



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VINAY SARAF**

WRIT PETITION No. 31343 of 2024

M/S JPEE DRUGS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Dr. Anuvad Shrivastava - Advocate for the petitioner.

Ms. Janhavi Pandit - Additional Advocate General for respondent no. 1

Mr. Rohit Jain - Advocate for the respondent no. 2 and 3 on Caveat.

Reserved on – 30th July, 2025

Pronounced on – 27th October, 2025

ORDER

Per: Justice Vinay Saraf:

1. The instant writ petition has been preferred by the petitioner firm which is engaged in the business of the manufacturing and supplying of the medicines to the government hospitals.

2. Short facts of the case are that the petitioner firm participated in NIT issued for supply of drugs to various government district hospitals in the State of Madhya Pradesh by Department of Public Health & Family Welfare through M.P. Public Health Services Corporation Limited, Bhopal. Petitioner's bid was accepted for supply of drug Ascorbic Acid (Vitamin C) Tab IP 500 mg (tablet) and



Ethambutol 400 mg (tablet). Petitioner entered into an agreement for supply of the drugs as per the tender document and thereafter the petitioner supplied Ascorbic Acid (Batch No. JDT-8007) in the month of April and Ethambutol 400 mg (Batch No. JDT-8054) in May to various government hospitals in the State of Madhya Pradesh. Later on Ascorbic Acid (Batch no. JDT – 8316 and JDT – 7741) were also supplied by the petitioner.

3. A show cause notice dated 23.09.2024 was issued to the petitioner firm seeking explanation that why the petitioner firm be not blacklisted on the ground that drugs supplied by the petitioner firm were failed in quality test. Along with the show cause notice, test report was also forwarded to petitioner firm. As per the show cause notice, Ascorbic Acid supplied by the petitioner firm (Batch No. JDT-8007, JDT- 8316, JDT-7741) was found substandard as well as Ethambutol (Batch No. JDT-8054) was also failed in quality test. It is mentioned in the show cause notice that as per the tender document, in case any batch is found NSQ (not of standard quality) then particular product of the supplier will be blacklisted/debarred for not less than two years. Upon blacklisting/debarment of such three NSQ batches of one or more products under a tender, the supplier will be blacklisted for not less than three years. The petitioner firm replied the show cause notice on 30.09.2024 after 05 PM and denied the allegation of supply of substandard drug and stated that due to improper storage condition and improper handling of the drugs, drugs failed in the quality test for which the manufacturer and supplier cannot be held responsible. Hence, there was no fault on the part of the petitioner.

4. Managing Director, M.P. Public Health Services Corporation Limited, Bhopal after observing that no reply to show cause notice dated 23.09.2024 was



filed by the petitioner firm within 7 days, passed two separate orders on 30.09.2024 by which the petitioner firm was directed to refund the value of the entire supplied material, which was found substandard and the petitioner firm was blacklisted for a period of three years from participating in any NIT issued by MPPHSCL. Thereafter by order dated 01.10.2024 reply/representation submitted by the petitioner firm on 30.09.2024 was considered and rejected. Hence the present petition has been filed.

5. Dr. Anuvad Shrivastava, learned counsel for the petitioner submits that respondents have not followed the proper procedure before passing the order of blacklisting and the orders passed on 30.09.2024 are *ex facie* arbitrary, illegal, malafide and in violation of principle of natural justice. He further submits that notice was issued to the petitioner on 23.09.2024 and seven days' time was granted to the petitioner to file the reply. Petitioner filed the reply on 30.09.2024, but without waiting for the reply of the petitioner in a hasty manner, the impugned orders were passed on 30.09.2024, by which petitioner firm was blacklisted for three years and products of the petitioner firm namely; Ascorbic Acid (Tab.) and Ethambutol (Tab.) were blacklisted for two years. He submits that no opportunity of the hearing was granted to the petitioner firm. The samples which were drawn by the respondent and examined by the laboratory, were not forwarded to the another laboratory for obtaining second opinion and until and unless the second opinion is obtained, no order could be passed by the respondent/department and therefore, the procedure adopted by the respondent/department was incorrect and arbitrary.

