



2026:CGHC:23723-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 181 of 2022

Cipla Limited Having Its Registered Office At Cipla House,. Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013 Maharashtra Also Having Its Office At Khasra No. 41, 43, Ph. No. 103, Besides Mohan Marriage Palace, Tatibandh, Ward No. 01, Nh 6, Raipur 492007 Chhattisgarh Through Its Authorized Signatory, Shri Abhayan Jawaharlal, S/o Late Shri Jawaharlal Ananthan, Aged About 50 Years, Presently Working As Deputy General Counsel Legal At Cipla Limited.

... **Petitioner(s)**

versus

1 - Chhattisgarh Medical Services Corporation Limited, (An Undertaking Of Government Of Chhattisgarh), Through Its Chief Managing Director, Having Its Office At Housing Board Commercial Complex, North West Corner, Sector 27, Nawa Raipur-Atal Nagar, 492018 Chhattisgarh

2 - State Of Chhattisgarh Through Its Principal Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar Nawa Raipur District Raipur Chhattisgarh 492018

... **respondent(s)**

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Abhishek Sinha, Senior Advocate along with Shri Samrath Singh Marhas, and Shri DL Dewangan, Advocates
For respondent/State	:	Shri Shashank Thakur, Addl AG
For respondent-2	:	Shri Trivikram Nayak, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Justice Ravindra Kumar Agrawal
Order on Board

Per Ramesh Sinha, Chief Justice

15.06.2026

Heard Shri Abhishek Sinha, learned Senior Advocate along with Shri Samrath Singh Marhas, and Shri DL Dewangan, learned Advocates

for the petitioner. Also heard Shri Shashank Thakur, learned Addl AG, appearing for the respondent/State and Shri Trivikram Nayak, learned counsel for respondent-2.

1. Petitioner has filed the present petition for the following reliefs:-

“a. This Hon’ble court may be pleased to issue appropriate writ, order or direction quashing/setting aside order dated 30.09.2021 (Annexure P-1) and email dated 27.11.2021 (Annexure P-2) both issued by the respondent no.1.

b. This Hon’ble Court may be pleased to direct the respondents to forthwith refund security deposit made by the petitioner which has been forfeited by them illegally.

c. Any other writs and directions that may be deemed fit and just in the facts & circumstances of case.”

2. The case of the petitioner, in substance, is that it is a well-established pharmaceutical company having more than 80 years of experience in the manufacture of drugs, vaccines and prophylactics and enjoys a substantial presence both in India and abroad. It is one of the leading pharmaceutical manufacturers in the country and has consistently supplied life-saving medicines to various governmental and private institutions. The petitioner was granted authorization to manufacture Remdesivir only in June 2020 after the original developer of the drug, Gilead Sciences, permitted selected Indian manufacturers to produce the same and the requisite approvals were granted by the Drug Controller General of India. According to the petitioner, the manufacture of

Remdesivir is a highly specialized and time-consuming process involving numerous raw materials, reagents and catalysts, and therefore production capacity cannot be expanded overnight without maintaining strict quality standards mandated for pharmaceutical products.

3. The respondent No.1 floated E-Proc Tender No.74887 on 26.03.2021 for the supply of Remdesivir injections of 100 mg strength. In the tender document, the quantity of 5,000 vials was indicated only as an approximate or indicative quantity, and it was mentioned that the actual requirement might vary depending upon the demand received from the concerned authorities. The petitioner participated in the tender process, and being the successful bidder, entered into an agreement with respondent No.1 on 31.03.2021.

4. The first purchase order dated 03.04.2021 was issued for the supply of 5,000 vials of Remdesivir, which was duly complied with. Subsequently, another purchase order dated 08.04.2021 was issued for the supply of 6,000 vials. However, immediately thereafter, on 09.04.2021, respondent No.1 issued a further purchase order requiring the supply of 35,000 vials, and on the very same day, issued another purchase order for an additional 15,000 vials. Thus, within a span of a few days, the petitioner was required to supply a total quantity of approximately 61,000 vials, including 50,000 vials ordered on a single day. Such a sudden and substantial escalation in demand was far beyond the indicative quantity specified in the tender and was impossible

to fulfil within the stipulated time, particularly in the prevailing circumstances.

