

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WRIT PETITION No.23437 OF 2022

Between:

Sri Venkata Ramana Medical & General
Stores

.. Petitioner

Vs.

Employees State Insurance Corporation
Medical College and Hospital, Ministry
Of Labour & Employment, Government of
India, at Sanathnagar, Hyderabad, represented
by its Dean

.. Respondents

DATE OF ORDER PRONOUNCED: 05.09.2022

HON'BLE SRI JUSTICE K. LAKSHMAN

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|---|---|---------------|
| 1 | <u>Whether Reporters of Local newspapers
may be allowed to see the Judgments?</u> | <u>Yes/No</u> |
| 2 | <u>Whether the copies of judgment may be
marked to Law Reporters/Journals</u> | <u>Yes/No</u> |
| 3 | <u>Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

JUSTICE K. LAKSHMAN

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

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*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

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% Delivered on: 05-09-2022

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\$ Employees State Insurance Corporation
Medical College and Hospital, Ministry
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.. Respondent

! For Petitioner

: Mr. N. Sreedhar Reddy

^ For Respondent

: Mr. Muppu Ravinder Reddy

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> Head Note

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? Cases Referred

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1. (2014) 9 SCC 105

2. (2021) 1 SCC 804

JUSTICE K. LAKSHMAN

THE HONOURABLE SRI JUSTICE K. LAKSHMAN**WRIT PETITION No.23437 of 2022****ORDER:**

Heard Sri N.Sreedhar Reddy, learned counsel for the petitioner and Sri Muppu Ravinder Reddy, learned Standing counsel appearing for respondent.

2. It is relevant to note that this Court vide order dated 05.05.2022 granted eight (08) weeks time to the respondent to file counter. Even on 15.05.2022, learned counsel appearing for respondent sought time to file counter. Today, learned counsel for the respondent on instructions would submit that there is no need of filing counter and proceeds with the arguments basing on the record available. Therefore, heard him on merits.

3. This writ petition is filed to declare and set aside the order dated 28.04.2022 in proceedings No.FP0000531506 on the file of the respondent herein, as illegal and arbitrary.

4. Perusal of the record would reveal that the petitioner herein stood as successful bidder pursuant to tender notification dated 04.11.2020 for empanelment of local

chemists for the year 2021-22. Both the petitioner and the respondent have entered into an agreement for supply of the same on 04.01.2021. The period of contract was for one year and it was expired on 05.01.2022. Thereafter, the respondent have extended the said contract for time to time i.e., one month, one month, fifteen days and fifteen days respectively and accordingly, the extension orders were issued i.e., 23.12.2021, 05.02.2022, 05.03.2022 and 20.03.2022.

5. Perusal of the record would also reveal that respondent has issued e-mail dt.11.10.2021 informing the petitioner that it has supplied substandard quality of drug i.e., 'Nepafenac Ophthalmic Suspension 0.1%'. The petitioner herein had submitted explanation stating that it has not supplied substandard quality drug. According to the petitioner, it is only a supplier and it is not a manufacturer. Therefore, it has addressed a letter to the manufacturer of the said drug who inturn got the said drug tested in authorized laboratories. The reports of the said labs were also filed before this Court. Referring to the same, Sri N.Sreedhar Reddy, learned counsel for the petitioner would submit that there is no defect in the drug supplied by the petitioner. Even the

manufacturer had supplied the said drug to the Military hospital and other several hospitals in the entire country and there is no complaint from any of the hospitals in respect of the said drug.

6. Without considering the same, the respondent had issued show cause notice dated 22.01.2022 requesting the petitioner to submit explanation as to why the agreement entered between the petitioner and the respondent cannot be terminated in terms of clause 18(g) of the tender agreement. The petitioner herein had submitted his explanation on 30.01.2022 narrating the aforesaid facts. Without considering the same, the respondent had issued impugned order dated 28.04.2022 blacklisting the petitioner for a period of five (05) years from the date of the order.

7. Sri N.Sreedhar Reddy, learned counsel for the petitioner would submit that the respondent has not mentioned the proposed action in the show cause notice dated 22.01.2022. Whereas clause 18(g) of the said tender agreement proposes termination of the contract and blacklisting of the said chemist for a period of five years and recovery of the amount.

