

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 4615 of 2024

1.M/s Pama Pharmaceuticals, a proprietorship firm having its registered office at Devi mandap, Ratu Road, P.O.-Ratu Road, P.S. Sukhdeonagar, Dist-Ranchi through its proprietor Birendra Kumar Singh S/o Late Manager Singh aged about 49 years, R/o Sukhdeonagar, Ratu Road, P.O.-Ratu Road, P.S. Sukhdeonagar, Dist-Ranchi.

... .. **Petitioner**

Versus

1.The Ranchi Municipal Corporation through its commissioner, officiating from his office at Ranchi Municipal Corporation, New Building, P.O. Kotwali, P.S. GPO, Dist-Ranchi.

2.Deputy Administrator, Ranchi Municipal Corporation, officiating from his office at Ranchi Municipal Corporation, New Building, P.O. Kotwali, P.S. GPO, Dist-Ranchi.

... .. **Respondents**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioner : Mr. Prashant Pallav, Advocate

Mr. Parth Jalan, Advocate

For the Respondents: Mr. L.C.N. Shahdeo, Advocate

Order No. 02 : Dated 2nd September, 2024
Sujit Narayan Prasad, ACJ:

1. The instant petition, under Article 226 of the Constitution of India, is directed against order dated 19.07.2024 issued under the Signature of Deputy Administrator, Ranchi Municipal Corporation, by which, the petitioner has been debarred for a period of one year.

2. The brief facts of the case, as per the pleading made in the writ petition, reads as under:

3. Notice inviting tender being e-tender 3375 dated 2nd July, 2022 was published for supply of certain medicines.

The petitioner participated in the tender and was declared successful. Pursuant thereto, the petitioner entered into an on 15th April, 2023 for supply of number of medicines for a period of two years.

4. Thereafter, supply order dated 21.04.2023 was issued to the petitioner directing him to supply a list of medicines, which the petitioners supplied. But vide letter dated 28.10.2023 the petitioner was informed that certain medicines were not in accordance with the specifications and were found to be spoilt, as such he was asked to submit clarification and replace the medicines.

5. It has been submitted that petitioner took immediate steps and replaced the medicines which were found to be spoiled. However, the petitioner informed the respondent-authority that the role of the petitioner is only to supply medicines procured from renowned manufacturers, who are neither blacklisted nor rejected by the respondent. But in spite of that notice dated 9th March, 2024 was issued to the petitioner whereby it has been stated that certain medicines were found to be below standards, which are contrary to Clause 13 and 14 of the agreement.

6. The petitioner replied the said show cause on the very same day i.e., on 9th March, 2024 but the same being found not satisfactory impugned order dated 19th July, 2024 was

passed by which the petitioner was blacklisted/debarred for a period of one year.

7. It is evident from the factual aspect that in terms of the Notice Inviting Tender for supply of medicine to the hospitals having been controlled by the Ranchi Municipal Corporation, Ranchi, the petitioner was issued work order. The medicines, which were supplied by the petitioner was found to be contrary to the terms and conditions of the agreement and as such a show cause notice was issued asking the petitioner to explain as to why action be not taken for violating the clause/condition no. 13 and 14 of the bid document. The petitioner replied stating therein that no condition of the agreement has been flouted by the petitioner.

8. It has been stated that the respondent-authority, without taking into consideration reply submitted by the petitioner passed the impugned order.

9. It has further been submitted that impugned order otherwise also suffers from error as the petitioner was not knowing about the fact that the said show cause notice was with respect to debarring the petitioner for any period for making supply of the medicines to the hospitals.

10. Learned counsel for the respondents-RMC has submitted that the allegation is very serious. It has further been submitted that it is not a case that without affording

opportunity the impugned order has been passed rather show cause was issued, which has been responded by the petitioner and thereafter, the impugned order has been passed. Hence, the impugned order suffers from no error and as such the same may not be interfered with.

11. This Court has heard learned counsel for the parties and gone across the pleading made in the writ petition as also impugned order passed by the respondent-authority.

12. The issue on merit has been raised regarding impropriety of the impugned order and in addition to that the issue of violation of principles of natural justice has also been raised.

13. It has been contended that the show cause cannot be said to be proper since there is no reference of punishment said to be inflicted i.e., debarring from supply of medicine, save and except, the reference has been made in the show cause that action will be taken, therefore, argument has been advanced that in absence of any punishment said to be provided to the writ petitioner, the impugned order is said to be passed in violation of principles of natural justice.