5. These events occurred during the peak of the second wave of the COVID-19 pandemic, when there was an unprecedented demand for Remdesivir throughout the country. During this period, pharmaceutical manufacturers were facing acute shortages of raw materials, disruptions in supply chains, transportation difficulties, reduced workforce availability due to lockdowns and COVID infections, and other operational constraints. Despite these extraordinary difficulties, it supplied the entire quantity of 5,000 vials under the first purchase order and a further 1,666 vials under the subsequent purchase order. Realizing its inability to immediately supply the remaining quantity, the petitioner addressed a detailed communication dated 05.05.2021 to respondent No.1 explaining the circumstances and requesting that no adverse or coercive action be taken against it.

6. The petitioner was also under an obligation to comply with the allocation directives issued by the Government of India concerning the distribution of Remdesivir amongst various States and Union Territories. Reference has been made to allocation orders issued by the Department of Pharmaceuticals and the Ministry of Health and Family Welfare during April and May, 2021, whereby manufacturers, including the petitioner, were directed to ensure the supply of Remdesivir across the country in accordance with centrally determined allocations. According to the petitioner, these governmental directives significantly affected its ability to

independently allocate production to any particular State and constituted a relevant circumstance which ought to have been considered by the respondents while evaluating the alleged default in supply.

7. It is the further case of the petitioner that, notwithstanding the aforesaid explanations and representations, respondent No.1 issued a show-cause notice dated 06.09.2021 proposing to blacklist the petitioner. The petitioner submitted a detailed reply on 14.09.2021, reiterating the extraordinary circumstances prevailing during the pandemic and explaining that the shortfall in supply was neither deliberate nor attributable to any negligence on its part. However, respondent No.1 proceeded to pass the impugned order dated 30.09.2021, blacklisting the petitioner Company for a period of three years, and the Security Deposits have also been forfeited. The petitioner, thereafter, submitted a representation dated 22.10.2021 seeking review and recall of the blacklisting order, highlighting the severe shortage of raw material, production constraints, COVID-related disruptions and compliance with central allocation directives. The said representation was also rejected on 27.11.2021, hence, the present petition.

8. The respondent No.1 filed its return with the averments that the impugned order dated 30.09.2021 has been passed strictly in accordance with the terms and conditions governing the tender and the rate contract executed between the parties, after affording an adequate opportunity of hearing to the petitioner. The principles of natural justice were duly complied with, as a detailed show-cause notice was issued to

the petitioner, its reply was considered and only thereafter the decision to blacklist the petitioner's product and to forfeit the security deposit was taken. According to respondent No.1, the action impugned in the writ petition is neither arbitrary nor disproportionate but is a consequence expressly contemplated under the contractual conditions accepted by the petitioner.

9. Respondent No.1, namely, Chhattisgarh Medical Services Corporation Limited (CGMSCL), is a public sector undertaking functioning under the Health and Family Welfare Department of the State Government and is entrusted with procurement, storage and distribution of medicines, medical consumables and equipment for government health institutions throughout the State. During the COVID-19 pandemic, CGMSCL was required to undertake emergency procurement of life-saving medicines on the basis of demand received from the Directorate of Health Services and the Directorate of Medical Education. In view of the grave public health emergency prevailing during the second wave of COVID-19, an e-tender was floated on 26.03.2021 for the procurement of Remdesivir injections to meet the urgent medical requirements of the State.

10. Although the tender document mentioned an indicative quantity of 5,000 vials of Remdesivir, it was specifically provided therein that the quantity was only tentative and could vary depending upon the requirements received from the competent authorities. It is further submitted that the tender was in the nature of a rate contract and the

petitioner was fully aware at the time of participation, that multiple purchase orders could be issued and that the quantity of procurement might substantially increase based on actual consumption and demand. The agreement executed on 31.03.2021 specifically incorporated the terms and conditions of the tender and, therefore, the petitioner was contractually bound to honour all purchase orders issued during the currency of the rate contract. The tender conditions further stipulated that the entire ordered quantity was required to be supplied within the prescribed period from the date of issuance of the purchase order. The tender also contained a specific penal clause providing that if a supplier failed to execute at least 70% of the ordered quantity in any three purchase orders relating to the same drug, the concerned product would be liable to be blacklisted for a period of three years, apart from forfeiture of the security deposit. These conditions were accepted by the petitioner without any protest, and therefore, the petitioner cannot subsequently seek to avoid the consequences arising from its admitted failure to supply the contracted quantity.

11. While the petitioner supplied the entire quantity under the first purchase order dated 03.04.2021, it supplied only about 28% of the quantity ordered under the purchase order dated 08.04.2021 and completely failed to supply any quantity whatsoever against the two purchase orders dated 09.04.2021. Consequently, despite the acute shortage of Remdesivir and the urgent requirement of the drug in government hospitals during the peak of the pandemic, the petitioner

failed to discharge its contractual obligations. In such circumstances, respondent No.1 was constrained to issue a show-cause notice dated 06.09.2021 proposing blacklisting and forfeiture of the security deposit, clearly specifying the grounds and the relevant contractual provisions under which action was contemplated. The petitioner submitted its reply dated 14.09.2021, which was duly considered by the competent authority. However, the explanation offered by the petitioner was found unsatisfactory in view of the magnitude of the default and the critical nature of the drug involved. Thereafter, a conscious decision was taken to blacklist the petitioner's product, namely Remdesivir Injection 100 mg, for a period of three years and to forfeit the security deposit by order dated 30.09.2021. The impugned action is fully supported by the contractual stipulations and the settled principles governing blacklisting the petitioner-Company.

12. Learned Senior Advocate appearing for the petitioner would submit that the impugned order of blacklisting dated 30.09.2021 (Annexure P-1) and the consequential rejection of the petitioner's representation are wholly arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The tender itself contemplated only an indicative quantity of 5,000 vials of Remdesivir, and the petitioner had duly complied with and supplied the entire quantity covered by the initial purchase order. According to the petitioner, the respondents, within a span of few days, abruptly increased the demand to an unprecedented level, by issuing purchase orders aggregating 50,000 vials on a single

day. Such an extraordinary escalation, being several times higher than the indicative quantity mentioned in the tender, was beyond any reasonable commercial expectation and rendered the contractual obligation uncertain and vague. It is submitted that no prudent bidder could have anticipated that an indicative quantity of 5,000 vials would be enhanced to more than ten times that quantity within a matter of days, and therefore, penal consequences such as blacklisting could not legally be imposed for failure to comply with such unforeseen demands.

Learned senior counsel would further submit that the respondents, being instrumentalities of the State, were under an obligation to act fairly, reasonably and in a non-arbitrary manner even in contractual matters. Reliance is placed upon the settled principle that the element of public law does not disappear merely because the relationship between the parties is governed by a contract. It is submitted that judicial review remains available where the action of the State is arbitrary, disproportionate or unfair. The respondents failed to take into account the unprecedented circumstances prevailing during the second wave of the COVID-19 pandemic, including acute shortages of raw materials, disruption of supply chains, logistical constraints and reduced manufacturing capacity. The petitioner had promptly informed the respondents about these difficulties through its communication dated 05.05.2021 and had requested that no coercive action be taken. However, the said representation was allegedly ignored, and the

respondents proceeded with a predetermined mindset to blacklist the petitioner.

It is further argued that the doctrine of economic duress and unequal bargaining power is clearly attracted in the facts of the present case. Learned counsel submits that the petitioner had entered into a standard-form government contract where the terms were dictated by the respondents, and there existed no real bargaining power with the petitioner. By imposing purchase orders of an extraordinary magnitude during a period of national crisis and thereafter threatening penal consequences for non-compliance, the respondents exercised their dominant position to obtain an unfair advantage. Referring to Sections 16 and 23 of the Indian Contract Act, it is submitted that a contractual stipulation, if applied in a manner that is unconscionable, arbitrary or opposed to public policy, cannot be enforced to the detriment of the weaker party. The respondents, therefore, could not invoke the penal clauses of the contract in a mechanical manner without examining whether the circumstances justified strict enforcement thereof.

Lastly, learned senior counsel for the petitioner would submit that performance of the contractual obligations had become impossible on account of circumstances beyond the petitioner's control, thereby attracting the doctrine of frustration embodied in Section 56 of the Indian Contract Act. It is argued that the devastating second wave of COVID-19, the nationwide shortage of essential raw materials, restrictions affecting production and transportation, and the allocation orders issued by the

Government of India directing distribution of Remdesivir throughout the country constituted supervening events that fundamentally altered the conditions under which the contract was to be performed. The petitioner had consistently brought these circumstances to the notice of the respondents through its letters dated 05.05.2021, 14.09.2021 and 22.10.2021, but the same were not given due consideration. In these circumstances, it is submitted that the impugned blacklisting order and the rejection of the petitioner's representation are arbitrary, disproportionate and contrary to law, and therefore, deserve to be quashed by this Court.

13. Learned counsel appearing for respondent No.1 would submit that the impugned order of blacklisting has been passed strictly in accordance with the terms and conditions of the tender and the rate contract voluntarily accepted by the petitioner. It is argued that although the tender mentioned an indicative quantity of 5,000 vials, the tender document itself expressly stipulated that the quantity was subject to variation depending upon the requirements received from the Directorate of Health Services and the Directorate of Medical Education. The contract was in the nature of a rate contract and specifically contemplated issuance of multiple purchase orders during its validity period. Therefore, the petitioner, having participated in the tender process with full knowledge of these conditions and having executed the agreement incorporating the tender terms, cannot subsequently contend that the

increase in quantity was either unforeseen or beyond the scope of the contract.

Learned counsel would further submit that the petitioner-Company committed a clear and admitted breach of its contractual obligations. While the petitioner supplied the first purchase order in full, it supplied only a fraction of the quantity covered by the subsequent purchase order and failed altogether to supply the quantities covered by the remaining two purchase orders. The tender conditions specifically provided that where a supplier failed to execute at least 70% of the ordered quantity in three purchase orders relating to the same product, the consequence would be blacklisting of the concerned product for a period of three years, together with forfeiture of the security deposit. Since the petitioner's case squarely fell within the said contingency, respondent No.1 had no option but to invoke the contractual consequences in order to safeguard public interest and ensure uninterrupted availability of a life-saving drug during the peak of the COVID-19 pandemic.

It is further argued that the principles of natural justice were followed before passing the impugned order. A detailed show-cause notice dated 06.09.2021 was issued to the petitioner specifying the alleged defaults and the proposed action. The petitioner submitted its reply, which was duly considered by the competent authority before the final order was passed. The subsequent representation submitted by the petitioner was also examined and rejected on the merits. Learned counsel would submit that the plea of impossibility of performance and economic hardship

cannot absolve the petitioner of its contractual obligations, particularly when the requirement of Remdesivir arose on account of a public health emergency, and the respondents were acting to meet the urgent medical needs of the citizens of the State. It is therefore submitted that the impugned order does not warrant interference in the exercise of the writ jurisdiction of this Court.

13. We have heard learned counsel for the parties, considered their rival submissions, and gone through the records.

14. Having heard learned counsel for the parties and upon perusal of the material available on record, this Court finds that the core issue in the present petition is not whether the petitioner failed to supply the entire quantity covered by the purchase orders, but whether the respondents were justified in imposing the extreme penalty of blacklisting for a period of three years in the peculiar facts and circumstances prevailing at the relevant time and forfeiture of Security Deposit.

15. It is not in dispute that the tender in question mentioned an indicative quantity of 5,000 vials of Remdesivir and that the petitioner had successfully supplied the entire quantity covered by the first purchase order dated 03.04.2021. It is equally undisputed that within a short span of a few days, the respondents issued further purchase orders requiring the supply of an additional 56,000 vials, including two purchase orders aggregating 50,000 vials on 09.04.2021 itself. Though the tender permitted variation in quantity, such power could not be exercised in a

manner divorced from the doctrine of reasonableness, particularly when the commodity involved was a life-saving drug whose production was admittedly dependent upon complex manufacturing processes and availability of scarce raw materials during the peak of the second wave of COVID-19.

