

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 16756 of 2023

Between:

M/s Ridley Life Science Pvt. Ltd.

... Petitioner

And

Telangana State Medical Services & Infrastructure
Development Corporation, Hyderabad.

... Respondent

JUDGMENT PRONOUNCED ON: 11.09.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 16756 of 2023****% 11.09.2023****Between:**

M/s Ridley Life Science Pvt. Ltd.

..... Petitioner

And\$ Telangana State Medical Services & Infrastructure
Development Corporation, Hyderabad.

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr Anshuman Sharma,
Mr B.Balaji

^Standing counsel for Respondent : Smt Vakeel Manjula

? Cases Referred:

1. (1975) 1 SCC 70
2. (2021) 1 SCC 804

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 16756 of 2023****ORDER:**

**Heard the Learned Counsel for the Petitioner and
the Learned Counsel for the Respondents.**

2. This Writ Petition is filed to issue a Writ of Mandamus by setting aside (a) the Order bearing Lr. No. Spl/Medicine Wing/Ph3/2022-23 dated 20.01.2023 issued by the Respondent herein declaring the Petitioner as "Unreliable and Undependable Supplier" and banning the Petitioner to participate for a period of 2 years, i.e. from 19.01.2023 to 18.01.2025 in the future tenders of the Telangana State Medical Services & Infrastructure Development Corporation, Hyderabad (TSMSIDC) and setting aside the (b) listing of the Petitioner Company in the blacklisted companies vide Statement Showing List of Firms Blacklisted for the period from 19.01.2023 to 18.01.2025 and also by directing the Respondent to release the sum of Rs. 70,70,721/- (Rupees Seventy Lakhs Seventy Thousand Seven Hundred Twenty-one) along with applicable interest as also demanded in the

Letter Dated 19.06.2023 by the Petitioner, while holding the impugned orders as per (a) (b) as illegal, arbitrary, without authority of law and without jurisdiction, violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. The case of the Petitioner, in brief, is as follows:

a) The Petitioner is a manufacture of Pharmaceutical Products. The Respondent has issued a Rate Contract of Essential Medicines & Scheme Medicines for a period of one year under Tender Document No. 4 E(2)/ TSMSIDC/ EQU/2020-21 on 01.10.2020 for Essential Medicines & Medicines for Schemes.

b) An agreement dated 04.07.2022, for the supply of (Drugs) / Medicines was executed between the petitioner and the Respondent, pursuant to the aforesaid Rate Contract and the Tender Document, in terms of the procurement of Medicines and General Medicines & Medicines for Schemes, whereby certain medicines were specified along with the specifications and rate per unit.

c) While the Respondent delayed signing of the Agreement dated 04.07.2022, the petitioner made supplies to the Respondent immediately after signing of the Tender Documents and Rate Contract dated 01.10.2020.

d) Thereafter, the petitioner sent a letter dated 30.09.2022 to the Managing Director of the Respondent requesting for the completion of the Agreement process as per Tender Document and clearly informed that after the issuance of the PO, the Petitioner will neither accept nor process the PO (Purchase Order) without completion of the Agreement process, because pending amount of Rs.86,16,962/- is to be cleared by the Respondent and the Petitioner has also sent the list of pending invoices stating that the petitioners cannot supply the material on time without receiving the pending dues.

e) On 10.10.2022, the petitioner sent a Reminder-1 email with respect to the earlier communication dated 30.09.2022. On 29.10.2022, the respondent sent an email enclosing the list of Drugs with PO details and the maximum permissible delivery dates as mentioned in the PO. However, on

31.10.2022, the petitioner sent an email to the respondent stating their concern regarding pending payments and also informed that immediate steps for supply of all pending order will be done once pending payment are cleared.

f) On 01.11.2022, an email was sent to the Respondent requesting to complete the agreement obligations as per tender conditions and also requested about the pending payment for more than 15 months i.e., to a tune of Rs.86,16,962/-. However, after a lot of follow up, the respondent released an amount of Rs.15,15,853/- on 02.11.2022 and the same was reflected in the bank statement.

g) Subsequently, the respondent sent a show cause notice dated 02.12.2022 alleging that the Petitioner had failed to execute purchase orders within the scheduled period of timelines and directed the Petitioner to initiate supplies immediately and the petitioner through a reply dated 21.12.2022 informed about their commitment to supply on time and that they are not receiving payments on time.

h) Through a letter dated 30.12.2022, the petitioner informed that "we are not denying the supply of the orders placed on our company, however as we informed you that it's difficult to supply on indefinite credit period without any timely payments". The Petitioner also informed that as per Clause 13.5 of Tender Document, they must get their payments within 60 days of delivery.

i) Subsequently, on 20.01.2023 the Respondent sent the impugned letter to the Petitioner through which the Respondent alleged and declared the Petitioner Firm as unreliable and undependable supplier and the Respondent restricted the Petitioner firm from participating in the future tenders of the TSMSIDC for a period of 2 years i.e. from 19.01.2023 to 18.01.2025. Thus, the impugned action of the Respondents is untenable and an instrument of coercion.

j) However, on 15.06.2023, the Office of the Medical Superintendent, V.M.M.C. & Safdarjung Hospital has issued a Rate Contract for Medicine for inviting bids for V.M.M.C. & Safdarjung Hospital / Dr. RML Hospital and the Petitioner has submitted a bid for the aforesaid tender. Alongside, the

current Statement of outstanding amounts as on 19.06.2023 is showing a balance outstanding of Rs.70,70,721/- in favor of the Petitioner.

k) It is also pertinent to mention that the conditions of blacklisting as per the terms and conditions of the Tender Document and Contract dated 01.10.2020 are not attracted to the petitioner's case. On 19.06.2023, petitioner sent a letter to the respondent requesting to delete its name from the list of blacklisted parties and to release the payment of Rs. 70,70,721/- and the same was not done. Aggrieved by the action of the respondent in passing the orders dated 20.01.2023, the present Writ Petition is filed.

4. Counter Affidavit filed by the Respondents, in brief, is as under:

a) The main objective of inviting tenders for the supply of medicines is to ensure the availability of quality medicines in various Government Health Facilities situated in the State at a reasonable price. The public more particularly poorer segment of the society depends for their medical needs on these Government Health Facilities which provided medicines at free

of cost. Thus, there is a noble object in the whole process which is meant to uphold and protect the public interest. Therefore, any default of the terms and conditions of the supply of medicines would cause not only inconvenience, but also loss to the members of the public who frequently depend on the Government Health Facilities for their medical needs. Thus, the default, if committed by the suppliers, will be serious in nature and harmful to the public interest.

b) During the month of December 2022, when the Health Facilities are requesting for supply of certain drugs ordered to be supplied by the Petitioner's Company, the Respondent's Corporation has reviewed the supply Status of the 57 POs issued to the firm and noticed that out of the 57 POs issued, for 26 POs the supply period of 70 days has been completed and the petitioner has not initiated supplies against the 26 POs.

c) In view of the seriousness of the problem, in order to obtain the stocks by recalling tenders, the Respondent's Corporation after careful consideration of the reply given by the Petitioner, duly taking into the consideration of the past

performance of the Petitioner's firm which is found to be very poor in terms of making timely supplies, has declared the firm as undependable supplier on 19.01.2023 for a period of 2 years till 18-01-2025.

d) Alongside, in the present case the bidder was declared as the successful bidder for 8 items under Tender No. 4E(2)/TSMSIDC/Equ/2020-21, dated 01.10.2020 during the Bid Finalization Committee meeting held in the month of February 2021 and issued notification of award for the 8 items with a request to enter into agreement within 15 days in terms of Tender Clause 11.5. In spite of notification of award issued and several subsequent requests made through the representative of the Petitioner's firm the Petitioner has shown utter negligence in entering into contract with the Respondent's Corporation till July 2022.

e) Furthermore, the Petitioner is habitual in not entering into agreement and thus violating the tender clauses in other medical supplies corporations also. The Bihar Medical Services & Infrastructure Corporation Limited, Patna vide its order dated 12.04.2023 has blacklisted the Petitioner's product

Phenytoin Sodium Oral Solution for not entering into agreement within the stipulated time.

f) Moreover, the Petitioner has willfully made irrelevant statement with an intention to misguide this Court. In fact, the matter in W.P. No: 24009 of 2022 filed by Ms. Suzichem Drugs Pvt. Ltd., pertains to the black listing of the firm for supplying the Not of Standard Quality Drugs declared by the Drugs Control Administration, Telangana State. This court has set aside the Black Listing order as the Drugs Control Administration, Hyderabad has declared the same product as of Standard Quality and there is a provision in the Tender Document for such retesting.

g) The Petitioner is making all irrelevant allegations regarding delay in payment with a sole motto to cover up his delays and breaches the Petitioner made to the contract. The tender Clause No. 13.5 (3) of the relevant Tender Document reads as follows.

Tender Clause No: 13.5 (3):

Payments shall be made promptly by the TS MSIDC, after submission of a valid invoice or claim by the vendor. The vendor should submit the invoice or claim to the TSMSIDC not later than 45 days after the Last

day of Supply of goods. If delay occurs in submission of claim, the TSMSIDC does not owe any responsibility whatsoever for delayed payment.

h) In the present case the Petitioner out of the 26 completely executed POs has partially executed 2 POs as mentioned above and has submitted bills for only 19 POs as on the date of filing of this Writ Petition, out of the bills submitted for 19 POs, bills pertaining to only 1 (one) Purchase Order was submitted within the stipulated time of 45 days and the remaining 18 POs bills were submitted very late i.e., between 90 days and 205 days after the completion of supplies and in the tender conditions itself it has been clearly mentioned that it is the Supplier's responsibility to submit the bills within 45 days of completion of supply in order to process the bills and make payments promptly.

i) As per the records available the Petitioner has not submitted bills for the following 09 POs till the filing of the Writ Petition and the Petitioner has submitted the bills for the following 09 POs on 05.07.2023. This clearly shows the malafide intention of the Petitioner to misguide the respondents and the petitioner instead of submitting the bills

to receive the payment has unnecessarily wasted the valuable time of this Court without submitting the bills.

j) The bills submitted by the Petitioner were not processed by the Respondent's Corporation due to non-availability of Agreement from the Petitioner. The Petitioner with a sole motto to get his payment has entered into agreement with the Respondent in the Month of JULY 2022 after a lapse of 1 year 5 months and thus the Petitioner has violated the Tender Clause No: 11.5 (e) of Tender No:4E(2)/TSMSIDC/Equ/2020-21.

k) The Respondent's Corporation has issued the orders declaring the Petitioner as un-dependable supplier on 20.01.2023 and displayed the same in the Corporation's website simultaneously and the Petitioner was silent for 5 months.

l) In view of the non-supply of ordered Products and delayed supplies by the Petitioner's firm, the Government health facilities have suffered greatly due to non-availability of essential and lifesaving medicines in stock and this has resulted in deprivation of poor public from receiving the

essential and lifesaving medicines free of cost. Hence, the Writ Petition is without merits and is liable to be dismissed.

5. PERUSED THE RECORD :

i. The relevant portion of the notice dt. 02.12.2022 issued by the Respondent herein vide Lr.No.Spl/Medicines Wing/2022-23/2918, dated 02.12.2022 reads as under :

“As per tender conditions section 4.2 the supplier should supply 50% Quantity within 45 days and remaining 50% in 70 days from the date of issue of Purchase order.

It was found that your firm has failed to execute / initiate the supplies within the stipulated period of supplies in spite of several reminders were sent to you in phone calls and virtual meetings held with the officials of the Corporation.

In this regard several reminders were sent to you and during several meetings held with the officials of the Corporation you have made assurances to supply the stocks and totally failed to supply the stocks, in spite of several opportunities were given to you.

Hence you are directed to, initiate supplies immediately and submit your written explanation within 07 days from the date of receipt of this notice, failing which it will be construed that you have no explanation

to offer and necessary tender provisions will be invoked against your firm.”

ii. The e-mail dated 30.12.2022 of the Petitioner addressed to the Respondent herein, reads as under:

“Thank you very much for your call on 29th December 2022 regarding show cause notice for delay in supplying certain items.

