

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2550 OF 2024

Scott Edil Pharmacia Ltd. through its
Authorized signatory
Mr. Dinkar Vishnu Chavan and Anr.

...Petitioner

Versus

Municipal Corporation of Greater
Mumbai and Anr.

...Respondents

...

Mr. Vishwajeet Kapse with *Mr. Vikram N. Walawalkar i/b. Mr. K.K. Khamre and Ms Sayali Gangal for the Petitioner.*

Ms Pooja Yadav i/b. *Mr. Sunil Sonawane for the Respondent -MCGM.*

Dr. Yajurvendra Patil, *CPD, present.*

**CORAM : SANDEEP V. MARNE &
DR. NEELA GOKHALE, JJ.
(VACATION COURT)**

DATED : 13 MAY 2024.

PC:

1. By this petition, Petitioners challenge orders dated 7 March 2024 passed by Respondent -Municipal Corporation Greater Mumbai (MCGM) blacklisting them for a period of three years from participating in tender process initiated by the Respondent -MCGM.

2. The MCGM floated two tenders on 3 February 2022 for supply of (i) tablets and capsules and (ii) creams, drops, ointments, oral liquids, lotions, syrups, liniments, spirituous preparations and miscellaneous medicines in its Municipal hospitals, maternity homes and dispensaries. The technical bids were to be opened on 28 February 2022 and financial bids were to be opened on 29 March 2022. Petitioners participated in the tender process by submitting their bids. According to Petitioners they decided to withdraw their bids as they intended to upgrade their facilities as per international GMP guidelines and accordingly withdrew their bids by letters dated 1 July 2022. Taking cognizance of letters dated 1 July 2022 the Municipal Corporation considered the bids as “non-responsive” and the Earnest Money Deposit (**EMD**) came to be forfeited.

3. Petitioners were issued Show Cause Notices on 9 May 2023 alleging that they submitted fake documents (performance certificates) in support of their bids. They were called upon to show cause as to why they should not be blacklisted. Petitioners responded to the show cause notices and attempted to blame third parties for submitting erroneous documents in support of the bids. After taking into consideration the reply filed by Petitioners, orders dated 7 March 2024 are passed by the MCGM blacklisting both Petitioners from participating in any tender process initiated by the MCGM for a period

of three years. Petitioners have filed the present petition challenging orders dated 7 March 2024.

4. Mr. Kapse, the learned counsel appearing for Petitioners would submit that the bids were withdrawn by Petitioners during the bid validity period of 180 days. That since the bids were withdrawn, there is no question of MCGM taking any action against Petitioners on the basis of documents accompanying the bids. That there is no concluded contract between the parties. That the show cause notice for blacklisting was issued as an afterthought, after one year of withdrawal of the bids. That Petitioners have not taken any undue benefit in the tender process and have withdrawn their bids. That they did not participate in the financial bidding. That Petitioners fairly admit the mistake committed by external agencies in submitting erroneous documents alongwith bids. That Petitioners have not derived any benefit out of the entire tender process. That since the tender process has not yielded any outcome for Petitioners, the MCGM cannot pass an order of blacklisting them. Mr. Kapse would rely upon judgment of the Apex Court in *VETINDIA Pharmaceuticals Limited vs. State of Uttar Pradesh and Anr. (2021) 1 SCC 804* in support of his contention that since the tender is not awarded and since there is no enforceable contract between the parties, blacklisting cannot be resorted to. He would submit that Petitioners are globally recognised players having presence in more than 70 nations across the world and have been supplying medicines to the Respondent- MCGM as well as State of

Maharashtra for more than 12 years. That the impugned order would badly affect their business. He would therefore submit that the impugned orders of blacklisting be therefore set aside.

5. *Per contra*, Ms. Yadav, the learned counsel appearing for the Respondent- MCGM would oppose the petition and support the orders of blacklisting Petitioners. She would submit that even in absence of concluded contract, the Municipal Corporation is entitled to take action against a bidder, if there is any misrepresentation or forgery noticed during the tender process. That mere withdrawal from the tender process does not wash out the illegalities committed by Petitioners during tender process. She would pray for dismissal of the petition.

6. We have considered the submissions canvassed by the learned counsel appearing for the parties.

7. The Petitioners participated in the tenders floated by MCGM for supply of tablets and capsules to various hospitals, maternity homes and dispensaries of the MCGM. Another tender was floated for supply of creams, drops, ointments, oral liquids, lotions, syrups, liniments, spirituous preparations and miscellaneous medicines. It appears that Petitioners submitted bids in respect of both the tenders. The tender conditions required the bidders to submit “performance certificate”

under Annexure-16 for the purpose of certifying capacity and quality certification from Food and Drug Authority (**FDA**). Discrepancies were noticed in the performance certificates submitted by Petitioners under Annexure-16 and therefore, a query was raised by the MCGM about such discrepancies. Petitioners therefore submitted physical Performance Certificates bearing FDA's signatures and stamps. The said certificates were sent by the MCGM for verification by FDA and the verification report submitted by FDA indicated that the performance certificates relied upon by Petitioners were fake. Once Petitioners were caught for submitting forged documents in support of their bids, they submitted letters dated 1 July 2022 for withdrawal of their bids submitting that they planned upgradation of their facilities as per the international GMP guidelines and also they had upcoming audit in November 2022. Petitioners therefore claimed that on account of those factors, supply could be delayed and hampered. Petitioners thus did not cite the reason of submission of fake documents for withdrawal of the bid. Now in the petition, Petitioners have sought to blame M/s. Rahul Pharma for submission of fake documents by one of its employees Mr. Rohidas Naik. However, while withdrawing the bids by letter dated 1 July 2022 the said reason was not cited by the Petitioners.

8. The Petitioners' bids were treated as non-responsive by the MCGM and their EMD was forfeited by issuing communications dated 12 July 2022. It appears that based on the queries raised by the

MCGM, the Health and Family Welfare Department of the Himachal Pradesh Government has issued show cause notices to Petitioners.

9. In the above background the MCGM issued Show Cause Notices dated 9 May 2023 to Petitioners asking them to show cause as to why they should not be blacklisted for having submitted fake and fabricated documents in support of the bids. In their replies to the Show Cause Notices, Petitioners did not dispute that the Performance Certificates submitted alongwith the bids are fake and fabricated. They however sought to blame M/s. Rahul Pharma for submission of fake documents. After considering the reply filed by Petitioners, the MCGM has proceeded to issue orders dated 7 March 2024 blacklisting Petitioners. It appears that additionally criminal prosecution is also initiated against Petitioners for having fabricated the Performance Certificates.

10. Mr. Kapse's main contention in support of challenge to the impugned blacklisting orders is non-conclusion of any contract between the parties. According to Mr. Kapse, the bids were withdrawn by Petitioners before expiry of the bid validity period. He has submitted that the bids were valid for a period of 180 days as per the tender conditions and that the bids were withdrawn on 93rd day, within the validity period. In our view, mere withdrawal of the bids by Petitioners would not absolve them of consequences arising out of their conduct in submitting fake and fabricated Performance Certificates.

Mr. Kapse's contention that blacklisting can only be resorted to on a conclusion of contract cannot be accepted. It was the responsibility of Petitioners to ensure that genuine documents were submitted along with bids. Reliance on fake and fabricated documents before a public authority is bound to invite strict action against the bidder. The tender condition No.18 specifically fixed the responsibility for production of correct and authenticated documents on the bidders. Condition No.18 in the tender documents reads thus:-

“ 18. The responsibility to produce correct authentication rests with the tenderer. If any document detected to be forged, bogus, etc., the tender shall be rejected and the tender deposit forfeited. Any contract entered under such conditions shall also be liable to be cancelled at any time during its currency and further penal action like criminal prosecution, blacklisting against the said contractor and /or the partners. The Municipal Commissioner shall also be entitled to purchase the items from the open market at the risk and cost of the said tenderer and the damages thereof shall be recovered from the contractors' dues.”

11. Mr. Kapse has relied upon following clause in the “General Conditions of Contract (GCC):

3) Blacklisting: The firm shall be blacklisted if it is found that :

- i. Forged document are submitted OR
- ii. If it becomes responsive on the basis of submission of bogus certificate OR
- iii. If the supply received is of substandard quality/Non-Supply.
- iv. If non-compliance of tender conditions deemed fit for blacklisting by MCGM.”

12. According to Mr. Kapse, GCC would come into existence only after contract is entered into between the parties. However, it must be noted that the condition for blacklisting is to be found not just in the GCC but the same was also incorporated in “General Instructions to the Tenderer”. It therefore cannot be accepted that a bidder can get away by submission of forged documents in a bid submitted to public authority without any consequences.

13. Mr. Kapse’s reliance on judgment of the Apex Court in *Vetindia Pharmaceuticals* (supra) does not cut any ice. In the case before the Apex Court, the show cause notice did not contemplate blacklisting. It only mentioned that appropriate action would be taken in accordance with the rules of the tender. This is the highlighting aspect in the judgment in *Vetindia Pharmaceuticals* (supra) in which the Apex Court in paragraph 8 has held as under:

“8. There is no dispute that the injection was not supplied to the Respondents by the Appellant. Yet the show-cause notice dated 21-10-2008 referred to further action in terms of the tender for supplying misbranded medicine to the Appellant. Furthermore, the show-cause notice did not state that action by blacklisting was to be taken, or was under contemplation. It only mentioned appropriate action in accordance with the rules of the tender. The fact that the terms of the tender may have provided for blacklisting is irrelevant in the facts of the case. In the absence of any supply by the Appellant, the order of blacklisting dated 8-9-2009 invoking clauses 8.12 and 8.23 of the tender is a fundamental flaw, vitiating the impugned order on the face of it reflecting non-application of the mind to the issues involved. Even after the Appellant brought this fact to the attention of the Respondent, they refused to pay any heed to it. Further, it specifies no duration for the same.”

14. Thus, the judgment of the Apex Court in ***Vetindia Pharmaceuticals*** (supra) cannot be read in support of an absolute proposition that no such action for blacklisting can ever be initiated where there is no concluded contract between the parties. In our view therefore the MCGM was entitled to take action for blacklisting Petitioners on account of submission of forged documents alongwith their bids. Petitioners have already attracted other stringent actions in the form of proceedings initiated by the Himachal Pradesh Government as well as criminal prosecution lodged in Agripada Police Station, Mumbai. Blacklisting order merely prohibits Petitioners from participating in tender process of MCGM for three years. Even if the blacklisting order is relied upon in other Government tenders, in our view, this is the minimum consequence which Petitioners must suffer for having indulged into forgery.

15. Petitioners cannot get away from consequences arising out of forgery by seeking to blame an outside agency. Once the bids are submitted in the name of Petitioners, they must own responsibility in respect of every document submitted alongwith their bids. Mr. Kapse submitted that Petitioner is a global leader in supply of medicines and will suffer badly on account of blacklisting. If indeed Petitioner is a global leader with presence across 70 nations in the world, it ought to have been more careful in not relying on forged and fabricated documents to secure contract with Municipal Corporation.

16. After considering the overall conspectus of the case, we are of the view that no valid ground is made out for interference in the impugned decision of the MCGM. The Writ Petition is devoid of merits and is liable to be dismissed. The Writ Petition is accordingly dismissed without any order as to costs.

[DR. NEELA GOKHALE, J.]

[SANDEEP V. MARNE, J.]