16. The expression “indicative quantity” employed in the tender document cannot be interpreted as conferring an unfettered authority upon the procuring agency to increase the demand to any extent whatsoever and thereafter visit the supplier with severe civil consequences for inability to meet such extraordinary demand. While the quantity was undoubtedly variable, the variation must bear a reasonable nexus with the legitimate expectations arising from the tender conditions. A sudden escalation from an indicative quantity of 5,000 vials to a demand exceeding 60,000 vials within a day, during an unprecedented national health emergency, was a circumstance that required a pragmatic and fair assessment by the respondents before invoking the penal clause of blacklisting and forfeiture of the security deposit. Administrative actions of the State and its instrumentalities, even in contractual matters, are subject to the mandate of fairness and non-arbitrariness embodied in Article 14 of the Constitution.

17. At this stage, it would be apposite to refer to the decision of the Hon'ble Supreme Court in **Erusian Equipment & Chemicals Ltd. v. State of West Bengal**, (1975) 1 SCC 70, wherein it was held that blacklisting has the effect of depriving a person of the privilege and

advantage of entering into lawful relations with the Government for purposes of gains and, therefore, any decision relating to blacklisting must satisfy the test of fairness.

18. The Hon'ble Supreme Court observed in paragraph-20 of the **Erusian Equipment** (supra) judgment that blacklisting casts a serious stigma and creates a disability affecting future business prospects, as under:

“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. Likewise, in the matter of **Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL** (2014) 14 SCC 731, the Hon'ble Supreme Court held that although the power to blacklist is inherent in every State instrumentality, the exercise of such power is subject to the principles of proportionality, fairness and judicial review. The punishment imposed must bear a reasonable relationship to the gravity of the alleged misconduct. Relevant paragraphs are extracted hereunder:

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work

whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.

25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

20. In the present case, the material on record reveal that the petitioner had consistently informed the respondents regarding the practical

difficulties faced in fulfilling the extraordinary demand raised during the second wave of the pandemic. The communications dated 05.05.2021, 14.09.2021 and 22.10.2021 specifically referred to shortage of raw materials, disruption of supply chains, reduced manufacturing capacity and the allocation orders issued by the Government of India requiring nationwide distribution of Remdesivir. The respondents have not demonstrated from the impugned order that these relevant considerations were objectively examined before arriving at the decision to blacklist the petitioner. The impugned order appears to proceed solely on the basis of contractual default without evaluating whether the default was deliberate, *mala fide* or attributable to circumstances beyond the control of the petitioner. Such non-consideration of relevant factors renders the decision-making process vulnerable to judicial review.

21. This Court is further of the opinion that the doctrine of proportionality, now firmly embedded in Indian administrative law, required the respondents to consider whether a lesser measure would adequately serve the purpose sought to be achieved. The petitioner had admittedly supplied the entire quantity under the first purchase order and part quantity under the second purchase order. The default occurred during an extraordinary period marked by a devastating public health crisis affecting the entire nation. In such circumstances, the imposition of the harsh consequence of blacklisting for three years and forfeiture of security deposit, resulting in exclusion of the petitioner from future government procurement processes relating to the product, appears

excessive and disproportionate to the nature of the default, particularly when there is no allegation of fraud, misrepresentation, supply of substandard products or any conduct involving moral turpitude.

22. Accordingly, considering the totality of the circumstances, this Court is of the view that the impugned order dated 30.09.2021 blacklisting the petitioner and the forfeiture of the security deposit and the consequential communication dated 27.11.2021 rejecting the petitioner's representation cannot be sustained in law. The impugned decision suffers from arbitrariness on account of failure to consider the extraordinary circumstances prevailing during the second wave of COVID-19, the unprecedented increase in demand beyond the indicative quantity mentioned in the tender, and the requirement of proportionality in imposing penal consequences.

23. Consequently, the writ petition is **allowed**, and the impugned order dated 30.09.2021, as well as the consequential order dated 27.11.2021, are liable to be quashed and set aside.

24. Respondents are directed to forthwith refund the security deposit made by the petitioner-Company.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head Note

Where contractual non-performance is occasioned by extraordinary circumstances, imposition of blacklisting and forfeiture of security deposit, in the absence of fraud, or misconduct, is disproportionate and unsustainable, in view that order of blacklisting must satisfy the test of fairness.