6. Learned counsel appearing on behalf of the petitioner relied on the decision delivered by the Supreme Court in the matter of *M/s Technoprints Vs.*



Chhattishgarh Text Book Corproation (2025 INSC 236) wherein the Supreme Court has held that the authorities are expected to be very careful before issuing a show cause notice for blacklisting and there is always an inherent power with the authority to blacklist a contractor, but possessing such inherent power and exercising such power are two different situations and connotation. There may be a power but there should be reasonable ground to exercise such power. The relevant paragraph of the judgment reads as under:

"32. We may put it in a slightly different way. Take for instance, the show cause notice in the present case is the final order of blacklisting. The final order in any case cannot travel beyond the show cause notice. Therefore, we take the show cause notice as the final order. Whether it makes out a case for blacklisting? This should be the test to determine whether it is a genuine case to blacklist a contractor or visit him with any other penalty like forfeiture of EMD, recovery of damages etc. We say so because once an order of blacklisting is passed the same would put an end to the business of the person concerned. It is a drastic step. Once the final order blacklisting the Contractor is passed then the Contractor is left with no other option but to go to the High Court invoking writ jurisdiction under Article 226 of the Constitution and challenge the same. If he succeeds before the Single Judge then it is well and good otherwise he may have to prefer a writ appeal or LPA as the case may be. This again would lead to unnecessary litigation in the High Courts. The endeavour should be to curtail the litigation and not to overburden the High Courts with litigations of the present type more particularly when the law by and large is very well settled and there is no further scope of any debate.

33. As observed by this Court in Erusian Equipment & Chemicals Ltd. Vs. State of W.B. reported in (1975) 1 SCC 70, an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties. Else, for every breach or violation, though there are legal modes of redress and which compensate the party like the Corporation before us, it would resort to blacklisting and at times by abandoning or scuttling the pending legal proceedings.

34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.



35. Usually, while participating in a tender, the bidder is required to furnish a statement undertaking that it has not been blacklisted by any institution so far and, if that is not the case, provide information of such blacklisting. This serves as a record of the bidder's previous experience which gives the purchaser a fair picture of the bidder and the conduct expected from it.

Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that it must follow in the wake of an action that is equally grave.

36. In the overall view of the matter more particularly in the peculiar facts of the case, we have reached the conclusion that asking the appellant herein to file his reply to the show cause notice and then await the final order which may perhaps go against him, leaving him with no option but to challenge the same before the jurisdictional High Court will be nothing but an empty formality. Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind.

It has got to be issued because this Court has said that without giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice."

7. Learned counsel for the petitioner further relied on the judgment delivered by the Supreme Court in the matter of ***Blue Dreamz Advertising Pvt. Ltd. Vs. Kolkata Municipal Corporation (2024 INSC 589)*** wherein the Supreme Court has held that any decision to black list, will be open to scrutiny on the anvil of doctrine of proportionality in view of the facts and circumstances of the case. He further submits that as per the procedure prescribed in the Tender document, it was necessary for the department to send the sample for second quality test which was not done by the respondents and it was not considered that the storage condition was not maintained and the analysis of the drugs were made after unreasonable delay of about four months. He further submits that petitioner offered to replace the drugs free of cost, however, the drastic step of blacklisting is adopted without following the due procedure and the same is liable to be set aside. He prays for quashment of the impugned orders.



