condition of ALC shall be imposed upon you and the amount deducted from the bills due to you while processing your ALC bills by this office.

It is impressed upon you to be more vigilant and careful and not to repeat such kind of incidence in future.

(Dr. A.K. Naharia)
ADDITIONAL DIRECTOR”

19. It is apparent from the above that the appellant was required to suffer a monetary penalty and was warned to be vigilant and careful in the future. In view of the above, the matter relating to complaint made by Sh. Amit Sahu ought to have stood concluded. However, on 13.11.2019, certain discrepancies were observed by one Dr D.C. Joshi, Advisor, CGHS Wellness Centre, Abulane during inspection. By an Office Memorandum dated 13.11.2019, the appellant was called upon to provide his explanation why a penalty equal to 10% of the Performance Bank Guarantee not be imposed for failure to comply with the terms and conditions of the ALC Tender. The said Office Memorandum dated 13.11.2019 reads as under:

“Dated: 13.11.2019

OFFICE MEMORANDUM

During the surprise inspection of Dr. D.C. Joshi, Advisor at CGHS, Wellness Centre Abulane, the following discrepancies were observed on Local Purchase Counter

1. Variation in Batch no. in IP voucher.
2. Variation in Company Name.
3. Rate Variation.
4. Expiry dates.

The above negligence of work was seriously viewed by the competent authority.

M/s Sahara Medical Store, Meerut is hereby directed to submit his explanation within five (05) days with the reason for such negligence on your part and why not a penalty of 10% of your Performance Bank Guarantee be imposed for failure to comply with the terms and conditions of ALC tender, in case your explanation is not found satisfactory.

(Dr. A.K. Naharia)
ADDITIONAL DIRECTOR
CGHS Meerut”

20. As stated above, the appellant responded to the said Memorandum by a letter dated 18.11.2019. However, it appears that the explanation furnished by the appellant was not accepted. Thereafter, by a letter dated 30.01.2020, a penalty equivalent to 10% of the Performance Bank Guarantee furnished by it, was imposed on the appellant. The said letter dated 30.01.2020 is important as it appears to have resurrected the complaint made by Mr Amit Sahu. The said letter is set out below:

“Dated 30.01.2020

To

M/s Sahara Medical Store,
Shop No-8, Shahpeer Gate,
Meerut.

Sub:- Violations of Terms and Conditions of
MoA with CGHS Meerut-reg.

In compliance to this office letter of even No. dated 13.11.2019 regarding Case of Amit Sahu's Mother in which proper medicine were not supplied from your end, your explanation received on dated 18.11.2019 was not found satisfactory hence it is decided to impose penalty on you by way of encashment of 10% of Performance Bank Guarantee as per MoA, with the warning that in case of repetition of violation of the terms and conditions of the Empanelment and MoA, you are liable to be suspended from empanelment under CGHS with forfeited for full Performance Bank Guarantee.

(Dr. R.B. Arya)
Additional Director
CGHS Meerut

[emphasis added]

21. Admittedly, the Performance Bank Guarantee furnished by the petitioner was encashed to the extent of 10% as a penalty in terms of the above-mentioned letter dated 30.01.2020.

22. There is merit in the appellant's contention that it had already suffered the punitive measure imposed by the respondents in respect of the allegations regarding supply of expired medicines initiated pursuant to the complaint made by Mr Sahu; there was no ground to impose any further punishment.

23. In *Lt. Governor of Delhi And Others v. HC Narinder Singh:*

(2004) 13 SCC 342, the Supreme Court upheld the decision of the Central Administrative Tribunal to quash the show cause notice in respect of a disciplinary action initiated against the respondent (HC Narinder Singh). The Tribunal held that the authorities had, pursuant to an earlier show cause notice based on the same allegations, imposed a penalty of reduction of pay by one stage without cumulative effect. Thus, the second show cause notice proposing removal of the petitioner's name from the promotion list on the same allegations was impermissible. In the aforesaid context, the Supreme Court observed as under:

“4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule.”

[emphasis added]

24. Although the said decision was rendered in the context of a service matter, the principle enunciated would be equally applicable to administrative orders imposing any punishment. In ***Omax Engineering Works through its partner Ramesh Kumar v State of Haryana And Others: 2016 SCC OnLine P&H 1768***, the Division Bench of the Punjab and Haryana High Court had, referring to the decision in ***Lt. Governor of Delhi And Others v. HC Narinder Singh: (supra)*** observed that the use of the expression ‘double jeopardy’ by the

Supreme Court was not in the context of Article 20(2) of the Constitution of India but “*obviously in the context of administrative law*”. The court following the decision of the Supreme Court, held as under:

“24. In our view, in a case such as this, where the second show cause notice is identical in every respect to the first show cause notice and where the first show cause notice was taken to its logical conclusion and the decision taken therein has attained finality, a second show cause notice is impermissible on the principle embodied in the Latin maxim ‘*interest reipublicae ut sit finis litium*’ and on the principle of cause of action/estoppel. These principles in turn are based on an important aspect of public policy.”

25. In the circumstances, the impugned order dated 05.05.2020 is unsustainable as it is premised on the same set of allegations, on the basis of which, the appellant was penalised earlier. It is apparent that the appellant was penalised for supplying expired drugs and had suffered punishment imposed.

26. In addition to the above, we are also of the view that the impugned order is liable to be set aside on the ground that the same was passed in violation of principles of natural justice. Admittedly, the respondents had not issued any show cause notice specifically proposing to blacklist the appellant and calling upon it to show cause why such punitive action should not be taken.

27. In ***Erusian Equipment & Chemicals Ltd v. State of West Bengal & Another: (1975) 1 SCC 70***, the Supreme Court had observed as under:-

“20. Blacklisting has the effect of preventing a person

from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

28. In *Gorkha Security Services v. Govt. (NCT of Delhi)*: (2014) 9 SCC 105, the Supreme Court had described ‘blacklisting’ as a ‘civil death’ of the person who is foisted with the order of blacklisting. The Supreme Court had further held that a person against whom a blacklisting order is proposed, must be specifically put to notice of such proposed action. The relevant observations made by the Supreme Court are set out below:

“21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.”

29. Since no specific notice proposing that the appellant be blacklisted was issued to the appellant, the impugned order blacklisting

the appellant is liable to be set aside.

30. In view of the above, the appeal is allowed. The impugned order passed by the learned Single Judge as well as the blacklisting order dated 05.05.2020 passed by respondent no.3 are set aside. All pending applications are also disposed of.

31. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 28, 2023
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