HC-KAR

NC: 2026:KHC:27591
WP No. 25026 of 2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 25026 OF 2025 (GM-TEN)

BETWEEN

BIOGENETIC DRUGS PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
NO.66 MATHUR VAISHYA NAGAR, TONK ROAD,
JAIPUR-302 011
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
MR. PUSHKAR DEO.

... PETITIONER

(BY SRI. PIYUSH KUMAR JAIN.D., ADVOCATE)

AND

KARNATAKA STATE MEDICAL SUPPLIES CORPORATION LIMITED
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
NO. 1. DR. SIDDAIAH PURANIK ROAD,
KHB COLONY, MAGADI ROAD,
BENGALURU-560 079
REPRESENTED BY ITS MANAGING DIRECTOR,

.... RESPONDENT

(BY SMT. SUMANA BALIGA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI TO QUASH THE ORDER OF BLACKLISTING DATED MARCH 28, 2025, PASSED BY THE RESPONDENT WHEREBY THE RESPONDENT BLACKLISTED 20.1.20 FERROUS SALTS(A) + FOLIC ACID (B) 45 MG ELEMENTAL IRON (A)+ 400 MCG (B) PINK TABLET 45MG + 400MCG 1X10X10 (FOR BREVITY, DRUG) MANUFACTURED

AND SUPPLIED BY THE PETITIONER HEREIN, FOR A PERIOD OF 3 YEARS, VIDE ORDER DATED MARCH 28, 2025 (IMPUGNED ORDER), VIDE ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 01.06.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. Petitioner is before this court seeking for the following reliefs:

> 1. *Issue a writ of certiorari to quash the Order of Blacklisting dated March 28, 2025 passed by the Respondent whereby the Respondent blacklisted 20.1.20 Ferrous Salts(A) + Folic Acid (B) 45 mg elemental Iron (A) + 400 mcg (B) Pink Tablet 45 mg + 400 mcg 1x10x10 (for brevity, "Drug") manufactured and supplied by the petitioner herein, for a period of 3 years, vide Order dated March 28, 2025 (Impugned Order), vide Annexure-A;*
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> 2. *Pass such other order/s as this Hon'ble Court deems fit to grant in the interest of justice and equity.*

2. The petitioner claims to be a pharmaceutical company engaged in the manufacture and supply of pharmaceutical products. The respondent – Karnataka State Medical Supplies Corporation Limited (KSMSCL) issued a tender notification dated 05.05.2023 for procurement of 4,46,724 units of iron

tablets. The petitioner participated in the tender process and, upon evaluation, was declared a successful bidder for supply of the said drugs under a purchase order valued at Rs.46,45,929/-.

3. The drugs supplied by the petitioner were accompanied by test reports issued by an NABL-accredited laboratory as well as the petitioner's in-house quality control reports. Upon receipt of the consignment, the respondent subjected the drugs to quality testing through the Drug Inspectorate. The sample so tested was reported to be "Not of Standard Quality" (NSQ). It is on the basis of the said test report that the respondent issued a replacement notice dated 24.01.2025 calling upon the petitioner to replace the quantity of drugs supplied. A further replacement notice dated 24.02.2025 was also issued. According to the respondent, despite the issuance of the aforesaid notices, the petitioner neither replaced the drugs nor took any corrective action.

4. The report of the Government Analyst declaring the concerned batch of drugs as "Not of Standard Quality" formed the basis for initiation of further action by the respondent. Pursuant thereto, the

respondent addressed communications dated 24.01.2025, 27.02.2025, and 28.02.2025 calling upon the petitioner to replace the drugs in question.

5. The petitioner, for the first time, responded by its letter dated 03.03.2025. In the said reply, the petitioner contended that neither a copy of the Government Analyst's report nor the statutory sample portions had been furnished to it by the Drug Inspectorate. It was further contended that the procedure prescribed under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder had not been complied with by the concerned authorities. According to the petitioner, such non-compliance had deprived it of its statutory right to challenge the Government Analyst's report and seek further testing in accordance with law. On that basis, the petitioner requested the respondent to keep the replacement notices in abeyance until it was afforded an opportunity to avail its statutory remedies.

6. The respondent, however, was not persuaded by the aforesaid explanation. By its communication dated 06.03.2025, the respondent once again informed the petitioner that the drugs supplied had been declared as "Not of Standard Quality" and that the petitioner

had failed to replace the same despite repeated notices. Taking the view that such conduct amounted to a breach of the tender conditions, the respondent invoked Clause 21.1(g) of the tender document and issued a show-cause notice calling upon the petitioner to explain as to why it should not be blacklisted for a period of three years.

7. The petitioner submitted its reply dated 07.03.2025 to the show-cause notice. In the said reply, the petitioner reiterated that the drugs had been manufactured strictly in accordance with the applicable statutory requirements and had conformed to all prescribed quality parameters at the time of manufacture and supply. The petitioner once again asserted that neither the Government Analyst's report nor the statutory sample portions had been furnished to it, though such furnishing was mandatory under the scheme of the Drugs and Cosmetics Act, 1940. It was contended that, in the absence of compliance with the statutory procedure, the petitioner had been deprived of its right to verify the report, seek re-analysis, and take appropriate remedial measures.

8. The petitioner further contended that until the statutory procedure was duly followed and the petitioner was afforded an opportunity to exercise its rights under the Drugs and Cosmetics Act, 1940, the respondent could not proceed on the basis of the Government Analyst's report or initiate penal consequences such as blacklisting. The petitioner therefore requested that the proposed action be deferred and reiterated its stand that the drugs supplied were of the requisite quality.

9. The respondent did not accept the explanation offered by the petitioner. Upon consideration of the petitioner's reply and the material available on record, the respondent passed the impugned order dated 28.03.2025 blacklisting the petitioner for a period of three years. Aggrieved by the said order of blacklisting, the petitioner has approached this Court seeking the reliefs prayed for in the present writ petition.