14. However, the said issue has been disputed by the respondent on the ground that the nature of allegation is serious, as such the impugned order was passed.

15. This Court, on appreciation of the rival submissions advanced on behalf of parties, is of the view that what is being contended on behalf of petitioner is having substance reason being that the principles of natural justice cannot be said to be mere formality and when an adverse decision is being taken then it is incumbent upon the authority concerned to apprise the party concerned who is to suffer from the adverse decision i.e., regarding the proposed action which is to be taken against that party. If such parameter has not been followed then it will be said that there is non-compliance of principles of natural justice.

16. The natural justice is the cardinal principle, which cannot be not said to be a mere formality rather it requires consideration by the court of law, as has been held by Hon'ble Apex Court in the case of ***Maneka Gandhi vs. Union of India and Anr., (1978) 1 SCC 248.***

17. For ready reference, the relevant paragraph is quoted as under:

“221. It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa v. Dr (Miss) Binapani Dei [AIR 1967 SC 1269, 1271 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] in the

following words: “The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed: it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

18. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by Hon’ble Apex Court in the case of ***Erusian Equipment & Chemicals Lts. V. State of W.B. [(1975) 1 SCC 70]***, wherein it has been held as under:

“12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

15. ... 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”.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

19. Further, in the case of black-listing, the Hon’ble Apex Court in the case of ***Nasir Ahmad Vs. Custodian General, Evacuee Property [(1980) 3 SCC 1]***, it has been held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the notice to answer the case against him.

20. The Hon’ble Apex Court in the case of ***Gorkha Security Services v. State (NCT of Delhi) (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 Hon’ble Apex Court further held that the necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. For ready reference, the relevant paragraph is quoted as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

21. Similarly the Hon’ble Apex Court in the case of ***UMC Technologies Private Limited Vs. Food Corporation of India & Anr. [(2021) 2 SCC 551]***, taking note of aforesaid judgments has held that before passing the order of blacklisting the show cause notice is to be issued to constitute valid basis of black-listing order so that the litigant concerned be able to respond properly the allegation based upon that the proposal has been taken to black-list.

22. For ready reference, the relevant paragraph is quoted as under:

“21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting 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 blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.”

23. Now, advertent to the factual aspect of the present case, it is not a case wherein show cause notice has not been issued rather the show cause notice was issued but it is not with respect to the order of black-listing rather show cause notice was issued, wherein it has been referred that why an action be not taken against the petitioner since there is non-compliance of the terms and conditions of the agreement as contained under condition no. 13 and 14 of the agreement.

24. It is evident from the said show cause notice that there is no reference that as to why the petitioner be not black-listed or debarred from supplying the medicines. However, the response was submitted by the petitioner, wherein the ground has been taken of committing no irregularity.

25. Therefore, this Court is of the view that merely due to the reason that show cause notice has been issued the principles of natural justice cannot be said to be followed, as in the facts and circumstances of the present case, the requirement as per the law is that before debarring the writ petitioner specific show cause notice was required to be issued as to why he be not debarred due to commission of irregularity as has been found to be committed.

26. This Court, therefore, is of the view that since in absence of such averment in the show cause notice order of

debarment has been passed hence the order of debarment for a period of one year is required to be quashed and set aside.

27. Accordingly, order dated 19.07.2024 issued under the Signature of Deputy Administrator, Ranchi Municipal Corporation, by which, the petitioner has been debarred for a period of one year is hereby quashed and set aside.

28. The law is well settled that on technicality no one can be allowed to take advantage and as such this Court is of the view that the matter needs to be referred before the authority concerned i.e., Administrator, Ranchi Municipal Corporation to pass order afresh after issuing fresh show cause notice.

29. In view thereof, the Administrator, Ranchi Municipal Corporation is directed to issue fresh show cause notice to the petitioner by giving specific imputation therein within a period of one week from the date of receipt/production of copy of this order. The petitioner, in turn thereof, has undertaken to submit reply within a period of two weeks from the date of receipt of such show cause notice.

30. The concerned authority i.e., Administrator, Ranchi Municipal Corporation is directed to take decision thereafter within a period of two weeks from the date of receipt of reply so submitted by the petitioner.

31. It is made clear that the final outcome with respect to the issue of supply of medicine will depend upon the decision

which is to be taken by the Administrator, Ranchi Municipal Corporation.

32. With the aforesaid observations and directions, the writ petition stands disposed of.

(Sujit Narayan Prasad, A.C.J.)

(Arun Kumar Rai, J.)

Alankar/
AFR