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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: March 21, 2024**Decided on: May 03, 2024**+ **W.P.(C) 1871/2024 & CM APPL.7817/2024****M/S BIOSHIELD LIFESCIENCES****PRIVATE LIMITED & ORS.****..... Petitioners**

Through: Mr. Akhil Sibal, Senior Advocate with Mr. Gaurav Mitra, Mr. Vineet Kumar, Ms. Harshita Gulati, Mr. Adityaraj Patodia, Ms. Lavanya Pathak, Mr. Arpit Singh, Ms. Asavari Jain, Advocates

versus**GOVERNMENT OF NCT OF DELHI & ORS.****..... Respondents**

Through: Mr. Avishkar Singhvi, ASC with Mr. Vivek Kr. Singh and Mr. Naved Ahmed, Advocates for GNCTD

AND+ **W.P.(C) 2076/2024 & CM APPL.8626/2024****HOSPIMAX HEALTHCARE PRIVATE LIMITED****..... Petitioner**

Through: Mr. Ratan K. Singh, Senior Advocate with Mr. Rajeev Gurung and Mr. Rishi Sethi, Advocates

versus**GOVERNMENT OF NCT OF DELHI & OTHERS****..... Respondents**

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**Through: Mr. Avishkar Singhvi, ASC
with Mr. Vivek Kumar
Singh and Mr. Naved
Ahmed, Advocates for
GNCTD**

**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

J U D G M E N T

1. The present writ petitions are filed under Article 226 and Article 227 of the Constitution of India for quashing and to set aside impugned order dated 31.01.2024 bearing reference no F.1(2)/53/DGHS/CPA/2023-24 (hereinafter referred to as **“the impugned order”**) issued by the respondent no 2/Directorate General of Health Services.

2. Briefly stated the facts as mentioned in writ petition bearing no W.P.(C) 1871/2024 case are that the petitioners M/s Bioshield Lifesciences Private Limited i.e. the petitioner no 1, M/s A.C. Surgipharma Private Limited i.e. the petitioner no 2 and Zenica Pharma i.e. the petitioner no 3 have challenged the impugned order issued by the respondent no 1 intimating that the Central Procurement Agency i.e. the respondent no 3 (hereinafter referred to as **"CPA"**) under the guidelines of Directorate General of Health



Services i.e. the respondent no 2 (hereinafter referred to as "**DGHS**") had blacklisted 10 companies/firms which were allegedly involved in tender pooling/cartel formation in CPA medicine tenders and supply of sub-standard medicines in GNCTD Hospitals and Institutions and operating as Health-Mafia. The impugned order and blacklisting are bad in the eyes of law as the action taken by the CPA to blacklist the said companies/firms was arbitrary and was taken on the basis of anonymous complaints without inquiring the substance of the allegations levelled against the petitioners and no show cause notice was served on the petitioners and as such a fair opportunity was deprived to the petitioners to respond to the allegations levelled against them.

2.1 The petitioners no 1 and 2 are engaged in the business of distributing the medicines/drugs from its respective manufacturers to the Hospitals and Institutions approved by CPA under the guidelines of DGHS. The petitioner no 3 is engaged in the business of distributing the medicaments which consists of mixed or unmixed products for therapeutic or prophylactic uses, put up in measures doses, from its respective manufacturers to the Hospitals and



Institutions approved by CPA under the guidelines of DGHS. The manufacturers apply for the tenders before CPA under the guidelines of DGHS and CPA after ensuring that the concerned manufacturers meet the eligibility criteria of the respective tenders enters into contract with manufacturers who unilaterally appoint a distributor in accordance with the norms of the tender for the purpose of delivering the medicines and other related goods to the Hospitals and Institutions approved by CPA under the guidelines of DGHS. The process of invitation fore-tenders for supply of medicines is supervised by CPA under the guidelines of DGHS. CPA accepts a distributor only if the distributor authorization certificate issued by the bidder is accompanied by an affidavit by the distributor to that effect. The bidder shall be responsible for compliance with all conditions of the tender irrespective that the goods were supplied by its authorized distributor. The distributors and CPA do not enter into a separate contract. The manufacturers for the purpose of distributing the medicines to the respective Hospitals and Institutions enter into agreements with distributors such as the petitioners. The distributors such as the petitioners deliver the medicines to the concerned



Hospitals and Institutions in accordance with the agreement with the concerned manufacturers and also collect the payments for the delivered medicines and subsequently shared with the manufacturer in accordance with the agreements entered between the manufacturers and the distributors.

2.2 The petitioners in the month of September 2023 came to know about filing of a complaint by Dev Raj who alleged that numerous distributors and manufacturers are engaged in fraudulent and anti-competitive practices. The companies and firms are operating a cartel and are manipulating tenders in collusion with government officials. Another complaint dated 29.12.2023 was filed with anonymous name alleging serious irregularities, biggest scam and corruption committed by the medicine manufacturers and distributors while participating in the medicine tenders conducted by CPA under the guidelines of DGHS. The complaint submitted by Dev Raj in month of September, 2023 was sent to CBI and NGO namely Anti-Corruption India on 06.01.2024. A complaint addressed to Health and Family Welfare Minister was filed on 19.01.2024 for debarring and blacklisting of the numerous companies and firms including the



petitioners. The petitioners also discovered filing of numerous additional complaints with anonymous and fictitious names before different government bodies with aim to harass and tarnish the reputation of the petitioners ultimately impeding their business operations. The petitioners along with other manufacturers submitted a collective representation addressed to the Central Vigilance Commission wherein detailed ongoing abuse and baseless allegations levelled against them by using pseudo-names and urged against arbitrary actions of CPA on grounds that no legitimate action can be taken on basis of anonymously complaints; CPA had violated the principles of natural justice by depriving the petitioners along with other manufacturers and distributors from an opportunity to respond to the false and baseless allegations levelled against them etc.

2.3 The petitioner on 03.02.2024 discovered a news article whereby the DGHS released Order dated 31.01.2024 i.e. the impugned order whereby CPA had blacklisted 10 firms/companies which were engaged in the business of manufacturing and distribution of medicines in relation to medicine tenders with the CPA. CPA never apprised the petitioners about any complaint wherein delivery of sub-



standard medicines by the petitioners was alleged. CPA did not give any show-cause notice to the petitioners and as such a fair opportunity to respond to the false allegations was denied to the petitioners. The impugned order also instructed all hospitals, CDMO offices, and other indenting institutions of CPA under GNCTD to stop payments to 10 firms/companies including the petitioners. According to the order, the firms were debarred and blacklisted by CPA due to alleged involvement in tender pooling/cartel formation in CPA medicine tenders, substandard supplies in GNCTD hospitals and institutions, and operating as part of a health mafia besides stoppage of payments. The petitioners were never apprised by CPA about any complaint regarding alleged delivery of sub-standard medicines by them. CPA never served any show-cause notice to the petitioners as such a fair opportunity to respond to the false allegations levelled was deprived to the petitioners. The representatives of the petitioners on 04.02.2024 visited CPA hospitals to collect the due payments but came to know about impugned order whereby all hospitals, CDMO offices and other indenting institutions of CPA under GNCTD to stop payments to 10 firms/companies



including the petitioners. It was alleged that these firms were blacklisted by CPA due to alleged involvement in tender pooling/cartel formation in CPA medicine tenders, substandard supplies in GNCTD hospitals and institutions, and operating as part of a health mafia. The petitioners have been engaged in the business of distributing the medicines to the Hospitals approved by the CPA under the guidelines of DGHS for more than two decades and have never been implicated or declared as a supplier of sub-standard goods in the history of its business with any government authority. There was no valid basis for contemplating blacklisting.

