

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 26915 of 2025

Helax Healthcare Private Limited

Versus

State of West Bengal & Ors.

Mr. Jishnu Choudhury, Sr. Adv.

Ms. Tannya Baranwal

Mr. Andolan Sarkar

Mr. Afsar Ali

Ms. Meena P

.....For the petitioner.

Mr. Vivekananda Bose, Ld. Jr. S.C.

Mr. Tirthankar Dey

.....For the State.

Hearing Concluded On : 15.12.2025

Judgment on : 17.12.2025

Krishna Rao, J.:

1. The petitioner has filed present writ application praying for quashing and setting aside the impugned order of blacklisting and debarment dated 26th September, 2025, issued by the respondents and restraining the respondents from invoking, encashing or forfeiting the Performance Bank Guarantee of Rs. 30,00,000/- submitted by the petitioner as per Notice inviting E-Tender issued by the Deputy Director of Health Services (E&S), West Bengal, dated 23rd October, 2024, the petitioner has participated in the said tender.
2. On opening of the tender, the petitioner was declared as L1 bidder for supply of Telmisartan Tablet IP 40 mg. and accordingly, Performance Bank Guarantee of Rs. 30,00,000/- executed by the Central Bank of India, Roorkee Branch in favour of the respondent no. 1 for the petitioner. The respondents have issued notices to the petitioner informing that the medicine supplied by the petitioner does not comply of Indian Pharmacopoeia (IP) with respect to description and dissolution. The petitioner has forwarded in-house Quality Control report and NABL laboratory report wherein it reveals that the medicine Telmisartan Tablet 40 mg. was standard quality as per specification. The petitioner also requested the respondent no. 1 for sample collection details, test report, filtration method used, and expressed its readiness to participate in joint analysis.

3. The respondents have issued notices to the petitioner for personal hearing and also informed that if, supply status of drugs with standard quality do not improve within one month, then penal action would be taken against the petitioner. Lastly on 16th September, 2025, the respondents have issued notice to the petitioner directing the petitioner to appear for personal hearing on 23rd September, 2025 and to explain why the penal action shall not be initiated against the petitioner as per the terms and conditions of the tender.
4. On 26th September, 2025, the respondent no. 1 had issued an order by imposing penalty of blacklisting for the item “Telmisartan Tablet I.P. 40 mg.” upon the petitioner and also debarred the petitioner from participating in the tenders of the Central Medical Stores (CMS) for three successive years from the date of issue of the order with forfeiture of Performance Security/ Bank Guarantee.
5. Mr. Jishnu Choudhury, Learned Senior Advocate representing the petitioner submits that though the respondents have issued the notices to the petitioner for personal hearing but in the said notice, it is not mentioned that the respondents will impose penalty of blacklist and debarment. He further submits that the petitioner has been blacklisted on the ground that the petitioner has supplied non-standard quality of drugs but the respondents have not supplied the laboratory test report on the basis of which the respondents came to know that the petitioner has supplied the non-standard quality of medicine.

6. Mr. Choudhury submits that the respondent authorities have issued the order of blacklist and debarment against the petitioner without informing that the respondents will impose penalty upon the petitioner for blacklist and debarment is in violation of natural justice and thus the same is liable to be set aside.
7. Mr. Choudhury further submits that the respondents have relied upon the test report on the basis of which the notices were issued that the petitioner has supplied non-standard quality of medicine but the report has not been supplied to the petitioner inspite of request made by the petitioner. In support of his submission, he has relied upon the judgment in the case of **Gorkha Security Services vs. Government (NCT of Delhi) & Ors.** reported in **(2014) 9 SCC 105** and submitted that nature of action which is proposed to be taken for the alleged breach is to be mentioned in the show cause notice. He further relied upon the judgment in the case of **UMC Technologies Pvt. Ltd. vs. Food Corporation of India & Anr.** reported in **(2021) 2 SCC 551** and submits that mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. He further relied upon the judgment in the case of **Indian Commodity Exchange Ltd. vs. Neptune Overseas Ltd. & Ors.** reported in **(2020) 20 SCC 106** and submits that if the respondents have passed an order relying upon the documents, the

documents should be provided to the petitioner so as to enable the petitioner to file appropriate reply.

- 8.** *Per contra*, Mr. Vivekananda Bose, Learned Junior Standing Counsel representing the State submits that time and again the respondents have informed the petitioner that the medicine supplied by the petitioner does not comply of the IP with regard to the description and dissolution of the medicine but inspite of assurance given by the petitioner that he will resolve the issue, the petitioner failed to supply the standard quality of medicine in terms of supply order issued to the petitioner. He further submits that the petitioner has admitted in writing that he will improve the supply performance with the quality of medicine but failed to improve the same.
- 9.** Mr. Bose submits that it is not only that the petitioner has supplied non-standard quality of medicine but the petitioner has not supplied the essential drugs as per required quantity.
- 10.** Mr. Bose has relied upon the show cause notice dated 24th July, 2025 and submits that in the show cause notice, the petitioner is directed to show the reason of such poor supply in writing as to why penal action as per the terms and conditions of tender will not be taken against the petitioner. As per the terms and conditions of the tender document, in penalty clause, debarment from participation in the next tender process of the Department of Health and Family Welfare, West Bengal, is provided and as such the respondents have found that the petitioner

has supplied the non-standard quality of medicine inspite of several notices, the authorities have no other alternative and not to pass the order of blacklist and debarment.