8. Ms. Janhavi Pandit, learned Additional Advocate General for the respondent/State and Shri Rohit Jain, learned counsel appearing on behalf of respondents 2 and 3 opposed the petition mainly on the ground that the drugs/medicines supplied by the petitioner firm were found substandard. Medicines were purchased for the purpose of providing to the patients of government hospitals and when medicines were found to be NSQ, the action was taken against the petitioner after issuance of show cause notice in accordance with Clause 19 of Tender Document and the said action cannot be said to be illegal and arbitrary. It is further submitted by the respondents that no request was made by the petitioner for sending the sample to another laboratory and in the absence of any request by the supplier, there was no need to forward the sample to any other laboratory. The reports issued by the M.P.F.D.A. are binding and cannot be put to challenge on the basis of bald allegation that the storage of the drugs were not apt and correct. They further submit that petitioner has supplied the nonstandard material which was found NSQ by the Food Laboratory of the State Government and the medicines were tested in the laboratory during its shelf-life, therefore, the petitioner firm is responsible for the same and as per the terms of the tender, the firm was rightly blacklisted.

9. Heard learned counsel for the parties for the purpose of final disposal of the case and perused the documents available on record.

10. The petitioner is aggrieved by the order of blacklisting for a period of three years. For procuring and distributing various drugs to Government Hospitals all over the state, the respondent floated the tender. There is no dispute to the fact that terms and conditions of the tender, more particularly, Clause 19 and Annexure IX of the tender document deal with blacklisting for various reasons *inter alia*



quality failure. Clause 19 and Annexure IX of Tender Document stipulate as follows :

DEDUCTION & OTHER PENALTIES ON ACCOUNT OF QUALITY FAILURE:

“19.1. If the samples do not conform to statutory standards, the bidder will be liable for relevant action under the existing laws and the entire stock in such batch has to be taken back by the bidder within a period of 30 days of the receipt of the letter from tender inviting authority / ordering authority.

19.2. If any items of Drugs/Medicines supplied by the Bidder have been partially or wholly used or consumed after supply and are subsequently found to be in bad or, 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. In other words the Bidder will not be entitled to any payment whatsoever for Items of drugs found to be of “NOT OF STANDARD QUALITY” whether consumed or not consumed and the Tender Inviting Authority/ ordering authority is entitled to deduct the cost of such batch of drugs from any amount payable to the Bidder. On the basis of the nature of failure, action will be initiated to blacklist the product/supplier.

19.3. For the supply of “NOT OF STANDARD QUALITY” drug to Government of Madhya Pradesh, action shall be initiated as per procedure laid down in Annexure IX. The Bidder may also not be eligible to participate in tenders of Tender Inviting Authority for supply of such Drugs for a period of five subsequent years. In addition, the Controller/Director of Drugs Control of concerned State may be informed for initiating necessary action on the Bidder in their State.

19.4. The Bidder shall furnish the source of procurement of raw material utilized in the formulations, if required by Tender Inviting Authority/Ordering Authority. Tender Inviting Authority /Ordering Authority reserves the right to cancel the purchase orders, if the source of supply is not furnished.

19.5. The decision of the Tender Inviting Authority, or any officer authorized by him, as to the quality of the supplied drugs, medicines etc., shall be final and binding.

19.6. For infringement of the stipulations of the contract or for other justifiable reasons, the contract may be terminated by the Tender Inviting Authority, and the Bidder shall be liable to pay for all losses sustained by the Tender Inviting Authority, in consequence of the termination which may be recovered personally from the Bidder or from his properties, as per rules.

19.7. Non-performance of any of the contract conditions and provisions will attract provisions of penalty/termination/blacklisting as stipulated in the tender documents.

19.8. (a) In the event of making ALTERNATIVE PURCHASE, as specified in Clause 13.6, Clause 15.11 and in Clause 16.3 penalty will be imposed on the supplier apart from forfeiture of Security Deposit. The excess expenditure over and above contracted prices incurred by the Tender Inviting Authority /Ordering Authority in making such purchases from any other sources or in the open market or from any other Bidder who has quoted higher rates and other losses sustained in the process, shall be recovered from the Security Deposit or from any other money due and become due to the supplier and in the event of such amount being insufficient, the balance will be recovered personally from the supplier.



(b) Aggrieved by the decision or levy of penalty by the Ordering Authority, the supplier can make a representation with the Managing Director, MPPHSCL. Aggrieved by the decision of the concerned Director, the supplier can take up the appeal with the Commissioner(Health).