8. Clause 18(g) of the said tender agreement reads as follows:

“The medicines/drugs to be supplied will be of standard quality. In case, it is found that any particular medicine has expired, or is substandard or spurious, the Local Chemist will be liable to be black listed for a period of five (5) years for future participation in any ESIC tenderer. Besides any other legal action as deemed fit will be taken. If for any unavoidable reason beyond your control, it is not possible for local chemist to unavoidable reason beyond your control, it is not possible for local chemist to immediately supply the medicines and the hospital is compelled to procure the same from other local chemist, extra expenditure on this account will be recovered from subsequent bill (S)/security deposit. Under no circumstances, the indented medicines would have to be substituted in case the indent is of Brand item.”

9. He would further submit that any show cause notice without specifically mentioning proposed action is illegal. He has placed reliance on the judgment of the Hon’ble Apex Court in **Gorkha Security Services vs. Government of NCT of Delhi And Others**¹ in Civil Appeal Nos.7167-7168 of 2017 (Arising out of Special Leave Petition (civil) No.38898-

¹ (2014) 9 SCC 105

38899 of 2013). The same principle was laid down by three Judges Bench of Hon'ble Apex Court in Civil Appeal No.3647 of 2020 arising out of SLP (C).No.6319 of 2020 dated 06.11.2020.

The relevant paragraph is extracted below:

“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 notice 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 notice is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.”

The Hon'ble Apex Court in ***Vetindia Pharmaceuticals Limited vs. State of Uttar Pradesh and Another***² reiterated the said principle. Though the said facts were specifically mentioned in the reply dated 30.01.2022, respondents have not considered said facts.

² (2021) 1 SCC 804

10. Sri Muppu Ravinder Reddy, learned counsel for the respondent referring to e-mail dt.11.10.2021 would submit that the petitioner herein had supplied substandard material, therefore, the respondent had blacklisted the petitioner vide impugned order dated 28.04.2021 by following due procedure laid down under law and also in terms of aforesaid agreement dt.04.01.2021. Thus, there is no error in it.

11. As stated above, in the show cause notice dt.22.01.2022, respondent had sought explanation from the petitioner as to why his tender agreement cannot be terminated in terms of clause 18(g) of the agreement. Whereas, the respondent had issued impugned order dt.28.04.2022 blacklisting the petitioner for a period of five years from the date of order. Therefore, the impugned order is contrary to the proposed punishment in the show cause notice dt.22.01.2022. Therefore, the impugned order is contrary to principle laid down by the Hon'ble Apex Court in the aforesaid judgments.

12. It is also relevant to note that though the respondent had issued e-mail dt.11.10.2021 intimating the petitioner about the supply of substandard drug. Thereafter,

the respondents have issued four proceedings extending the contract for a period of three months. On one hand, respondent is alleging that petitioner has supplied substandard drug. On the other hand, it has extended the contract of the petitioner.

13. It is relevant to note that respondent had issued performance certificate 01.01.2022 stating that the petitioner herein had supplied drug to respondent hospital on 06.01.2021 and the performance of the petitioner is found satisfactory till 01.01.2022. Therefore, the action of the respondent in blacklisting the petitioner for a period of five years in violation of terms of agreement dated 04.01.2021 apart from the principle laid down by the Hon'ble Apex Court in the aforesaid judgments.

14. Viewed from any angle, the impugned order is liable to be set aside, accordingly it is set aside. This order will not preclude the respondents from taking action afresh in terms of the said agreement dated 04.01.2021.

15. Learned counsel for the petitioner would submit that pursuant to impugned order dated 28.04.2022,

respondent is not releasing the security deposit of Rs.12,50,000/- deposited by the petitioner. In view of the same, liberty is granted to the petitioner to submit a representation by duly enclosing copy of this order to the respondent with a request to release the said amount. On receipt of said representation, respondent shall consider the same and release the aforesaid amount deposited by the petitioner towards security. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

K. LAKSHMAN, J

05.09.2022

Note:

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