- 11.** Mr. Bose further relied upon the order wise GRN status of the petitioner and submits that as per the said status, the petitioner has not supplied the medicine in terms of the order issued to the petitioner from time to time and thus the petitioner also failed to supply medicines as per order issued to the petitioner for supply of medicine.
- 12.** Mr. Bose further submits that as per Clause 25 of the terms and conditions of the contract, the order passed by the respondent is appealable order but the petitioner without filing an appeal has filed the present writ application, thus the writ petition is not maintainable.
- 13.** Heard the Learned Counsels for the respective parties, perused the materials on record. Admittedly, time and again the respondents have issued notices to the petitioner informing the petitioner that the medicine supplied by the petitioner does not comply of IP with respect to description and dissolution. The respondents have relied upon the show cause notice dated 24th July, 2025 wherein the petitioner was directed to show cause the reason of poor supply in writing as to why penal action as per terms and conditions of the tender will not be taken against the petitioner. Subsequent to the said show cause notice dated 24th July, 2025, on 11th August, 2025 and 16th September 2025, the respondents have issued notice to the petitioner for personal hearing.

In both notices, the petitioner is directed to appear for personal hearing and intimated that why penal action will not be taken against the petitioner as per the terms and conditions of the tender.

- 14.** In none of the notices, the respondents have informed the petitioner that the respondents will take penal action against the petitioner blacklist and for debarment. The respondents have relied upon the Clause 24 of the tender notice wherein the penalty has been described. Clause 24(C) provides for debarment from participation in next tender process of the Health and Family Welfare Department. The Tender Selection Committee reserves the right to declare the firm of the company blacklisted for three (3) years due to :

(ii) Failure in supply within the stipulated period of 5 (five) occasions during the tenure of tender period for its extensions. There may be blockage for the entire State for failure in supply for five occasions for a particular item without any valid reason.

(iv) In the case of supply of Spurious drugs, Adulterated drugs, misbranded and Not of Standard quality of drugs, (as applicable) along with proceedings under the provisions Drugs and Cosmetics Act, 1940 and Rules framed thereunder.

(v) For supply of non-standard item or items as per quality tests within the tender period as determined by the testing by CMS/Tender Selection committee in respect of the particular item(s) only.

15. The impugned order is issued on the allegation that the petitioner has not supplied the essential drugs and repeated non-standard quality of supplied drugs. In the case of **Gorkha Security Services (supra)**, the Hon'ble Supreme Court held that:

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

16. In the case of **UMC Technologies Private Limited (supra)**, the Hon'ble Supreme Court held that:

“25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed

beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained.”

17. The contention of the respondents that in the show cause notice as well as the personal hearing notices issued to the petitioner, it is categorically mentioned that penal action will be taken against the petitioner as per the terms and conditions of the tender document. From the show cause notice as well as personal hearing notices, it reveals that the respondents have not stated or mentioned that the respondent will impose the penalty of blacklist and debarment upon the petitioner. This Court also finds that the respondents have passed the impugned order of blacklisting and debarring the petitioner from participating in the tender on the ground of supply of non-standard quality of medicine but the respondents have not supplied the report on the basis of which the respondents have come to the conclusion that the medicine supplied by the petitioner is of non-standard quality. The respondents have neither informed the petitioner in the show cause notice and the personal hearing notice with regard to the penalty which the respondents are going to impose upon the petitioner and have also not supplied the report so as to enable the petitioner to file any objection, if any, to the said report as the respondents have relied upon the report and passed the impugned order.
18. On 8th August, 2025, the petitioner requested the respondents for sample collection details, test report, filtration method used and

expressed readiness to participate in joint analysis. On 19th September, 2025, the petitioner requested the respondents for test reports, sample integrity details and method validation but the same was not provided to the petitioner.

19. In such view of the above, the impugned order issued by the respondents dated 26th September, 2025, is in violation of principle of natural justice, accordingly, the same is set side and quashed.
20. As regard to the filing of the appeal, by the petitioner against the impugned order, this Court finds that the petitioner has filed the present writ application on the ground of violation of principle of natural justice and thus the writ petition is maintainable.
21. It is made clear that if the respondents intend to take action against the petitioner, this order will not prevent the respondents for taking appropriate action against the petitioner in accordance with law.
22. **WPA No. 26915 of 2025 is disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)

Later :

Learned Counsel for the respondents prays for stay of the operation of the order. Learned Counsel for the petitioner objected for the same. Considered the submissions made by the parties, prayer is refused.

(Krishna Rao, J.)