19.9. In all the above conditions, the decision of the Tender Inviting Authority, would be final and binding, in case of any dispute regarding all cases under tender procedure or in any other non-ordinary situation and would be acceptable to all.

19.10 All litigations related to the supplier for any defaults will be done by Tender Inviting Authority and his decision will be final and binding.”

ANNEXURE – IX

“PROCEDURE FOR BLACKLISTINGBLACKLISTING OF PRODUCT / TENDER IF ANY WITHDRAWAL OF BIDDER

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BLACKLISTING FOR QUALITY FAILURE.

3. Each and every batch of drugs / medicines supplied by the suppliers shall be subjected to quality test by the laboratories selected/empanelled by Tender Inviting Authority.

4. The samples are collected from the Stores from each batch of supply of the same drugs and after eliminating the common batch, samples shall be taken in random, decoded and to be sent to the empanelled testing laboratories for testing the quality of drugs. In case of any complaint received from the institutions, public, Doctors, etc, the available stock will be frozen on the basis of primary investigation report either TIA or by complaint authority and samples of the complaint batch drawn from the point of complaint will be tested for quality (Govt. Lab) Technical team of TIA can also visit the manufacturing firm site and BMR, BPR, other batch related document can also be called by TIA to review and can also call an explanation from the firm.

5. If such sample passes quality test in all respects, ordering authority will instruct its store to issue such items of drugs to various hospitals / Institutions.

6. If the sample fails in quality test and report is received certifying that sample is not of standard quality, one more sample shall be drawn from the same batch and to be sent to other laboratory for quality testing. On confirmation of the test result by the second laboratory, firm will be black listed as per terms. In case when the second report is contradictory to the first report, the Govt. lab or third laboratories report will be final and if the sample has been tested by the Govt. Lab at any stage, its report will be conclusive & final.

7. In case any one batch is found NSQ than particular product of the firm will be blacklisted/debarred for not less than two year. Upon blacklisting / debarment of such 3products or found such 3 NSQ batches(of one or more products) under a tender then firm will be blacklisted not less than 3 years.

8. In case any batch is found NSQ during self life above blacklisting procedure will be applicable. If sample, taken by Drug inspector found NSQ at any stage than blacklisting procedure will be adopted as per above term 7.



9. In case of any sample in even one batch declared as spurious or adulterated or misbranded than the company shall be blacklisted not Less than 3 years.

10. On complaint from Drug Inspector during their Test of field sample, that the particular drug has been reported to be of NOT OF STANDARD QUALITY, the issue of available stock of the items will be stopped. Available stock of the product in hospitals will be retrieved. The supplier shall be called upon to explain why the product should not be blacklisted. On receipt of his explanation and scrutiny of record, decision will be taken by the TIA to decide the appropriate punishment / penalties including blacklisting as per above terms whichever is applicable.

11. (a) On receipt of report from Govt. Analyst / Drug Testing Laboratory informing that particular Item / Drug is NOT OF STANDARD QUALITY, a notice shall be issued to the supplier calling for explanation within 7 days from the date of notice. On receipt of explanation from the supplier, the ordering authority may take appropriate action on merits of the case and impose penalty including the blacklisting of the particular item of the product / supplier.

(b) If the particular item of the drug has been black listed according to the procedure stated above, the supplier/s is/are not eligible for participating any of the tenders for the particular item floated for stated period immediately succeeding the period in which supplies were made to Govt. Of Madhya Pradesh.

(C) The supplier/s, blacklisted according to the procedure stated above, are not eligible for participating any of the tenders floated for stated period immediately succeeding the period in which supplies were made to Govt. of Madhya Pradesh.

(d) It is the duty of the supplier that if his firm get blacklisted in quality ground by any state/central government supplier should inform immediately to the corporation by medium of letter and mail. In case of no information provided it will be considered as fraud practices and action will be taken as per terms and conditions.