In continuation to our letter on 21st December 2022, we would like to state that we are not denying the supply of the order placed on our company, however as we informed you that its difficult to supply on indefinite credit period without an timely payments.

As per clause 13.5 of tender documents we must get our payments within 60 days of delivery, however even after continuous follow up it never happened, still we have many old payments to be cleared by your corporation.

We are ready to supply as usual in timely manner however kindly advise about timely payments. We propose you to either provide us post dated checks of 60 days or LC so that we can supply the materials in timely manner.

I would request again to kindly find a solution to this.

iii. The relevant portion of the proceedings impugned dated 20.01.2023 in letter No.Spl/Medicine Wing/Ph3/2022-23 of the Respondent herein, reads as under :

TELANGANA STATE
MEDICAL SERVICES & INFRASTRUCTURE
DEVELOPMENT CORPORATION HYDERABAD
<http://tsmsidc.telangana.gov.in>
(AN ENTERPRISE OF GOVT. OF TELNGANA)

4th Floor, DM&HS Campus, Koti,Sultan Bazaar Hyderabad
- 500 095

gmdrugmisdc@telangana.gov.in

Lr.No.SPI/Medicine Wing/Ph3/2022-23,

dated 20.01.2023

To

M/s Ridley Life Science Pvt.Ltd

D-1651, Dsidc Indl.Complex, Narela, Delhi-110040

Gentlemen,

Sub: TSMSIDC – Medicines Wing – Purchase Orders
issued for the supply of certain items to M/s Ridley
Life Science Pvt. Ltd and the firm has failed to
execute the purchase orders beyond the scheduled
period of timelines – Firm Declared as unreliable
and Undependable Supplier – regarding.

Ref: 1. SCN Lt No.SPL/Medicines Wing/2022-23/2918
dt: 02.12.2022.

2. Reply from the firm Mail Received dt:
02.01.2023”

“Vide reference 2nd cited above you have submitted an
explanation to the Show Cause Notice as detailed under:

In continuation to our letter on 21st December
2022, we would like to state that we are not
denying the supply of the orders placed on our
company, however as we informed you that its
difficult to supply on indefinite credit period
without any timely payments. As per clause 13.5
of tender documents we must get our payments
within 60 days of delivery, however even after
continuous follow up it never happened. still we
have many old payments to be cleared by your
corporation. We are ready to supply as usual in
timely manner however kindly advise about timely
payments. We propose you to either provide us
post dated checks of 60 days or LC so that we can
supply the materials in timely manner. I would
request again to kindly find a solution to this.

Hence the above explanation submitted by your firm is found to be not satisfactory as the majority of the purchase orders were not executed by your firm.

In the above circumstances, after careful examination of the matter your firm M/s Ridley Life Science Pvt. Ltd is hereby declared as "Unreliable and Undependable Supplier and your firm will not be permitted to participate for a period of 2 years i.e. from 19.01.2023 to 18.01.2025 in the future tenders of the TSMSIDC."

iv. The counter affidavit filed by the 1st respondent, in particular, paras 9, 16, 17, 19 reads as under:

"9. It is to respectfully submit that, in view of the seriousness of the problem, in order to obtain the stocks by recalling tenders, the Respondent's Corporation after careful consideration of the reply given by the Petitioner, duly taking into the consideration of the past performance of the Petitioner's firm which is found to be very poor in terms of making timely supplies, has declared the firm as undependable supplier on 19-01-2023 for a period of 2 years till 18-01-2025. The detailed abstract of the POS showing the Petitioner's poor performance is as shown under the below table. A detailed PO wise statement in this regard is filed as Annexure-4.

Sl. No.	Particulars	Number	Percentage
1.	Total No. of Pos issued to petitioner till date	85	
2.	Number of Pos Executed	26	30.59
	A) Total Pos Executed within stipulated time	5	5.88%

	B) Total Pos executed beyond stipulated time	21	24.71%
3.	Number of Pos not executed	59	69.41%
	A) Total POs executed partially i.e. up to 50%	2	2.35%
	B) Total POs against which no supplies have been initiated by the firm	57	67.06%

v. Clause 13.5 – Payments and Deductions pertaining to Tender Doc.No.4E(2)/TSMIDC/EQU/2020-21, dated 01.10.2020, read as under:

“13.5. Payments & Deductions:

1.The vendor's request(s) for payment shall be made to the TS MSIDC in writing, accompanied by an invoice describing, as appropriate, the goods/service delivered/ performed.

2.Bidder can raise invoice(s) for each PO as follows:

- a. If value of PO is below Rs.20.00 lakhs: One invoice only after completing at least 95% of indented quantity.
- b. If PO value is Rs.20.00 lakhs or more but below Rs.50.00 Lakhs: Maximum Two invoices. First invoice after supplying at least 48% and second invoice after at least 95% of indented quantity.
- c. If PO value is more than Rs.50.00 lakhs Maximum Three invoices. First invoice after supplying at least 28%, second invoice after at least 58% and third after at least 95% of indented quantity.
- d. Payments will be made as per the guidelines of Govt. of Telangana & TSMSIDC.
- e. Bills will be processed once the analytical reports are received from the Empanelled Labs/DCL/NIPER.

f) However as far as possible payment will be made within 30 days after receipt of material at Central Drug Stores.

3. Payments shall be made promptly by the TS MSIDC, after submission of a valid invoice or claim by the vendor. The vendor should submit the invoice or claim to the TS MSIDC not later than 45 days after the Last day of Supply of goods. If delay occurs in submission of claim, the TS MSIDC does not owe any responsibility whatsoever for delayed payment.

DISCUSSION AND CONCLUSION:

DISCUSSION :

6. It is the specific case of the Petitioner that the Petitioner is a Manufacturer of Pharmaceutical Products and the Respondent had issued a Rate Contract of essential medicines and scheme medicines for the period of one year under Tender Doc.No.4E(2)/TSMSIDC/EQU/2020-21 on 01.10.2020 for essential medicines of General Medicines and Medicines for Schemes and an Agreement dated 04.07.2022 was entered into between the Petitioner and Respondent herein. It is further the case of the Petitioner that the Respondent delayed signing of the Agreement, but however, the Petitioner continued to

make supplies to the Respondent after signing of the tender documents and rate contract dated 01.10.2020 and the petitioner had supplied in timely manner against all purchase orders received from the Respondent. The Petitioner had in fact vide letter dated 30.09.2022 addressed to the Respondent requested the Respondent to complete the agreement clause as per tender process and after that issue the P.O. and without completion of agreement process the Petitioner will not be in a position to supply the material, and the Petitioner had enclosed the pending bills and pending invoices to the said letter dated 30.09.2022. It is further the case of the Petitioner that vide mails dated 31.10.2022, 01.11.2022, the Petitioner requested to complete the agreement process and release the payments due to the Petitioner immediately failing which the Petitioner will not be in a position to supply the material sought for by the Respondent in time.

7. It is further the case of the Petitioner, that the Petitioner received the Notice dated 02.12.2022 issued by the Respondent herein calling upon the Petitioner to

submit explanation observing that the Petitioner as per tender condition 4.2 had to supply 50 % quantity within 45 days and remaining 50 % in 70 days from the date of issue of purchase order and that the Petitioner firm had failed to execute/initiate the supplies within the stipulated period inspite of several reminders and phone calls and hence the Petitioner was directed to initiate supplies immediately and submit Petitioner's explanation within 7 days from the date of receipt of the said notice dated 02.12.2022 failing which it will be construed that the Petitioner had no explanation to offer and action against the petitioner would be initiated by invoking necessary tender provisions against the Petitioner. The Petitioner in response to the said notice dated 02.12.2022 submitted reply dt. 21.12.2022 and also e-mail dated 30.12.2022 where under the Petitioner clearly explained that the show cause notice dated 02.12.2022 was received by the Petitioner only on 17.12.2022 and further the Petitioner had been supplying the goods to the Respondent for almost 2 years on time and further that an amount of

Rs.71 lakhs was due to the Petitioner herein and in response to the e-mail dated 31.10.2022 of the Petitioner herein to release the due payments the Petitioner received Rs.15 lakhs on 02.11.2022 from the Respondent from total outstanding amount of Rs.86 lakhs and that the Petitioner received only an amount of Rs.15 lakhs in last 2 years as on December 2022. The Petitioner further referring to Clause 13.5 of tender documents regarding payments which clearly stipulates that the payment should be made within 30 days after the goods are received by the Respondents herein and that without timely payment the Petitioner will not be in a position to supply the material on time. In the mail dated 30.12.2022 the Petitioner specifically requested to provide post dated cheques of 30 days or LC so that the Petitioner can supply materials in timely manner. Without considering the request of the Petitioner made vide letter dated 21.12.2022 and the reply of the Petitioner vide letter through mail dated 30.12.2022, the Respondent herein passed the impugned order dated 20.01.2023 declaring the Petitioner firm as

unreliable and undependable supplier and further held that the Petitioner firm will not be permitted to participate for a period of 2 years i.e., from 19.01.2023 to 18.01.2025 in the future tenders of the TSMSIDC. Aggrieved by the said impugned order dated 20.01.2023 Petitioner approached the Court by filing the present Writ Petition.

8. The counter affidavit has been filed by the Respondent and a bare perusal of para 9 of the counter affidavit filed by the Respondent indicates that after taking into consideration the reply given by the Petitioner to the show cause notice and duly taking into consideration the past performance of the Petitioner's firm which is found to be very poor in terms of making timely supplies, the Respondent had declared the Petitioner firm as undependable supplier on 19.01.2023 for a period of 2 years till 18.01.2025. The Respondent contends that there is no any illegality in the order impugned and the writ petition needs to be dismissed.

CONCLUSION :

9. This Court opines that the order impugned bearing Lr. No.Spl/Medicine Wing/Ph3/2022-23, dated 20.01.2023 of the Respondent herein needs to be set aside for the following reasons:-

10. A bare perusal of Clause 12.7 and 12.8 of the tender conditions pertaining to Tender No.4E(2)/TSMSIDC/EQU/ 2020-21, dated 01.10.2020 indicates the circumstances under which a firm can be black listed and further Clause 11.7 refers to the circumstances under which a bidder could be debarred for future tenders by the Respondent in cases of the bidders involvement in corrupt, fraudulent and unethical practices as explained in Clause 11.7 of the tender dated 01.10.2020.

11. Admittedly as borne on record the Petitioner's case does not fall neither in Clause 12.7, Clause 12.8 nor 11.7.

12. In fact it is the specific case of the Petitioner that inspite of letters dated 30.09.2022 and 10.10.2022 and emails dated 29.10.2022, 31.10.2022, 01.11.2022,

which refer to various communication addressed by the Petitioner to the Respondent to release the payments legally due to the Petitioner pending for over 15 months and the Petitioner having received only Rs.15 lakhs for a period of 2 years till 21.12.2022 and the Petitioner specifically referring to Clause 13.5 of the tender document requested for timely release of payments clearly indicating that if the payments are not made in time the Petitioner will not be in a position to supply the material in time. The Petitioner in fact in its letter dated 21.12.2022 very clearly pointed out that the Petitioner received only Rs.15 lakhs on 02.11.2022 as against outstanding due of Rs.86 lakhs and therefore this Court opines that the Petitioner could not have been declared as an undependable supplier on 19.01.2023 for a period of 2 years till 18.01.2025, and hence, there is clear violation of Clause 13.5 (f) of the tender conditions pertaining to payments and deductions since condition/clause 13.5 Sub-clause (f) clearly stipulates that however, as for as possible

payment will be made within 30 days after receipt of material at Central Drug Stores.

13. This Court is of the firm opinion that the contents of the show cause notice dt. 02.12.2022 issued by the Respondent to the Petitioner does not indicate any intention on the part of the Respondent who had issued the said notice to black list the Petitioner / Notice.

14. This Court opines that for a show cause notice to constitute the valid basis of a black listing order such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to black list the notice and such a clear notice is essential for ensuring that the person against whom the penalty of blacklisted is imposed has an adequate reasonable opportunity to show cause against his possible blacklisting. Admittedly in the present case the show cause notice dt. 02.12.2022 issued by the Respondent herein vide Lr.No.Spl/Medicines Wing/2022-23 clearly indicates that the word blacklisting does not reflect at

all and penalty of blacklisting is imposed and further the Petitioner has been declared as unreliable and undependable supplier with a further stipulation that the firm will not be permitted to participate for a period of 2 years i.e., from 18.01.2023 to 18.01.2025 in the future tenders of the TSMSIDC.

15. This Court opines that the order impugned dt. 20.01.2023 of the Respondent herein clearly indicates that it is a wholly cryptic order passed without assigning any reasons, without application of mind in a routine casual manner, without considering the explanation furnished by the Petitioner to the show cause notice dated 02.12.2022, and simply extracting the same as it is and observing that the explanation submitted by the Petitioner firm is found to be not satisfactory as the majority of the purchase orders were not executed by the Petitioner firm is unsustainable since admittedly a borne on record, there is no discussion in so far as the difficulty expressed by the Petitioner through various letters/ mails of correspondence letter dt. 30.09.2022 and emails dated

30.09.2022, 10.10.2022, 29.10.2022, 31.10.2022, 01.11.2022 for timely release of pending dues for providing timely supplies to the Respondent herein as stipulated under Clause 13.5 of the tender document dt. 01.10.2020.

16. This Court opines that the order impugned is in clear violation of principles of natural justice and the Petitioner had been denied reasonable opportunity in view of the fact that the show cause notice did not state that action by black listing was to be taken by the Respondent or was proposed or was under contemplation by the Respondent.

17. This Court opines that the judgments relied upon by the Counsel for the Respondent do not apply to the facts of the present case. This Court opines that the judgments relied upon by the Counsel for the Writ Petitioner enlisted below squarely apply to the facts of the present case.

18. The judgment of the Apex Court reported in (1975) 1 SCC 70 in M/s Erusian Equipment and

Chemicals Ltd v State of West Bengal and another, in particular paras 15 and 17 read as under:

“15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. **The State need not enter into any contract with anyone but 'if it does so, it must do as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.**

19. The judgment dated 25.05.2021 of the High Court of Delhi at New Delhi Apex Court passed in W.P.(C)5347 of 2021, CM Appl.No.16492 of 2021 in Sarr Freight Corporation and another v Union of India and another, in particular, para 9 reads as under:

“9. In the light of this position, I am of the prima facie view that permitting the impugned order to continue at this stage and allowing it to inevitably cost the petitioner its contract with the respondent no.2 would be unjust and prejudicial to the petitioner, especially given that there has been a considerable delay in its issuance - which delay is entirely attributable to the respondent no.1. Had the impugned order been passed within a reasonable time from the date of receipt of the petitioner's reply to the show cause notice on 24.07.2019, then its operation, slated to be for a period of one year, would have come to expire much earlier - well before the petitioner executed the contract with respondent no.2 on 17.04.2021. **Significantly, the impugned order is wholly cryptic and bears absolutely no reference to the detailed explanation given by the petitioner in its reply dated 24.07.2019.** In addition to that, during these times of economic uncertainty brought about by the pandemic, the petitioner is an MSME with financial obligations towards all of its employees and has already invested significant sums in carrying out the work under its Sea

International Logistics Services contract with the respondent no.2. It is, thus, evident that the petitioner would suffer irreparable harm if the impugned order, passed after a significant delay and lacking any discussion of the petitioner's defence, were permitted to be enforced in this manner today."

20. The judgment of the Apex Court reported in (2021) 1 SCC 804 in Vetindia Pharmaceuticals Limited v State of Uttar Pradesh and another, in particular para 13, reads as under:

"In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the

appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.”

21. Taking into consideration the above said facts and circumstances and the law laid down by the Apex Court in the various judgments (referred to and extracted above) the Writ Petition is allowed as prayed for and the impugned order bearing Lr. No.Spl/Medicine Wing/Ph3/ 2022-23, dated 20.01.2023 of the Respondent is set aside.

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

SUREPALLI NANDA, J

Date: 11.09.2023

Note: L.R.Copy to be marked.
b/o
kvrn