

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1886 of 2024

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M/s Om Surgical Industries, a partnership firm, having its office at 7.7. km stone, Village and PO Titolo, Jhind Road, Rohtak, 124001 Haryana, through its partner Ajay Goyal, aged about 52 years (Male), son of Tilak Raj Goyal, resident of House No. 227 F, Near Medical Mor, Model Town P.S. Rohtak City, District Rohtak, Haryana 124001. ...

... ... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, 1st Floor Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, 1st Floor Vikas Bhawan, Bailey Road, Patna.
3. Bihar Medical Services and Infrastructure Corporation Limited, Through its Managing Director, 4th Floor, State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna 800023.
4. The Managing Director, Bihar Medical Services and Infrastructure Corporation Limited, 4th Floor, State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna 800023.
5. The Chief General Manager (Supply Chain), Bihar Medical Services and Infrastructure Corporation Limited, 4th Floor, State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna 800023.
6. The General Manager (Procurement), Bihar Medical Services and Infrastructure Corporation Limited, 4 th Floor, State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna 800023.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Rohit Singh, Advocate
For the Respondent/s	:	Mr. Government Pleader 18 Mr. Vikash Kumar, Advocate Mr. Ayush Kumar, Advocate



Mr. Kanishak Shankar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-03-2024

The petitioner is aggrieved with Annexure-P-16 order of blacklisting issued by the respondent authorities. The 4th respondent issued a Notice Inviting Tender (NIT) produced as Annexure-P-1 and the petitioner was successful in the same. Letter of Intent (LoI), Annexure-P-2 awarded the work of supply of Disposable Caps and Absorbent Cotton Wool to the petitioner. The petitioner was required to supply the material with the test certification of an approved laboratory; which test report accompanied the supply of the petitioner. The respondent, however, sent a sample of the supplied material for testing and found that it did not meet the required standards. The petitioner was informed of the same and asked to replace the materials. The petitioner replaced it at the first instance and at the second instance, though agreed to replace it, raised a challenge against the test analysis done by the authority. A further rejection of



supply was also met with the same response by the petitioner. The petitioner was then issued with the blacklisting order, which is challenged in the above writ petition.

2. Learned counsel for the petitioner argued that the test report accompanied with the materials certified that the materials were of the quality required. While the petitioner's supplies were rejected based on a test report, what was supplied to the petitioner was a mere tabulation of the test analysis without even disclosing which laboratory tested the materials. The petitioner once agreed to replace the material but then also requested that he may be allowed to challenge the test report by insisting on a second analysis. The said contentions were not acceded to by the authorities and he was issued with a blacklisting order. It is argued by the learned counsel for the petitioner that in the notice issued, four consequences were threatened- (1) deemed rejection, (2) demand for replacement, (3) termination of contract and (4) blacklisting. There was no specific threat levelled of blacklisting and hence the same cannot be imposed, as has been held in *Gorkha Security*



Services v. Government (NCT of Delhi) and others; (2014)
9 SCC 105.

3. Having gone through the records and noticing the test report supplied along with the show cause notice, not indicating the laboratory in which it was tested, we directed the files to be produced. Today, Shri Vikash Kumar, learned counsel appearing for the respondents produced the files and also showed us the copies of the test reports which actually were obtained from accredited laboratories. The name of the laboratory is not disclosed to the parties for maintaining confidentiality and ensuring that no undue influence is made on the laboratories.

4. We see that the supply of medical consumables was the work tendered and awarded to the petitioner. The supply of materials also had to be accompanied with the certificate of the accredited labs. The petitioner was issued with the purchase order at Annexure-P-4 and the petitioner supplied two batches of Disposable Caps and Absorbent Cotton Wool, which were rejected by the respondents. A show cause notice was issued at Annexure-P-6 dated 03.02.2023 to which a reply was made on 13.02.2023,



Annexure-P-7 by the petitioner. The petitioner agreed to replace the materials and replaced it but also requested for an option of re-test of the samples, which was not responded to.

5. Yet again, two consignments were rejected by AnnexureP-9 dated 17.02.2023 of 17 batches and a further show cause notice dated 15.03.2023, Annexure-P-11 which rejected two batches of Absorbent Cotton Wool. Admittedly, these contained test reports but, however, without indicating the name of the laboratory. The petitioner to both Annexure-P-10 and Annexure-P-11 requested for a re-test with an accredited laboratory. The respondent did not accede to the same and rejected the request of the petitioner and blacklisted the petitioner by Annexure-P-13.

6. ***Gorkha Security Services*** (supra) was a case in which specifically it was found that there was no penalty of blacklisting threatened in the show cause notice. It was held that a department intending to impose a penalty of blacklisting should specifically state it in the show-cause notice and otherwise it would not be an adequate and meaningful opportunity to show cause. It was also declared



that even if it is not mentioned specifically; if from the reading of the show-cause notice, it can be clearly inferred this would fulfil the requirement. What was emphasized was the requirement to put the party on notice as to what would be the consequence, of the authority being not satisfied with the response to the show-cause notice. In the present case, even according to the petitioner, blacklisting was specifically mentioned as one of the consequences along with three other consequences. All of these consequences flow from the contract executed between the parties and can be effectuated on breach, by the person or agency who has been awarded the work. When specifically blacklisting was referred to, as one of the consequences, the petitioner cannot contend that there was no adequate or meaningful opportunity to show-cause.

7. The mere fact that the supplier was obliged to ensure a test report to be accompanied with the material supplied, would not restrain the authority from independently checking the material supplied. In the present case, we have been shown that the materials supplied were tested at an accredited laboratory; the name of which has



not been disclosed only for reason of maintaining the confidentiality. We find absolutely no reason to interfere with the proceedings initiated and concluded, in the instant proceedings under Article 226.

8. We decline jurisdiction, especially since there is a specific dispute resolution clause as per the agreement which has to be invoked by the petitioner. The contract, as is produced herein, indicates that, it provides for approaching the Tribunal under Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008.

9. The petitioner would be entitled to take appropriate remedies for referring the dispute to arbitration. We find absolutely no reason to interfere with the orders passed, in the writ petition, and make it clear that though the procedure followed by the respondent authorities is unassailable, we have not validated the cancellation, which has to be looked at by the Arbitration Tribunal. The blacklisting is only with respect to supply of Absorbent Cotton Wool, which would also be subject to the dispute resolution mechanism.

10. We dismiss the writ petition leaving open the



remedy as above.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	22.03.2024
Transmission Date	