BLACKLISTING FOR NON-SUPPLY:

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The black listing of particular item of the drug/medicine or the supplier is without prejudice to the other penalty stipulated in the conditions of Tender Documents.

Tender inviting authority reserves the right to take final decision regarding blacklisting due to any reason e.g. Quality failure or Non Supply or any other reason."

11. Clause 6 of Annexure IX stipulates that upon receipt of test report certifying that the supplied material is not of standard, one more sample shall be drawn from the same batch and the second sample shall be send to other laboratory for analysis and quality test and if the report of second laboratory confirms the substandard quality of the supplied product, the supplier will be black listed after issuance of notice of 7 days and grant of opportunity of hearing. Undisputedly in



the case in hand show cause notice to blacklist the petitioner firm was issued immediately after receipt of first report from laboratory and no second sample was drawn and sent to other laboratory. The contention of the respondents that no request was made on behalf of the supplier to draw a second sample and send the same to other laboratory, thus the respondents were not under obligation to send the second sample to other laboratory for analysis or quality test is misplaced as Clause 6 of Annexure IX makes it mandatory for the employer to draw the second sample and send the same to other laboratory for quality test. This procedure has not been followed by the respondent and straight way show cause was issued and 7th day without waiting for the reply of the petitioner, order of black listing was passed. Pertinently show cause notice was issued on 23.09.2024 and 7 days' time was granted to the petitioner to reply the same, which was ending on 30.09.2024, and 30.09.2024, the petitioner submitted the reply after 5 PM, but before receipt of reply on the same day i.e. 30.09.2024, the orders were passed to blacklist the petitioner firm and its supplied products. Undoubtedly these orders were passed in violation of the principles of the natural justice.

12. Indisputably, blacklisting a bidder or debarring him from participating in further tenders has serious civil consequences for his business and such an order is also punitive or stigmatic in nature. A person who is excluded from participating in tenders floated by any Govt. agency may also be disqualified from participating in tenders floated by other authorities or government bodies/agencies. It is, thus, necessary that such a punitive measure should not be taken mechanically and the procedure prescribed in the tender document should be followed strictly.

13. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises



because it is the State who is the counter-party in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. This is the fundamental right of every citizen guaranteed under Article 14 of the Constitution of India. Not only blacklisting takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

14. Supreme Court in **Gorkha Security Services v. Government (NCT of Delhi) and Ors.** (2014) 9 SCC 105 has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. The procedure prescribed in Tender Document and/or agreement should be followed strictly and by not sending second sample to other laboratory, the respondents have violated the terms of the contract and thus the order of blacklisting cannot be given seal of approval. However, at the same time, we cannot ignore the fact that the laboratory has found the supplied medicines of substandard, which were purchased for the purpose of human consumption. The contention of the petitioner that the medicines at the time of supply were of standard quality and before supply tested in laboratory also and later on found substandard only due to improper storage conditions, is also not acceptable. The medicines were tested within the period of their shelf-life.

15. It is informed to the court during the course of arguments that the supplied medicines are still not expired and the same may be tested at any other laboratory. Considering the same and the peculiar facts and circumstances of the



case, we deem it just and proper to dispose of this petition with the following directions:-

(a) Respondent MPPHSCL shall draw the fresh samples of each batch of supplied medicines in the presence of the petitioner within 15 days from today and will send the same to any Central Govt. Laboratory for analysis and quality test.

(b) If the report of the above test fortifies the allegation of MPPHSCL, orders dated 30.09.2024 shall remained intact and petitioner will be free to challenge the said orders in accordance with the alternate dispute resolution mechanism prescribed in the contract.

(c) In case the fresh quality test reports do not suggest the supplied medicines as substandard, orders dated 30.09.2024 and 01.10.2024 shall be deemed to be quashed.

(d) As the instant dispute is in respect of supply of medicines for human consumption and any medicine of substandard quality if given to any patient, it can result in danger to human life, which would be irreparable loss, therefore we are not inclined to grant any interim relief.

(e) With the aforesaid, the instant petition is disposed of. No order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE