IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12412 of 2025

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1. M/s. Sam Kem having its registered office at 15-B, AKVN, Industrial Area, Rangwasa, Rao, Indore, Madhya Pradesh through its authorised representative, Rajiv Shukla, aged about 49 yrs., S/o Late Nirmal Shukla, R/o-At and P.O.-Wari, P.S.-Singhia, District-Samastipur.
2. Rajiv Shukla, S/o Late Nirmal Shukla, R/o-At and P.O.-Wari, P.S.-Singhia, District-Samastipur authorised representative M/s. Sam Kem having its registered office at 15-B, AKVN, Industrial Area, Rangwasa, Rao, Indore, Madhya Pradesh.

... ... Petitioners

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
3. Bihar Medical Services and Infrastructure Corporation Ltd., Second and Third Floor, Swasthya Bhawan, behind IGIMS, Sheikhpura, Patna, Bihar through its Secretary.
4. The Managing Director, Bihar Medical Services and Infrastructure Corporation Ltd., Second and Third Floor, Swasthya Bhawan, behind IGIMS, Sheikhpura, Patna, Bihar.
5. The General Manager, Bihar Medical Services and Infrastructure Corporation Ltd., Second and Third Floor, Swasthya Bhawan, behind IGIMS, Sheikhpura, Patna, Bihar.

... ... Respondents

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Appearance :

For the Petitioners	:	Mr. Rajeev Kumar Singh, Advocate
For the State	:	Mr. S.D. Sanjay, AG Mr. Rahul Kumar, AC to AG
For the BMSICL	:	Mr. Lalit Kishore, Sr. Advocate with Mr. Ayush Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

5 13-07-2026 Heard learned counsel for the parties.

2. In the present writ petition, the petitioners have prayed for the following relief(s):-

"(i) To quash the order contained in File No.-BMSIC/40030/141-2024/4001 dated 17.07.2025 issued by the Managing Director, Bihar Medical Services and Infrastructure Corporation Ltd., Sheikhpura, Patna, (herein after referred to as B.M.S.I.C.L.) whereby and where under the petitioners' company has been blacklisted for its quoted product, Oral Rehydration Salts IP (herein after referred to as O.R.S.) for a period of two years from the date of issuance of this order on the ground that the O.R.S. which were supplied by petitioners' company to Patna, Purnia and Muzaffarpur warehouses of B.M.S.I.C.L. were declared "Not of Standard Quality" by BMSICL impanelled quality testing laboratories. Simultaneously it has also ordered that all unexecuted purchased order issued earlier shall also stand cancel. A copy of order dated 17.07.2025 is annexed as ANNEXURE-P/1 to this application.

(ii) To direct the respondent B.M.S.I.C.L. to accept the product namely O.R.S. for which the agreement dated 25.01.2024 was executed and the purchases orders were issued forthwith as several products of the O.R.S. are standing outside the warehouses and is having its date of expiry and if the same will not be accepted, the petitioners' company will suffer huge monetary loss because of inaction on the part of B.M.S.I.C.L.

(iii) To direct the respondents to extend the tenure of agreement dated 25.01.2024 for a further period of one month without late delivery charge so that the remaining product of O.R.S. as per the purchase order be supplied to

the warehouses of B.M.S.I.C.L."

3. The brief facts of the present case are that BMSICL issued a tender dated 20.09.2023 inviting bids for procurement and supply of various drugs to healthcare facilities across the State of Bihar. The petitioner participated in the tender process for supply of O.R.S. and, upon being declared successful, was issued a Letter of Intent dated 15.01.2024. The petitioner thereafter furnished the requisite performance security, pursuant to which an agreement dated 25.01.2024 was executed between the parties. Thereafter, purchase orders were issued from time to time and the petitioner supplied O.R.S. to various warehouses of BMSICL.

4. During the period of the contract, samples drawn from certain batches of the supplied O.R.S. were tested in laboratories empanelled by BMSICL. On the basis of the test reports, which allegedly found seven batches to be not of standard quality, a show cause notice dated 03.12.2024 was issued to the petitioner. The petitioner submitted its reply disputing the laboratory findings and requesting retesting of the samples. Thereafter, upon retesting, a second show cause notice dated 21.02.2025 was issued, to which the petitioner again submitted its response disputing the conclusions recorded in the test reports.

5. Ultimately, by the impugned order dated

17.07.2025, the respondent-Corporation blacklisted the petitioner's quoted product for a period of two years and further directed cancellation of all unexecuted purchase orders. Aggrieved thereby, the petitioner has preferred the present writ application.

6. Learned counsel for the petitioner submits that although two show cause notices were issued with respect to the alleged failure of certain batches of O.R.S. in quality testing, neither of the notices proposed or put the petitioner to notice regarding the proposed action of blacklisting under Clause 27 of the Tender Conditions. It is only in the impugned order that Clauses 27B(1), 27B(3) and 27C have been invoked for the first time. Consequently, the order of blacklisting has been passed without affording the petitioner any opportunity to show cause against the proposed penalty, rendering the same unsustainable in law.

7. It is further submitted that the cancellation of all unexecuted purchase orders is contrary to Clause 27C(ii) of the Tender Document, which expressly provides that purchase orders already issued prior to the order of blacklisting shall not be affected and only strict quality checks would be undertaken in respect of future supplies. It is, therefore, submitted that the respondents have acted in direct contravention of the contractual stipulations governing the parties.

8. Per contra, learned counsel appearing for the respondent-BMSICL submits that the impugned order has been passed strictly in accordance with terms of the tender document and after affording the petitioner adequate opportunity of hearing. It is submitted that after issuance of the Letter of Intent, execution of the agreement and issuance of purchase orders, the petitioner supplied O.R.S. under various batch numbers. In this regard, reliance has been placed upon paragraph 8 of the counter affidavit, which reads as under:

> *"8. That after due completion of formalities including issuances of LOI dated 15.01.2024 (marked as Annex-P/3 to the Writ Petition) ABD's execution of Agreement dated 25.01.2024 (marked as Annex-P/4 to the Writ Petition), purchase order dated 02.05.2024 issued by the BMSICL, petitioner firm supplied O.R.S. bearing Batch No.P24/0651, P24/0654, P24/0657, P24/0664, P24/0665, P24/0671 & P24/0684, which were declared "Not of Standard Quality" with respect to seal test parameters conducted by BMSICL Empanelled quality testing laboratory."*

9. Learned counsel submits that BMSICL, being the nodal procurement agency for drugs in the State, follows a stringent quality assurance mechanism under the Standard Bid Document (SBD), the terms whereof were accepted by the petitioner. The empanelled laboratories conduct testing in accordance with the standards prescribed under the Indian

Pharmacopoeia, and Clause 24(c) of the SBD specifically contemplates post-shipment random sampling and testing of supplied batches to ensure compliance with the prescribed quality standards.

10. It is further submitted that the petitioner was issued two show cause notices, dated 03.12.2024 and 21.02.2025, and replies were duly considered. However, as the batches again failed upon retesting and the petitioner's explanation was found unsatisfactory, the competent authority proceeded to pass the impugned order.

11. Learned counsel further submits that the seal test is a critical quality parameter in the case of O.R.S., as an impaired seal may result in moisture ingress, contamination, loss of dosage accuracy and deterioration of the drug, thereby rendering it unsafe for human consumption. It is, therefore, contended that failure of the seal test alone is sufficient to classify the batches as “Not of Standard Quality”, and acceptance of such products would compromise public health.

12. The limited issue which arises for consideration before this Court is as to whether the impugned order dated 17.07.2025 blacklisting the petitioner’s quoted product and cancelling the unexecuted purchase orders suffers from any illegality, arbitrariness or violation of the principles of natural justice warranting interference by this Court.

13. At the outset, it is not in dispute that the petitioner voluntarily participated in the tender process floated by the respondent-BMSICL and, upon being declared successful, accepted the terms and conditions contained in the Standard Bid Document (SBD), furnished the requisite affidavit accepting the tender conditions and thereafter entered into the agreement dated 25.01.2024. Consequently, the petitioner is bound by the contractual stipulations governing quality assurance, post-supply testing and the consequences of failure of the supplied product to satisfy the prescribed standards.

14. The contractual scheme itself demonstrates that maintenance of quality is the foundation of the procurement process. Clause 20(a) obligates the successful bidder to supply drugs of standard quality conforming to the provisions of the Drugs and Cosmetics Act, 1940, the Rules framed thereunder and the terms of the tender. Clause 24(c) authorises BMSICL to undertake post-shipment random sampling of supplied batches through its empanelled laboratories. Clauses 24(e), 24(f) and 24(g) prescribe the consequences where a supplied batch is declared “Not of Standard Quality”, including rejection of the batch, replacement by the supplier at its own cost and initiation of appropriate action under the tender conditions. Clause 27B further provides for blacklisting where supplied batches fail the prescribed quality parameters. The relevant Clauses of the SBD

reads as follows:

> *"20(a). The drugs supplied by the successful bidder shall be of the Standard Quality and shall comply with the specifications, stipulations and conditions specified under Drugs and Cosmetics Act and Rules there under and also should confirm to Terms and Conditions laid down in NIT and Rate Contract/agreement.*
>
> *24(c). Random samples of each supplied batch will be chosen at the point of supply or distribution/storage points for testing. The samples will be sent to different BMSICL empanelled laboratories.*
>
> *24(e). The drugs shall be of standard quality throughout the shelf-life period of the item. Samples can be drawn for quality testing periodically throughout the shelf-life period. If the sample is declared to be "NOT OF STANDARD QUALITY" or spurious or adulterated or misbranded, such batch / batches will be deemed to be rejected goods and action will be taken as per tender clause.*
>
> *(f). If the product / sample fails in quality test, every failed batch shall be taken back by the supplier at their own cost and BMSICL shall not be responsible for any damage during this period.*
>
> *(g). If a sample is found as not of standard quality by the Tender Inviting Authority, the distribution of NSQ batch will be frozen. The bidder will be liable for appropriate action as per the tender conditions and also for other legal actions under the Drugs & Cosmetics Act & Rules. The Tender Inviting Authority, at his [illegible]on may terminate the Contract and in*

case of such termination, the supplier shall be liable for all losses sustained by the Tender Inviting Authority, which may be recovered from the Security Deposit made by the Supplier and / or any other money due or becoming due to him. In the event of such amounts being insufficient, the balance may be recovered from the Supplier as per the provisions of Law.

27B(1). Each and every batch of drugs/medicines supplied by the supplier shall be subjected to quality test by the Empanelled laboratories as per the procedure adopted by BMSICL.

(3). If 3 batches of a particular item supplied by the supplier is reported to be failing in ASSAY content (above 50% but below prescribed limit) and/or other parameters, then the particular item of the firm shall be blacklisted for minimum of two years besides forfeiture of Security Deposit of that particular product(s).”

15. A conjoint reading of the aforesaid clauses leaves little room for doubt that post-supply quality testing through BMSICL empanelled laboratories is an integral part of the contractual mechanism and the consequences flowing from failure of such quality tests were expressly accepted by every participating bidder, including the petitioner.

16. From the records, it further emerges that samples drawn from the batches supplied by the petitioner were tested by the empanelled laboratories of BMSICL and were found to be “Not of Standard Quality” on the seal test parameters.

Thereafter, a show cause notice dated 03.12.2024 was issued to the petitioner. Instead of proceeding straightaway against the petitioner, the respondents subjected the products to retesting and, upon the batches again being found “Not of Standard Quality”, issued a second show cause notice dated 21.02.2025. The replies submitted by the petitioner to both the show cause notices were considered by the competent authority before passing the impugned order. Thus, the material available on record demonstrates that the petitioner was afforded adequate opportunity to present its defence and the respondents did not act in a mechanical or arbitrary manner.

17. This Court also cannot lose sight of the fact that the procurement in question pertains to Oral Rehydration Salts (O.R.S.), a drug intended for public healthcare. The respondents have consistently maintained that the seal test is a critical quality parameter as compromise of packaging integrity may result in contamination, moisture ingress, deterioration of the product and consequent risk to public health. In matters involving procurement of medicines for public distribution, the procuring agency is under a heightened obligation to ensure that only products satisfying the prescribed quality standards reach the beneficiaries. Once the agreed contractual quality assurance mechanism has been followed, this Court, while exercising judicial review under Article 226 of the Constitution, cannot

substitute its own opinion for that of the technical experts entrusted with such evaluation.

18. Significantly, Clause 27B(3) itself contemplates blacklisting where three batches of a particular product fail the prescribed quality parameters. In the present case, the respondents have proceeded on the basis that seven batches supplied by the petitioner failed the quality test. Prima facie, therefore, the action of blacklisting cannot be said to be dehors the contractual framework but is one traceable to the express stipulations accepted by the petitioner.

19. The scope of judicial review in contractual matters is well settled. The Court is concerned with the decision-making process and not with the merits of the decision itself. Unless the action of the authority is shown to be arbitrary, mala fide or in violation of statutory or contractual provisions, interference under Article 226 is unwarranted. In ***Michigan Rubber (India) Ltd. v. State of Karnataka,*** *reported in* ***(2012) 8 SCC 216***, the Hon'ble Supreme Court observed that the author of the tender document is the best judge of its requirements and the Court should exercise restraint while reviewing decisions taken in contractual matters. The relevant part of the said order reads as follows:

> ***"23.*** *From the above decisions, the following principles emerge:*
>
> *(a) The basic requirement of Article 14 is*

fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work;

and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. *Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? And

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226."

20. Likewise, in ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.,*** *reported in* ***(2016) 16 SCC 818***, the Hon'ble Supreme Court held that the interpretation placed by the tendering authority on the terms of the tender deserves deference unless shown to be arbitrary,

irrational or actuated by mala fides. The relevant part of the said order reads as follows:

> ***"15.*** *We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."*

21. The principle has been reiterated in ***Silpi Constructions Contractors v. Union of India,*** *reported in* ***(2020) 16 SCC 489***, wherein the Hon'ble Supreme Court held that constitutional courts should refrain from interfering in tender matters unless the decision is palpably arbitrary, discriminatory or mala fide. The relevant part of the said order reads as follows:

> ***"19.*** *This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and [illegible] that courts should exercise a lot of*

restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. *The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for* *overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."*

22. Applying the aforesaid principles to the facts of the present case, this Court finds that the impugned action is founded upon the contractual stipulations accepted by the petitioner, preceded by quality testing, retesting and issuance of two show cause notices, and has been taken keeping in view the paramount consideration of ensuring supply of quality medicines in public interest. No material has been placed before this Court to demonstrate that the decision-making process suffers from arbitrariness, mala fides or violation of the principles of natural justice so as to warrant interference under

Article 226 of the Constitution.

23. In view of the aforesaid discussion, the issue is answered against the petitioner.

24. Accordingly, the present writ application stands dismissed.

25. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, ACJ)

(Rajesh Kumar Verma, J.)

Gaurav Kumar,
Ibrar/-

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A.F.R.