2.4 The petitioners no 1 and 2 served as authorized distributors for medical and healthcare goods, representing manufacturers who have entered into a rate contract with the CPA under the guidelines of DGHS. The primary responsibility of the petitioners involves procuring medicinal and healthcare goods on behalf of all government hospitals in Delhi from the respective manufacturers. CPA procures medicines & surgical consumables for Delhi Government Institutions under the Jurisdiction of GNCTD through Tender Inviting Authority. CPA ensures availability of quality drugs



and surgical items, promotes prescription of generic drugs. Integrated supply chain management system facilitates CPA working. The Tender Inviting Authority (TIA) under the control and supervision of DGHS through its Division - CPA invites tender through NIC web portal for procurement of medicines directly from the manufacturers through a legal and transparent mode. The medicine procurement process at CPA through Tender Document duly approved by the Competent Authority covers all the terms and conditions within which the eligible medicine manufacturers can participate so that procurement of medicines are done through transparent online mode at most economical rates while maintaining the highest standards of medicine and transparency and fairness in the procedure. The manufacturers as per CPA guidelines and conditions can only participate in supply of the medicine to avoid the middlemen, dealers, or distributors in the process and to procure the medicines directly from the manufacturers and also to reduce cost. The Tender Document i.e. Guidelines and CPA allows the manufacturer to supply the orders through its distributors/suppliers/dealers. The supplier may supply goods and receive payment directly or through its distributor.



The department accepts a distributor only if the Distributor Authorization Certificate issued by the bidder is accompanied by an Affidavit (by the distributor to that effect). The bidder is responsible for compliance with all conditions of the tender irrespective of that the goods were supplied by its authorized distributor which can continue till a letter from the supplier to CPA annuls that relationship. The process of procurement of medicine commences with an open tender invitation on the e-procurement portal inviting bids from eligible manufacturers who possesses manufacturing license, MMC and other documentary proof and thereafter the Technical Evaluation team scrutinizes the bids through a transparent technical assessment wherein bidders are selected based on their qualifications and technical capabilities and the technical evaluation team, the e-procurement system selects the lowest price bidders. The Special Purchase Committee (SPC) scrutinizes the L1 (lowest) bidders through high-level committee. SPC is an additional layer of scrutiny to guarantee fairness and transparency in the process. The rates at which medicines are awarded to manufacturers are based on rates approved by the SPC. The dealers or distributors of the



medicine manufacturers are not entitled for any cost in addition to the final bid price. The distributor after receipt of authorization procures the goods from the manufacturer and distributes them to all hospitals under the purview of CPA. The distributor generates sale invoices for the supplied goods. The procedural safeguards ensure that only manufacturers can face blacklisting based on a complaint initiated by a drug inspector following a comprehensive inquiry which includes issuance of a show-cause notice to the supplier, allowing a seven-day response period. The sole authority to execute blacklisting rests with the Director General whereas the impugned order was issued by the Additional Director. The violation of the principle of Natural Justice is evident when the impugned order was passed without affording opportunity to concerned parties to represent their case.

2.5 The petitioners challenged the impugned order on grounds that impugned order in backlisting and debarring the petitioners from supplying medicinal goods is unreasonable, unjustified, arbitrary and capricious. The impugned order disqualifying the petitioners from stopping pending payments infringes the fundamental right to livelihood. The respondents no 2 and 3 have acted with undue haste



in not issuing the show-cause notices before passing the impugned order. The petitioners have been deprived of a reasonable and just right to put forth its case and answer the allegations against them. The impugned order resulting in grave financial loss and harm to the petitioners has been passed without following the due process of law. The impugned order lacks essential details such as the reasons, show cause or a proper process leading to blacklisting. The complaints filed against the petitioners were orchestrated by business rivals. The impugned order is deviated from the established procedures outlined by CPA and the issuing authority was lacking the power to blacklist and the inclusion of entities not associated with CPA. The impugned order stopping payments to the petitioners coupled with the potential blacklisting has immediate financial and legal consequences and the petitioners have been denied their rightful payments without proper justification, adversely affecting their financial stability and contractual obligations. The primary responsibility for compliance with CPA regulations and contractual obligations lies with the manufacturers not with the distributors/delivery agents. The petitioners no 1 and 2 should be treated as intermediaries facilitating the logistical aspects of the supplychain. The petitioners have never been involved



directly or indirectly with the CPA operations. The impugned order lacks the necessary clarity. Hence petitioners filed present petition with following prayers which are reproduced verbatim:-

- a. issue a writ in the nature of *Certiorari* or any other writ quashing and setting aside the Impugned Order dated 31.01.2024 of stop-payment passed by Respondent No. 2 against the Petitioners herein,**
- b. issue a writ in the nature of *Certiorari* or any other writ calling for the records of the Order of so-called black listing of the Petitioners herein from Respondent No.3 and setting aside the same;**
- c. issue a writ of *Mandamus* or any other writ directing the Respondent No.3 to pass an appropriate fresh order, if necessary, after giving the Petitioners a fair, reasonable and justifiable chance to represent themselves before passing any order against the Petitioners herein in the interest of justice, equity and fairness;**
- d. pass a writ of *Mandamus* or any other writ directing the Respondents No. 2 and 3 to release the due payments payable by the CPA approved Hospital and Institutions towards the Petitioners herein;**
- d. pass any such other or further order(s) that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.**

3. The petitioner i.e. Hospimax Healthcare Private Limited in petition bearing no 2076/2024 pleaded that the petitioner is aggrieved by the issuance of impugned order issued by DGHS whereby the petitioner without granting any opportunity of being heard and issuance of show cause notice was blacklisted by the respondents i.e. DGHS and CPA along with nine other companies on mere assumption for



indefinite period and Stop Payment was also ordered on allegations that said companies including the petitioner were allegedly involved in tender pooling/cartel formation and supply of sub-standard medicine in government hospitals (GNCTD) and institutions.

3.1 The petitioner, a company incorporated and registered under the Companies Act, 1956 is engaged in the business of marketing and sales of healthcare products (drugs/medicines and medical devices). The respondent no 1 is Department of Health and Family Welfare of Government of NCT of Delhi and is responsible to provide health care facilities to public in Delhi and is also a controlling authority of the respondent no 2 i.e. Directorate of Health Services of Govt. of NCT of Delhi and respondent no 3 i.e. CPA is the nodal agency functioning under respondents no 1 and 2 which provides health services, including awarding of contract to licensed manufacturer for supply of medicine in the NCT of Delhi. The petitioner has been supplying/distributing medicines in the various hospitals of Govt. of NCT of Delhi as authorised distributor of licensed manufacturer which manufacture and supply medicines indifferent hospitals of Govt. of NCT of Delhi under the contracts executed between such



licensed Manufacturer and the respondent no 3. The licenced manufacturers submitted bids in the tender process for procurement of medicines and contracts are executed between CPA and manufacturer (successful bidder) after completion of tender process. The petitioner is only a Distributor, authorised by such manufacturer only for the purposes of collecting medicine manufactured by licensed manufacturer and then supply medicine in different government hospitals and institutions as per the orders placed by CPA and receives payment. CPA on 10.11.2023 issued a common letter addressed to the All Medicine Manufacturers/Dealer Firms/Distributors Firms whereby manufacturers were asked to submit information/undertaking to affect that whether they are in touch with any distributor/dealer firm by e-mail/phone etc.; that they have not paid any commission to any distributor or dealer or if they have given such commission to distributor, same may be disclosed in tabular form and also to provide bank account statement for the period during which they held any CPA contract. The Above information/undertaking was asked for from the manufacturer which participated in CPA tender in last five years. The distributors were



also asked to give undertaking that they have not taken any commission from any medicine manufacturing firm and if they had taken, they were asked to give complete list of transaction with their respective accounts. The petitioner was not asked to provide such information. The Federation of Institutional Drug Manufacturers of India in response to the letter dated 10.11.2023 issued by CPA has submitted a detailed reply on behalf of medicine manufacturing company to CPA but the information relating to bank account statement was not provided being personal information and invasion of privacy. The petitioner had sent supplies to a hospital of Govt of NCT of Delhi in the first week of February, 2024 and also requested for release of pending payment but the official of hospital refused to take supply and release payment on the ground that the petitioner has been blacklisted by CPA and stop payment has been ordered against the petitioner along with nine other companies vide impugned order. The petitioner was neither issued any blacklisting order nor served with said impugned order. The impugned order has adversely affected the urgent maintenance/repair work of the ‘Life Saving Medical Equipment’ including replacement of components of such



equipment,] installed in different hospitals/institution. The impugned order adversely affected the business.

3.2 The petitioner challenged impugned order on grounds that CPA has blacklisted the petitioner without granting any opportunity of being heard and issuance of show cause notice to the petitioner and on mere assumption for indefinite period and has also ordered Stop Payment against the petitioner and other companies on allegations that said companies including the petitioner are allegedly involved in “tenderpooling/cartel formation” and supply of “Sub-Standard” medicine in Govt. hospitals (GNCTD) and institutions. The petitioner was not served with either the blacklisting order as mentioned in the impugned order or the impugned order directly. The impugned order has adversely affected the urgent maintenance/repair work of the “Life Saving Medical Equipment”. The petitioner did not have any role in the tender process for procurement of medicines for which bids are submitted by different ‘licensed manufacturers’ and after completion of tender process, contracts are executed between the CPA and Manufacturer (successful bidder). The petitioner is only a Distributor authorised by such Manufacturer only for the purposes of



collecting medicine manufactured by licensed Manufacturer, and then supply such medicine in different Govt. hospitals and institutions as per the orders placed by CPA and receive payment. The allegation regarding involvement of the petitioner in “tender pooling/cartel formation” and supply of sub-standard medicine is baseless. The impugned order does not contain sufficient details/particulars about “tender pooling” and names of the medicine/drug/supplies which have been described as “substandard supplies” in the impugned order. The impugned order was passed without proper investigation and is based on only assumption. DGHS as per the contract with manufacturers can pass a blacklisting only against manufacturer for supply of substandard/spurious medicine after issuing show cause notice to such manufacturer and as per clause 1.3 of NIT such blacklisting order, if passed against manufacturer shall not affect the past supply orders i.e. supply order issued prior to issuance of blacklisting order. The impugned order is arbitrary, unreasonable, discriminatory and in violation of fundamental and legal rights of petitioner. The petitioner being



aggrieved filed present petition and prayed as under which is reproduced verbatim:-

- a) **Issue writ in the nature of certiorari or any other appropriate writ, order or direction, thereby setting aside/quashing the impugned decision of blacklisting issued by Respondent No.3, as mentioned in the impugned Order dated 31.01.2024 issued by Respondent No.2 and also the said Order dated 31.01.2024 (impugned herein) issued by Respondent No.2, being totally arbitrary, unjust and unreasonable and violative of the fundamental and legal rights of petitioner and against the principle of natural justice.; and**
- b) **Issue writ in the nature of mandamus or any other appropriate writ, order or direction, thereby directing the Respondents to issue appropriate directions to concerned hospital/institutions to release the outstanding payment of Petitioner which has been withheld and denied on account of impugned order dated 31.01.2024; and/or**
- c) **Issue any other writ, order or direction as this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case to give complete relief to Petitioner.**

4. The respondent no 2 i.e. DGHS through Additional Director filed counter affidavit wherein denied averments, submissions and contentions mentioned in the writ petition.

4.1 The respondent no 2 i.e. DGHS in preliminary submissions and objections stated that impugned order was passed by the office of DGHS whereby all Hospitals and CDMO Offices were informed that after due investigation by the office of DGHS it was found out that



ten manufacturers/distributors/suppliers were involved in tender pooling/cartel formation in CPA medicine tenders and sub-standard supplies in GNCTD Hospitals and Institutions and operating as health mafia. DGHS after due investigation and after finding collusive methodology between the ten firms including the petitioners of both petitions which are owned between merely three individuals came to the conclusion that payment must be stopped against ten particular firms till loss to the exchequer is calculated and recovery is done. DGHS has mapped out the owner/proprietor/directors of 10 particulars companies/firms and has come to the conclusion that these medicines supplier/manufactures firms are divided between family-members of the three individuals. There was a complete negligence in quality standards resulting in distribution of sub-standard and counterfeit medicines by numerous manufacturers/suppliers/distributors posing severe risks to lives of patients. DGHS after considering the facts and circumstances under which such companies/firms were operating in its office passed the impugned order. The companies/firms have not only provided sub-standard medicines and medical equipment but also breached tender



conditions by colluding with each other. DGHS after due verification passed the Impugned Order which directed the hospitals to stop payments to distributors/manufacturers/suppliers. DGHS discovered that these 10 companies were owned by merely three individuals namely Sandeep Gupta, Chetan Makhija and Rajan Sakhuja. DGHS has prepared a detailed report dated 31.01.2024 before passing the impugned order. The Additional Director, DGHS was constrained to pass the Impugned Order of blacklisting/stopping payment because of the illegal, collusive, and cartelisation practices undertaken by ten companies/firms in particular. The impugned order is sustainable in law and is based on the principles of law.

4.2 The petitioners in both petitions were found indulging in collusive practices and have *mala fide* misrepresented information and acted fraudulently with the office of DGHS and breached Section IV- General & Special Conditions, Clauses 1.2.3, 6.1,6.1(a)(iii).The office of DGHS made available tender documents to all perspective bidders before bids were invited by the office of DGHS. The essence of the contract was to maintain quality of the medicines/medical



equipment supplied/manufactured. The petitioners in both petitions were providing substandard goods.

4.3 The petitioners in both petitions are habitual offenders and concealed various antecedents of their previous blacklisting. DGHS has conducted tests with respect to the supplies received from firms including the petitioners and after due testing, an order dated 24.12.2023 was passed by the Directorate of Health Services - Head of Office CPA regarding the Zenica Pharma i.e. the petitioner no 3 in W.P.(C) 1871/2024. DGHS while conducting quality test standards came to the conclusion that the supplies provided by Zenica Pharma were “Not of Standard Quality Drugs”. A similar company which has been blacklisted by DGHS vide impugned order already has an antecedent of being blacklisted by Office of the Medical Superintendent- Safdarjung on 28.11.2000 and vide said order the Medical Superintendent Safdarjung Hospital found two particular companies/firms namely Pharma Surge Impex Ltd & Brij Textiles & its Allied Concerns which were blacklisted from Safdarjung Hospital on the ground of under Investigation by CBI. The directors/key managerial personnel of the petitioners are inter-related through



family/blood relations deliberately did not inform the office of DGHS and participated in bids. Brij Textiles (Entry No. 9 of Blacklisted firms) was also debarred for a period of two years vide letter dated 06.11.2023 by Medical Superintendent - Lal Bahadur Shastri Hospital, Delhi Khichripur for supplying cotton bandages which were “Not of Standard Quality Drugs”. The petitioners with due knowledge that the quality of the goods/supplies was of essence, deliberately supplied sub-standard products. FIR at Anti-Corruption Branch, Govt. of NCT of Delhi dated 10.01.2012 was also got registered against Pharmatek. The blacklisted companies/firms have prior antecedents for manipulative pricing / illegal bidding, etc.

4.4 The petitioners have deliberately failed to disclose material information which to ought to have been placed before DGHS before initiation of work and before the tender bid, with the intent of getting undue advantage and using firms/companies that are owned by family members to form cartels and collude in the bidding process floated by CPA. The office of DGHS is empowered under clause 6.2 of the Tender Conditions which States that the office of DGHS after finding non-disclosure of information/supply of sub-standard



drugs/collusive action has the authority to blacklist or stop payments to tender awardees. The petitioners also failed to reply to the numerous intimations which have been sent by CPA after receiving due approval from the office of DGHS to conduct a vigilance test on the bidders that have participated in tender processes. DGHS was directed by the Department of Health and Family Welfare to conduct a vigilance test by ensuring that bidders who had participated in tenders floated by CPA file a detailed undertaking disclosing the information as had been sought. The first letter was sent on 10.11.2023 by Senior Medical Officer (Vigilance), CPA requesting details from previous tender participants. DGHS through CPA sent a reminder email dated 04.01.2024. The office of DGHS found response dated 09.01.2024 received from Federation of Institutional Drug Manufacturers of India on behalf of multiple manufacturers/suppliers was not satisfactory as failed to disclose information and the undertaking as requested by the CPA on 10.11.2023 and reminder dated 04.01.2024. The petitioners are yet to provide a satisfactory undertaking as requested by CPA even after nearly four months. DGHS after noting the collusive acts,



antecedents of the firms, concealment of material facts and cartelisation done by the petitioners was constrained to pass the Impugned order to ascertain/restrain the losses done to the exchequer. The impugned order mandated that payment must be stopped against ten firms till loss to the exchequer is calculated and recovery is done. DGHS found numerous samples belonging to the 10 blacklisted entities were found to be sub-standard posing high risk to the patient care. The acts of the petitioners would eliminate other bidders as there would be the presence of bids of the owners/directors of the petitioners in the bids for manufacturing and distributing medicines and medical supplies.

4.5 It was stated and prayed that both petitions are liable to be dismissed.

5. The respective learned Senior Counsels for the petitioners in both petitions advanced oral arguments and written submissions were also submitted on behalf of the petitioners. It was argued that the petitioners are distributors and not manufacturers of medicines and surgical consumables. DGHS invites bids from manufacturers and importers for procuring medicines and surgical consumables for



Delhi government hospitals and dispensaries and there is contractual relationship between the manufacturer which is also referred to as the bidder and DGHS and the successful bidder is termed as the supplier. The petitioners being distributors are neither bidders nor suppliers and do not have a contractual relationship with DGHS. It was further argued that Clause 1.2 of Invitation of e-tender for Supply of Medicines provides for blacklisting of the supplier for quality failure which only applies to the manufacturer/successful bidder with whom the contract is executed and not the distributor. The Clause 1.2.4 requires a show cause notice to be issued before passing any such blacklisting order.

5.1 The impugned order is addressed to all Delhi Government Hospitals is founded on a purported blacklisting of the petitioners and other distributors by CPA and consequentially orders "Stop Payment" against the petitioners amongst others. The counter affidavit filed by the respondent no 2 i.e. DGHS reflects that no order of blacklisting was existed prior to the impugned order exists and due to this reason the impugned order is liable to be set aside. The impugned order also alleged that the distributors have been blacklisted due to their



involvement in tender pooling/cartel formation in CPA medicine tenders and sub-standard supplies in GNCTD hospitals even though the petitioners were not manufacturers/bidders/suppliers. The impugned order also acknowledged the petitioners as "dealers of the manufacturing companies that participated in the tenders". The impugned order does not indicate any blacklisting or any other action against the manufacturers/bidders/suppliers.

5.2 The impugned order is arbitrary and motivated which is premised on a non-existent blacklisting and was passed without any prior notice to the affected parties. The impugned order also referred to three FIRs but none of which relate to the petitioners and further to a Debarment Letter and Blacklisting Order which also do not relate to the petitioners. The respondent no 2/DGHS in counter affidavit also referred impugned order as an "order of stopping the payment/blacklisting" which is contrary to the plain language of the impugned order.

5.3 The learned Senior Counsels further argued that impugned order was passed without observing principles of natural justice. The petitioners never received any such show cause notice and have never



been served with any blacklisting order. The blacklisting order must be preceded by a specific, unambiguous show cause notice proposing blacklisting without which a blacklisting order cannot sustain and a blacklisting order cannot be indefinite and must be for a specified period. The impugned order issued a blanket "Stop Payment" order to all GNCTD hospitals which prevented the petitioners from collecting payments to which they are entitled being authorized distributors of the manufacturers/bidders/suppliers. The impugned order does not reflect any contractual or blacklisting action having been taken against the suppliers but selectively debars the petitioners and other distributors from receiving the said payments leaving it open to the suppliers to simply switch to other distributors. The manufactures due to impugned order have started to threaten to their distributorships with the petitioners. The respondent no 2/DGHS relied on clause 6.2 of the CPA e-tender provisions in its counter affidavit which has no application to distributors who are not suppliers under the contract and the action contemplated under clause 6.2 is to cancel the contract with the supplier and blacklist the bidder



for 5 years with forfeiture of security deposit. It was argued that petitions be allowed in terms of prayer clause.

6. The Additional Standing Counsel for the respondents also advanced oral arguments and submitted written arguments as well. It was argued that the present writ petitions are filed to challenge the impugned order issued by DGHS which by its very conclusion issues a stop payment letter to government hospitals and directs the cessation of payments to the petitioners unless calculations of losses to exchequer are completed and recovery is initiated/executed. The petitioners have not disclosed the documents referred to in counter affidavit which are reply to letter dated 10.11.2023, reply to e-mail dated 04.01.2024 and Quality Lab Report dated 24.12.2023 and FIR.

6.1 It was further argued that the impugned order is not a blacklisting order rather it is a “Stop Payment” order. The impugned order was not issued arbitrarily or mechanically by DGHS and it was premised on substantial incriminating evidence against the petitioners and their direct associates. The petitioners were involved in tender pooling/cartel formation within CPA medicine tenders and violated tender clauses. DGHS issued the impugned order after thorough



consideration of a comprehensive internal report prepared by the Health & Family Welfare Department, Delhi. The report specifically pointed out that the petitioners were engaged in cartelization and other unethical practices. The manufacturing companies associated with the petitioners had been providing substandard materials in disregard of quality standards. The respondents have always followed the principles of natural justice.

6.2 The petitioners were duly served with notices dated 10.11.2023 and 04.01.2024 to present their links to specific manufacturers to ascertain the ultimate source of such spurious and overpriced medicines but there was unexplained silence on the part of the petitioners despite reminder. The impugned order is not a blacklisting order rather it is a “Stop Payment” order.

6.3 The Additional Standing Counsel further argued that the petitioners are deliberately attempting to misread the order of “Stop Payment” dated 31.01.202 as if it carries the consequences of a blacklisting order. The impugned order does not contain the ingredients of a blacklisting order such as curtailing the right to bid, affecting any fundamental rights for a fixed period, debarment from



other tenders, or consequential criminal action. The petitioners being distributors are liable for the supply of medicines made by him through whichever manufacturer the drugs may be sourced and relied on Clause 13.2. It was further argued that if the products supplied by the petitioners particularly life-saving drugs such as steroids and medicines are determined to be of substandard quality by accredited laboratories, then a range of measures concerning the supply of such materials is permissible and such measures can be undertaken under the terms of the contract and in accordance with common law principles even if the petitioners are deemed to fall within the definitions of 'contractor', 'agent', 'distributor', or 'supplier'. The Additional Standing Counsel also referred Clauses 3 (h)-3(j) which cast a duty upon the suppliers to take utmost care in supplying the medicines. The petitioners are involved in fraudulent, corrupt and collusive practices as per Clause 6.

6.4 The Health and Welfare Department as per internal report dated 31.01.2014 found that the petitioners are run and controlled by members of same families. The petitioners were found indulging in corrupt practice of supply of sub-standard medicines even life saving



drugs. The petitioners owe a strict responsibility and accountability in supplying medicines to the public at large which is at par with the manufacturers. It was further stated that there is a direct bar regarding closely related parties monopolizing the supply of life-saving drugs as it is an anti competitive practice undertaken by the petitioners and referred Clauses 6.1 and 6.2 of the tender agreement.

6.5 The Additional Standing Counsel stated that although there is no privity of contract between the petitioners herein and the respondents but the respondents are not without a remedy and as such the action taken by the respondents i.e. ceasing payment to the petitioners is merely a protective measure to safeguard public health against substandard quality drugs. It was also submitted that as per Clause 6.2, CPA and DGHS may terminate the supplier's employment under the contract and cancel the contract and the procurement will be made at the risk and cost of the supplier besides blacklisting the bidder for 5 years with forfeiture of security deposit apart from other penal actions. It was argued that the petitions are liable to be dismissed.



7. The Additional Written Arguments were also submitted on behalf of the petitioners. It was submitted and argued that the impugned order is a blacklisting order as reflecting from the plain language of the impugned order itself. The respondent no 2/DGHS in counter affidavit also took position that impugned order is a blacklisting order and described impugned order as “the order of stopping the payment/blacklisting”. It was also mentioned in counter affidavit that the Additional Director, Directorate General of Health Services, Headquarters was constrained to pass the Impugned Order of blacklisting/stopping payment. It was argued that in light of the express language of the impugned order which refers to a blacklisting order as well as the stand in the counter affidavit describing the impugned order itself as a blacklisting order. It was contended that no blacklisting order can be passed without compliance with principles of natural justice and prior unambiguous show cause notice and further no blacklisting order can be passed for an indefinite period. It was also stated that the respondent no 2/ DGHS contrary to the express stand in its counter affidavit has argued that the impugned order is not a blacklisting order and is merely a stop payment order



and referred **Mohinder Singh Gill V Chief Election Commissioner**, (1978) 1 SCC 405 wherein it was held that a public order made by public authorities must be construed objectively with reference to the language used in the order itself and cannot be subsequently supplemented and improved upon. The impugned order is having significant civil consequences for the petitioners as it was inform to all hospitals in Delhi that the petitioners have been blacklisted by CPA due to their involvement in tender pooling/ cartel formation, sub-standard supplies and are operating as part of a Health Mafia and such false assertions by a public health authority are extremely prejudicial and detrimental to the reputation and business of the petitioners. The impugned order also directed that all payments to the petitioners against all contracts by all Delhi hospitals be stopped. The impugned order has not been preceded by any show cause notice or hearing to the petitioners. The reliance was placed on **SBI V Rajesh Agarwal**, (2023) 6 SCC 1.

7.1 It was further argued that the impugned order is wholly without jurisdiction or power to pass such an order. The respondent no 2/DGHS in the counter affidavit placed reliance on clause 6.2 of the



e-tender provisions as the supposed source of power to pass an order of ‘stop payment’ but Clause 6.2 does not have application in the instant case. The petitioners are authorized distributors of the bidders/suppliers/manufacturers and there was no privity of contract Between the respondent no 2/DHGS and the petitioners as the petitioners were never bidders. Clause 1.1 of the e-tender provisions expressly provides that successful bidders are called ‘suppliers’. The provisions which are relied upon during oral submissions by the respondent no 2/DHGS provide for action against the bidder/supplier/manufacture and not the authorized distributor. Even otherwise also those provisions contemplate compliance with principles of natural justice and none of the clauses provide for a blanket stop payment order as impugned in the instant petition. Clause 1.2.4 provides the procedure for blacklisting which provides that only the Director General can pass an order of blacklisting after issuing a show cause notice. However in the instant case, the Additional Director has passed the impugned order without issuing any show cause notice and without disclosing any authority in this regard. It was ultimately argued that the impugned order is liable to



be quashed/set aside since it is i)founded on a non-existent blacklisting order, ii)passed in gross breach of principles of natural justice and iii) without jurisdiction/power.

7.2 It was further argued that the respondent no 2/DGHS has failed to substantiate the impugned order as there was no material to support the conclusions in the impugned order that the petitioners have engaged in tender pooling/ cartel formation, operating as part of a Health Mafia or being habitual offenders. The respondent no 2/DGHS did not disclose any action whatsoever taken against the actual bidders. The respondent no 2/DGHS has placed reliance on letter dated 10.11.2023 seeking certain information/undertakings from manufacturers and distributors but said letter was not in the nature of a show cause notice and did not provide for any consequential action and also not referred in impugned order. The Federation of Institutional Drug Manufacturers of India representing more than 100 manufacturer suppliers responded to said letter contending that the information sought is beyond the tender clauses and contract.



7.3 The petitioners to counter argument advanced on behalf of the respondents that the petitioners have a common ownership argued that the respondent no 2/DGHS has not pointed to any relevant bar in law or prohibition under any e-tender condition in this regard which has in any manner been violated by the petitioners and as such contention of the respondent no 2/DGHS is entirely irrelevant and misplaced and cannot justify the impugned order.

7.4 It was further argued that the respondent no 2/DGHS placed reliance on order dated 24.12.2023 to contend that the petitioners were supplying sub-standard medicines. However said order makes reference to the petitioner M/s. Zenica Pharma but said order is not addressed to the petitioner Zenica Pharma. The petitioners are distributors and not manufacturers. The medicines which were found to be “Not of Standard Quality” were manufactured by M/s. Adroit Pharmaceuticals Pvt. Ltd. and M/s. Medicamen Organics Ltd. and M/s. Zenica Pharma was not their authorized distributor. The impugned order also does not have any reference to the order dated 24.12.2023. Clause 1.1 expressly provides that the bidder shall be responsible for compliance with all conditions of the tender



irrespective of the fact that the goods were supplied by the authorised dealer.

7.5 It was further argued that CPA e-tender conditions expressly provide for blacklisting of the product and/or the supplier in case a medicine is found to be ‘Not of Standard Quality’ and prescribe a procedure to be followed. It does not contemplate any action against the distributor as there is no privity of contract with the distributor and a distributor cannot be held responsible for lack of quality of the medicines manufactured by the successful bidder/supplier and supplied through the authorized distributor.

7.6 The respondent no 2/DGHS also contended that the impugned order was passed in the interest of public health however but the respondent no 2/DGHS did not curtail supply of medicines by manufacturers/bidders/suppliers in any manner. The impugned order was selectively passed against certain distributors leaving manufacturers/bidders/suppliers free to appoint other competing distributors. The selective and motivated targeting of the petitioners smacks of legality. Clause 6.2 excludes distributors from its operation as it pertains to suppliers. The distributors acting solely as delivery



agents do not have any control over suppliers and their actions. It was reiterated that the petitions be allowed in terms of prayer clauses.

8. The petitioner in writ petition bearing no 2076/2024 submitted brief note of argument wherein stated that the respondents/DGHS passed the impugned order on grounds that the petitioner was involved in cartel formation of tender process for supply of medicine; supplied sub-standard quality of medicine; FIRs registered against some distributors and the petitioner is a habitual offender. The petitioner to counter allegation of cartel formation stated that as per respondents/DGHS, Rajan Sakhuja is one of the Directors of petitioner, is also proprietor of M/s Pharmimax India Ltd. whose name appears at serial no 10 in impugned order but M/s Pharmimax India Ltd. is not in operation since May, 2014 and surrendered its druglicence to Govt. of NCT of Delhi as reflected from Memorandum dated 22.05.2014 issued by Drugs Control Department, Govt of NCT of Delhi. The petitioner with regard to allegation of supply of Sub-Standard quality of Medicine stated that the respondents have not filed any test report which established that the petitioner had supplied substandard medicines. There is no FIR



against petitioner and further the respondents did not place any material to show that the petitioner is a habitual offender.

8.1 The respondent/DHGS has never issued any show cause notice to the petitioner proposing blacklisting of the petitioner and the purported blacklisting order or impugned order have ever been issued to the petitioner. The blacklisting order against the manufacturers as per clause 1.2 can be passed only after issuance of Show Cause Notice. The impugned order was passed in violation of principle of natural justice.

8.2 The blacklisting order was passed against the petitioner which is contrary to stand taken up by the respondent no 2/DGHS and in consequence of blacklisting order, stop payment with recovery has been ordered against the petitioner. The letter dated 10.11.23 was not issued to the petitioner. The blacklisting order does not have effect on post supply order and blacklisting cannot be given retrospective effect. The respondent/DHGS has not passed blacklisting order against manufacturer which participated in tender process and manufactured the medicines. It was argued that the impugned order be set aside.



9. It is reflecting from material placed on record that CPA procures medicines and surgical consumables for hospitals and institutions under the jurisdiction of GNCTD through Tender Inviting Authority (TIA). The Tender Inviting Authority (TIA) under the control and supervision of DGHS through CPA invites tender through NIC web portal for procurement of medicines directly from the manufacturers. The eligible medicine manufacturers can apply and participate in tender and procurement of medicines is stated to be done through online mode to ensure purchase of medicines at economical rates and to maintain highest standards of medicine and transparency and fairness in the procedure. The process of invitation for e-tenders for supply of medicines is stated to be supervised by CPA and Special Purchase Committee (SPC) also scrutinizes the L1 (lowest) bidders through high-level committee. CPA enters into contract with manufacturers who use to appoint a distributor for delivering the medicines and other related goods to the hospitals and institutions approved by CPA under the guidelines of DGHS. The essence of the contract was to maintain quality of the medicines/medical equipment supplied/manufactured. The distributors and CPA donot enter into a



contract directly. The bidder is stated to be responsible for compliance with conditions of the tender irrespective that the goods were supplied by its authorized distributor. The primary responsibility of the distributors after receipt of authorization involves procuring medicinal and healthcare goods from the respective manufacturers and thereafter to deliver the medicines to the concerned Hospitals and Institutions and also collect the payments for the medicines so delivered. The petitioners in both petitions claimed to be engaged in the business of distributing the medicines/drugs and health care products to the hospitals and institutions approved by CPA after procuring from manufacturers.

9.1 DGHS after due investigation noticed that ten manufacturers/distributors/suppliers including the petitioners in breach of tender conditions were involved in tender pooling/cartel formation in CPA medicine tenders and supply of sub-standard medicines in GNCTD hospitals and institutions and were operating as health mafia. DGHS also noticed that these ten firms are owned by merely three individuals and then decided to stop payments qua these ten firms till loss to the exchequer is calculated and recovery is done



and accordingly passed the impugned order dated 31.01.2024. The petitioners in both petitions allegedly breached Clauses 1.2.3, 6.1, and 6.1(a)(iii) of Section IV of Invitation of e-Tender for Supply of Medicine. The Directorate of Health Services, CPA passed an order dated 24.12.2023 regarding the Zenica Pharma i.e. the petitioner no 3 in W.P.(C) 1871/2024 and after conducting quality test standards came to the conclusion that the supplies provided by Zenica Pharma were “Not of Standard Quality Drugs”. Pharma Surge Impex Ltd and Brij Textiles and allied concerns were found not having clear antecedents. DGHS claimed to be empowered under clause 6.2 to blacklist or stop payments to tender awardees. DGHS as directed by the Department of Health and Family Welfare for conducting a vigilance test to ensure that bidders who had participated in tenders floated by CPA, filed a detailed undertaking disclosing the information as sought and accordingly a letter was sent on 10.11.2023 by Senior Medical Officer (Vigilance), CPA requesting details from previous tender participants and subsequent reminder email dated 04.01.2024 was also sent. Federation of Institutional Drug Manufacturers of India on behalf of multiple



manufacturers/suppliers sent a response dated 09.01.2024 which was found not satisfactory.

10. The Department of Health and Family Welfare, Government of National Capital Territory of Delhi (GNCTD) runs hospitals as well as dispensaries providing Health Services to the public. The Directorate of Health Services (DHS) has been mandated to procure the Medicines/Surgical Consumables, the procurement of which governed by rules and regulations as contained in **Invitation of e-Tender for the supply of medicines**. Section I of e-Tender deals with Instructions to Bidders. Clause 2.1 of Section I deals with eligibility of bidder and provides that bidder should be a licensed Indian manufacturer or an importer for which the bid is being submitted and an authorised distributor may be allowed to make supplies and collect payment later if contract is awarded to the bidder but the bid has to be submitted by manufacturer or importer. Clause 2.1 as such distinguishes between manufacturer and distributor. Section II deals with evaluation and acceptance of tender. Clause 3 deals with Award of Contract. It provides that the principle of selection/award will be the lowest priced, technically compliant bid



(LI) and the Bidder who has been declared as lowest bidder (LI) shall execute necessary agreement for the supply of the rate contracted item(s) on depositing the Performance Security for execution of the agreement. Section III deals with Schedule of Requirements. Clause I deals with supply conditions. It provides that supply orders along with the place of supply (destinations) will be issued to the successful bidder(s), now called supplier(s) at the discretion of the CPA. The bidder after award of contract known as the supplier, It also provides that the supply order shall be available at NIRANTAR (the Supply Chain software of CPA, DGHS to which access shall be given to the suppliers. Section IV deals with General and Special Conditions. Clause 1.2 is an important clause which deals with blacklisting for quality failure. Clause 1.2.1 provides quality test by the empanelled laboratories of CPA, DGHS and further provides that each batch of item supplied by the supplier to the end user (Hospitals/stores) may be subjected to quality test by the empanelled laboratories. Clause 1.2.3 deals with blacklisting of the supplier for quality failure and provides that in case of any sample declared as Adulterated/spurious by the Government Authorities/Empanelled laboratories, the



manufacturing company/firm shall be blacklisted for a period of 3 years from the date of intimation besides forfeiture of security deposit in full after observing the procedure laid down in Para 1.2.4. Clause 1.2.3 only provides blacklisting of manufacturer and does not talk about blacklisting of a distributor. Clause 1.2.4 deals another important aspect in blacklisting and provides procedure for blacklisting and further provides that on receipt of report indicating that a particular Item/Drug is **"Not of Standard Quality/Adulterated/Spurious"** as the case may be, a show cause notice shall be issued to the supplier calling for explanation within 7 days from the date of notice. Clause 1.2.4 deals with issuance of 7 days' notice before passing of blacklisting order. The Director General on receipt of explanation from the supplier may take appropriate action on merits of the case and impose penalty including the blacklisting of the particular item of the product/company or firm as deemed fit besides forfeiture of Security deposit. Clause 1.3 also provides that supply orders, if any, already issued before taking any blacklisting action or orders given in past will not be affected in view of action taken as per above guidelines but all strict quality checks



shall be observed for each supply of products. It is also made clear that order of blacklisting shall be done without prejudice to other legal penalties. Clause 6 deals with fraudulent and corrupt practices. Clause 6.2 deals with fraudulent and corrupt practices adopted by the suppliers. It provides that if CPA, DGHS determines that a supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the contract then the CPA, DGHS may after giving 7 days' notice to the supplier terminate the supplier's employment under the contract and cancel the contract and the procurement will be made at the risk and cost of the supplier besides blacklisting the bidder for 5 years with forfeiture of security deposit apart from other penal actions. Clause 13 deals with deduction and other penalties on account of quality failure. Clause 13.1 provides that if the samples do not conform to statutory standards, the bidder will be liable for relevant action under the existing laws. Clause 13.2 further provides that if any item supplied by the bidder have been partially or wholly used or consumed after supply and are subsequently found to be in bad odour. Unsound, inferior in quality or description or otherwise faulty or unfit for



consumption then the contract price or prices of such articles or things will be recovered from the bidder if payment had already been made to him. Clause 13.3 empowers CPA, DGHS for supply of Adulterated/Spurious/Misbranded items to blacklist the firm/company.

11. The impugned order dated 31.01.2024 perused. The impugned order is issued by the Additional Director (HQ), Directorate of Health Services, Govt. of NCT of Delhi and is addressed to the Director / Medical Supdt./CMO 1/c of all Hospitals and all CDMO Offices and other indenting institutions of CPA under GNCTD. The impugned order mandated stop payment against 10 firms including the petitioners of both petitions detailed therein till loss to the exchequer is calculated and recovery is done. The relevant portion of the impugned order is produced verbatim as under:-

Madam / Sir,

It is to intimate that following ten distributor / dealer firms & Owners and directors of the firms have been blacklisted by CPA (DGHS, GNCTD), due to their involvement in tender pooling/cartel formation in CPA medicine tenders & Sub Standard supplies in GNCTD Hospitals & Institutions and operating as Health Mafia. After investigation, it has been uncovered that these companies and suppliers, ranging from L1 to L20 across various items, are dealers of the manufacturing companies that participated in the



tenders. This indicates collaboration and the pooling of tenders within the CPA tenders. The evidence strongly suggests fraudulent activities by these companies and suppliers with the institution. The entire supply chain is corrupt and done fraud with institution.

These firms are also found to be behind supply of substandard medicines, consumables and Equipments. These companies extracted huge margins from manufacturers by consolidating tenders, and this should be required proper investigation & made to recover these funds from these suppliers.

1. M/S PHARMA SURGE IMPEX (OWNERS MRS. VANDANA GUPTA & ROHIT GUPTA)
2. M/S TIRUPATI MEDILINES PVT LTD (DIRECTOR'S-MR MUDIT GUPTA, MR SHUBHAM GUPTA & RAJESH GUPTA)
3. PHARMATEK INDIA (OWNER MR. ROHIT GUPTA)
4. M/S TAPS HEALTHCARE PVT LTD (DIRECTOR'S- MR TUSHAR SHARMA, MR SHRJSH BHARDWAJ, MR AKSHA Y RATHA)
5. M/S ZENICA PHARMA (PROPRIETOR MR. RAMESH CHANDER)
6. M/S BIOSHIELD LIFESCIENCES PRIVATE LIMITED (DIRECTOR'S MR CHETAN MAKHIJA & MRS. MEGHA MAKHIJA)
7. M/S A C. SURGIPHARMA PVT LTD (DIRECTOR'S-MR RAMESH CHANDER AND MR CHETAN MAKHIJA)
8. M/S HOSPIMAX HEALTHCARE PVT LTD (DIRECTOR'S-MRRAJAN SAKHUJA, MR ANIL CHAUDHRY AND MR SUNIL KUMARBAJAJ)
9. M/S BRIJ TEXTILES (PROPRIETOR MR. SANDEEP GUPTA)
10. M/SPHARMIMAX INDIA (MR. RAJ AN SUKHIJA)

StopPayment is hereby ordered against above ten firms till loss to the exchequer is calculated and recovery is done.

FIR No. 1/24 of ACB of year 2024 is already registered against Brij Textiles and associates. Also FIR No. 7/98 of CBI of year 1998 against Brij Textiles; and FIR No. 1/12 of ACB of year 2012 against M/s Pharmatek India were previously registered.



Above ten firms seem to habitual offenders so their supply to individual hospitals / institutions may also be subjected to scrutiny and no payment released till further communication by this office.

Further instructions have been given to all medical directors to establish a three-member senior official committee tasked with initiating the necessary recovery process by checking their sale, purchase & commissions invoice from these companies and suppliers on their end.

Sd/-

**Dr. Hari Charan Barua
Addl. Director (HQ)**

12. The petitioners in both petitions are distributors and not manufacturers of medicines and surgical consumables and there was no privity of contract between the petitioners and the respondents/DGHS. The respondent no 2/DGHS also admitted that there is no privity of contract between the petitioners and the respondents/DGHS. The petitioners being distributors are neither bidders nor suppliers and do not have a contractual relationship with DGHS. The respondent no 2/DGHS in impugned order only referred the blacklisting of the distributors including the petitioners and not blacklisting of the manufacturers/suppliers who happened to be the successful bidders. The petitioners stated that the impugned order is blacklisting order but contrary to this the respondent no 2/DGHS



termed the impugned order not as the blacklisting order but order only for cessation/stopping of payment. The respective learned Senior Counsels for the petitioners to substantiate contention that impugned order is a blacklisting order and is liable to be set aside argued that Clause 1.2 of Section IV of Invitation of e-tender for Supply of Medicines provides for blacklisting of the suppliers for quality failure and not of the distributors such as the petitioners and as per Clause 1.2.4 a show cause notice is required to be issued before passing blacklisting order which was never issued to the named distributors including the petitioners. The impugned order also referred blacklisting of the petitioners and other distributors by CPA due to their involvement in tender pooling/cartel formation in CPA medicine tenders and sub-standard supplies in GNCTD hospitals and passing of "Stop Payment" order subsequently against them however no such blacklisting order was in existence before passing of impugned order as reflected from the counter affidavit filed by DHGS. The Additional Standing Counsel for the respondents argued that the impugned order issued by DGHS is a stop payment letter issued to government hospitals directing cessation of payments to the



petitioners unless calculations of losses to exchequer are completed and recovery is initiated/executed.

12.1 The various clauses of Invitation of e-tender for supply of medicines clearly distinguishes between manufacturer and distributor without any overlapping and a distributor is not included in ambit of the manufacturer. Clause 2.1 of Section I distinguish between manufacturer and distributor by providing that bidder should be a licensed Indian manufacturer and an authorised distributor may be allowed to make supplies and collect payment but manufacturer has to submit bid. The distributor is not permitted to submit bid. The bidder after award of contract as per Clause I of Section III is known as the supplier. Clause 1.2.1 provides that each batch of item supplied by the supplier may be subjected to quality test by the empanelled laboratories and Clause 1.2.3 mandated blacklisting of only supplier for quality failure for a period of 3 years as per procedure laid down in clause 1.2.4. Clause 6.2 of Section IV applies only to supplier which deals with fraudulent and corrupt practices adopted by the suppliers. Clause 13.2 of Section IV also provides recovery of contract price or from the bidder. The petitioners of both petitions



and other firms referred in impugned order are only distributors without having any privity of contract with the respondents/DGHS. DGHS as per various clauses of Invitation of e-tender for supply of medicines which clearly distinguish between a manufacturer and a distributor cannot blacklist the distributors including the petitioners and the distributors including the petitioners cannot be blacklisted as Invitation of e-tender for supply of medicines. The impugned order also talked about blacklisting of 10 distributors/dealers including the petitioners of both petitions but said blacklisting order or proceedings if any is not place on record by the respondents/DGHS and appears to be non-existent. The impugned order in essence and letter and spirit only talked about stopping of payment to ten distributors/firms including the petitioners due to supply of substandard medicines, consumables and equipment and payment was stopped till loss to the exchequer is calculated and recovery is done. The impugned order does not contemplate blacklisting of manufacturers/bidders or distributors including the petitioners. The impugned order also does not contain any penal action against the petitioners and other firms such as bar from acceptance of further supplies, ineligibility from



participating in future tender process of Tender Inviting Authority of CPA, DGHS for supply of medicines for a specific period etc. There is force in arguments advanced by the Additional Standing Counsel for the respondents that impugned order is not blacklisting order rather it is an order against the petitioners and other firms only to stop payment of already supplied medicines and other consumable etc. The arguments advanced by learned Senior Counsels for the petitioners that impugned order is a blacklisting order cannot be accepted under given facts and circumstances of case, The impugned order is essentially is an order to stop payment to the petitioners and other firms.

13. The learned Senior Counsels for the petitioners also argued that impugned order was passed without observing principles of natural justice as the petitioners never received any such show cause notice and never served with any blacklisting order which must be preceded by a specific, unambiguous show cause notice proposing blacklisting and a blacklisting order must be for a specified period. It was further argued that the letter dated 10.11.2023 which sought certain information/undertakings from manufacturers and distributors is not



in the nature of a show cause notice as it did not provide for any consequential action and also not referred in impugned order. The Additional Standing Counsel for the respondents/DGHS argued that the petitioners were served with notices dated 10.11.2023 and 04.01.2024 to present their links to specific manufacturers to ascertain the ultimate source of such spurious and overpriced medicines but the petitioners did not respond to notices within 7 days.

13.1 The principles of natural justice involve a procedural requirement of fairness and have become an essential part of any system of administrative justice. Natural Justice is considered to be part of rule of law. The Supreme Court in **Sangram Singh V Election Tribunal Kotah**, AIR 1955 SC 425 observed that one should not be condemned unheard and decision should not be reached behind the back. The Supreme Court in **Maneka Gandhi V Union of India**, AIR 1978 SC 597 emphasized that natural justice is an essential element of procedure established by law and state action must be right, just and fair and not arbitrary, fanciful and oppressive. It was held that Article 14 of the Constitution strikes at arbitrariness



of state action and ensures fairness and equality of treatment. It was also observed in **Union of India V Tulsi Ram Patel**, AIR 1985 SC 1416 that Article 14 is not creator of principles of natural justice but it is constitutional guardian of Article 14. The Supreme Court in **Mohinder Singh V Chief Election Commissioner**, AIR 1978 SC 851 observed that the principles of natural justice are bones of healthy government.

13.1.1 The principles of natural are equally applied in purely administrative functions. The Supreme Court in **A.K. Kraipak V Union of India**, AIR 1970 SC 150 observed that the principles of natural justice are applicable to administrative inquiries and established that observance of principles of natural justice in decision making process of the administrative body having civil consequences. The Supreme Court again in **Neelam Mishra V Harinder Kumar Paintal**, AIR 1990 SC 1137 observed that administrative order involving civil consequences must be passed in accordance with notions of fairness.

13.1.2 The purpose of the principles of natural justice is to prevent miscarriage of justice. The expression *audi alteram partem* implies



that a person must be given an opportunity to defend himself and ensures that no one should be condemned unheard. *Audi alteram partem* makes it obligatory for an authority that a party should not suffer in person or in purse without an opportunity of being heard and implies that before an order is passed against any person real, reasonable and effective opportunity of being heard must be given to him. The rule of fair hearing is consisting of two components which are notice and hearing. It is basic principle of natural justice that the authority should give to the affected party a notice of the case against him so that he may defend himself adequately. Notice is starting point of any hearing and *sine qua non* of fair hearing. The administrative authority is also required to afford reasonable opportunity to the party to present his case. A real, rationale and effective hearing includes disclosure of all relevant material or information which the authority wishes to use against the individual in arriving of its decision. The administrative authority cannot take a decision on the basis of any material unless the person against whom it is sought to be utilised is given an opportunity to rebut or explain the same.



13.2 There was no privity of contract between the petitioners of both petitions and the respondents/DGHS. The petitioners are distributors and not the manufacturers. The rules and regulations as contained in various clauses of Invitation of e-tender for supply of medicines are binding on the manufacturers. The petitioners being authorised distributors as per Clause 2.1 of Section II are allowed to make deliveries and collect payments. The impugned order although not a blacklisting order is directed against the petitioners but it ordered stop payment against ten firms including the petitioners. The impugned order adversely affected the rights of the petitioners and as such the respondent no 2/DGHS being an administrative authority was required to follow principles of natural justice to the petitioners by giving suitable notice and fair opportunity of being heard. The impugned order is having reference of blacklisting often distributors/dealer firms and owners and directors of the firms including the petitioners by CPA, DGHS due to their involvement in tender pooling/cartel formation in CPA medicine tenders and Sub Standard supplies in GNCTD Hospitals and Institutions and operating as Health Mafia but said blacklisting order was not



submitted for perusal of the court. The perusal of letter dated 10.11.2023 referred and relied upon by the respondents/DGHS reflects that it was addressed to all medicine Manufacturers/Dealer Firms/Distributor Firms whereby medicine manufacturing firms were requested to submit undertaking within 7 days from receipt of letter in respect of the participations in CPA Tenders, DGHS. The medicine manufacturing firms who participated in CPA tenders in last five years were requested to disclose whether they are in touch with any distributor/dealer firm by email/ phone etc.; to provide undertaking on stamp paper of value Rs. 100/- that regarding CPA tenders they have not paid any commission to any distributor or dealer, or if they have given such commissions to dealer/ distributor firms, same may be disclosed in tabular form in same undertaking and to provide their bank account statement of the period they held any CPA rate contract. The distributors/dealers were requested to submit undertaking that they have not taken any commission from any medicine manufacturing firm which participated in CPA Tenders or if they have taken any commission then to submit in tabular form with complete list of commission transaction to their respective



accounts. Thereafter a subsequent reminder dated 04.01.2024 was also issued and sent for furnishing similar information. The letter/notice dated 10.11.2023 and reminder 04.01.2024 are in nature of seeking information from the concerned firm and were not issued to the petitioners and other firms as mentioned in impugned order as part of fair hearing and observance of natural justice. The Office Order dated 24.12.2023 again referred and relied upon by the Additional Standing Counsel for the respondents is pertaining to withholding of bills/payments of the suppliers/vendors namely M/s Zenica Pharma, M/s Triputi Medilines, M/s Charchika and M/s Novamed Healthcare on basis of various lab reports submitted by Delhi Drugs Testing Laboratory and also by government approved private laboratories as these vendors were found to be involved in procuring “Not of Standard Quality Drugs”. The Office Order dated 24.12.2023 is not a notice which can be construed as notice issued as part of fairing hearing. It is also pertaining to mention that above notices/letter/office order are not referred and mention in the impugned order. Even otherwise also Clause 1.2.4 of Section IV also mandated issuance of seven days’ notice to supplier in case of



blacklisting for quality failure, however this Clause is not applicable to the petitioners being distributors. The respondents/DGHS have failed to establish that the principles of natural justice including issuance of notice and fair hearing to the petitioners were observed before issuance of the impugned notice. The learned Senior Counsels for the petitioners are justified in arguments that impugned order is bad as before issuance of impugned notice to the petitioners and other firms, principles of natural justice were not followed. The argument of the Additional Standing Counsel for the respondents regarding observance of principles of natural justice before issuance of impugned order is without any legal and factual force. The impugned order is accordingly bad in law for want of observance of principles of natural justice before issuance of impugned notice.

14. The Additional Standing Counsel for the respondents/DGHS also argued that the petitioners and the other firms as detailed in the impugned order were supplying the sub-standard medicines including the lifesaving medicines and were liable for the quality of the medicines which were supplied by the petitioners irrespective of source of procurement and referred Clause 13 of Section IV of



Invitation of e-tender for supply of medicines. It was further argued that if the products supplied by the petitioners particularly life saving drugs such as steroids and medicines are determined to be of sub-standard quality by the accredited laboratories then the suitable measures can be undertaken under the terms of the contract against the petitioners and Clause 3(h)-3(j) cast a duty on the supplier to take utmost care in supplying the quality of the medicines. The petitioners were found involved in fraudulent, collusive and corrupt practices as stipulated under Clause 6 of the Section IV. The Additional Standing Counsel also referred the Internal Report dated 31.01.2024 wherein it was found that the petitioners' firms/companies are being run and controlled by the same family members and the petitioners were found in fraudulent, collusive and corrupt practices and accordingly, several FIRs were got registered against them. The petitioners were indulging in mal-practices of supplying sub-standard drugs causing health threat to the public at large and were found to be interrelated and interested parties and referred a chart to reflect that the petitioners were indulging in the cartel formation and monopolising the supply of life saving drugs. The learned Senior Counsel for the



petitioners in both the petitions have controverted these arguments and argued that there was no privity of the contract between the petitioners and the respondents/DGHS have not followed the principle of natural justice while passing the impugned order.

14.1 The petitioners are the authorised distributors and there was no privity of the contract between the petitioners and the respondents/DGHS. Clause 6.2 deals with the fraudulent, collusive and corrupt practices followed by the suppliers. It provides that if the CPA, DGHS determines that a supplier has engaged in fraudulent, collusive, obstructive and corrupt practices then the Director General, Health Services may after giving 07 days' notice terminate the supplier employment beside other penalties. Clause 13 also deals with deduction and other penalties on account of quality failure. Clause 13.2 provides that if any item supplied by the bidder have been partially or holy used or consumed after supply and are subsequently found to be of sub-standard quality then the payment which has already been made can be recovered. In the present case, the petitioners are the only distributors and not the manufacturers of the medicines. The petitioners or manufacturers or bidders or



suppliers before issuance of impugned order were not served with any show cause notice and no opportunity of being heard was provided to them. The petitioners were not supplied with incriminating materials including the internal report to justify the permission of cartel by the petitioners and other firms as mentioned in the impugned order. The respondent/DGHS was not justified to impose the ban regarding the recovery of payment unilaterally without affording the due opportunity to the petitioners to represent their case appropriately and was also not justified to withhold the payments of the medicines supplied by the petitioners particularly till the issuance of the show cause notice. The Clauses 6 and 12 pertains and applicable to the bidder/supplier and not the distributor such as the petitioners. Accordingly, the arguments advanced by the Additional Standing Counsel are without any force.

15. In view of the above discussion, the present petitions bearing W.P.(C) 1871/2024 and W.P.(C) 2076/2024 are allowed and impugned order dated 31.01.2024 is accordingly quashed. The respondents/DGHS are directed to release the payments so withheld by the respondents/DGHS in pursuance of the impugned order



immediately. However, the respondents/DGHS shall be at liberty to take appropriate action against the petitioners on allegations as stated in impugned order or otherwise including the recovery pertaining to the medicines already supplied by them and found to be of sub-standard quality after following the principle of natural justice including issuance of show cause notice and giving due opportunity to the petitioners to present and defend their case and after following the procure as laid down various clauses and provisions of Invitation of e-tender for supply of the medicines.

16. The pending applications if any also stand disposed of.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

MAY 03, 2024
J/ABK/HVK