10. Sri Piyush Kumar Jain, learned counsel appearing for the petitioner, assailing the impugned order of blacklisting, submits as follows:

10.1. Learned counsel submits that the petitioner has at all times complied with the terms and

conditions of the tender as well as the contractual obligations arising therefrom. He places reliance on Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000 and contends that the power to debar or blacklist a tenderer is not unbridled and can be exercised only in the circumstances contemplated under the said provision.

10.2. Referring to Rule 26A, learned counsel submits that a tenderer or contractor may be debarred only if it is found to have engaged, either directly or through an agent, in any corrupt or fraudulent practice while participating in, competing for, or executing a procurement contract, including by misleading the procurement entity at any stage of the procurement process or during execution of the contract.

10.3. It is his submission that the allegations made against the petitioner, even if accepted at their face value, do not disclose any corrupt practice, fraudulent conduct, misrepresentation, suppression of material facts, or any attempt to mislead the respondent-procurement entity.

The finding that a particular batch of drugs was allegedly "Not of Standard Quality" cannot, by itself, lead to an inference of fraud or corrupt practice so as to attract the provisions of Rule 26A.

10.4. Learned counsel further submits that the respondent has proceeded on the assumption that the Government Analyst's report is conclusive and has treated the alleged quality deficiency as sufficient to attract the consequences of blacklisting. According to him, a distinction is required to be drawn between a contractual dispute relating to quality of goods supplied and conduct amounting to fraud or corruption warranting debarment from future participation in public procurement processes.

10.5. It is therefore contended that, in the absence of any finding that the petitioner had intentionally misrepresented facts, suppressed material information, furnished false documents, manipulated the procurement process, or otherwise engaged in any fraudulent or corrupt practice, the jurisdictional requirements of Rule 26A are not satisfied. Consequently, the

impugned order of blacklisting is alleged to be without authority of law and liable to be set aside.

10.6. On the aforesaid basis, learned counsel submits that the respondent could, at best, have resorted to such contractual remedies as may have been available under the tender conditions in relation to replacement of the drugs or recovery of losses, but could not have imposed the drastic consequence of blacklisting the petitioner for a period of three years in the absence of the statutory preconditions prescribed under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000.

10.7. He relies on Sub-rule (2) of Rule 26A which is reproduced hereunder for easy reference:

> ***26-A. Debarment of Tenderers by Procurement Entity.*** *(1) The Procurement Entity may proceed with debarring such tenderer or contractor or supplier or any of the successor of the tenderer or contractor or supplier who has engaged directly or through an agent in a corrupt or fraudulent practices in participating or competing or executing the contract including misleading the Procurement Entity at any stage of procurement and executing activity.*
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> *(2) The Procurement Entity may, by order, appoint a Committee consisting of such officers not below the*

rank of Tender Inviting Authority to be the Debarment Committee to consider the proposals for debarring bidder or contractor or supplier and to take a decision thereof.

(3) On the receipt of information, Debarment Committee shall provide a reasonable opportunity, including an oral hearing, to the concerned for making representations before taking a decision.

(4) For consideration of debarment, Tender Inviting Authority or any other officer authorized by Tender Accepting Authority shall furnish the details of such bidders or contractors or suppliers who have engaged in corrupt practice and fraudulent practices to the Debarment Committee constituted under sub-rule (2) above.

(5) The Debarment Committee may make recommendations with reasoning in writing, within thirty days from date of receipt of information:

Provided that, the said period may be extended by another fifteen days by Procurement Entity for the reasons to be recorded in writing.

(6) On the recommendations of the Debarment Committee, the Procurement Entity shall by notification debar any of tenderer or contractor or supplier and publish the same on its website and Karnataka Public Procurement Portal and also maintain the list of such tenderer or contractor or the supplier or any of its successors.

(7) The order of debarment shall be deemed to have been automatically revoked on the expiry of the period specified in the debarment order.

10.8. By relying on Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000, and more particularly sub-rules (2) and (3) thereof, which prescribe the procedure

required to be followed before a tenderer, contractor, or supplier can be debarred. He submits that the said provision contemplates not merely substantive grounds for debarment but also a mandatory procedural safeguard intended to ensure fairness in the decision-making process.

10.9. Elaborating on the aforesaid submission, learned counsel contends that sub-rule (2) of Rule 26A requires the Procurement Entity to constitute a Debarment Committee consisting of officers not below the rank of the Tender Inviting Authority for the purpose of considering any proposal for debarment and taking a decision thereon. Thereafter, in terms of sub-rule (3), the Debarment Committee is required to provide a reasonable opportunity to the concerned tenderer, contractor, or supplier, including an oral hearing, before arriving at any decision regarding debarment.

10.10. Learned counsel submits that the scheme of Rule 26A indicates that the decision to debar a contractor cannot be taken unilaterally by the Procurement Entity or any individual officer.

According to him, the constitution of the Debarment Committee, consideration of the proposal by such Committee, grant of a reasonable opportunity of hearing, including an oral hearing, and the making of recommendations by the Committee constitute mandatory procedural requirements which must precede any order of debarment.

10.11. It is his submission that, in the present case, there is nothing on record to indicate that any Debarment Committee, as contemplated under Rule 26A(2), was ever constituted or that the matter was placed before such Committee for consideration. There is also no material to indicate that the petitioner was afforded an opportunity of oral hearing by such Committee as mandated under Rule 26A(3).

10.12. Learned counsel therefore submits that the impugned order is liable to be set aside on two independent grounds.

10.13. Firstly, the foundational requirement under Rule 26A(1), namely the existence of corrupt or fraudulent practice on the part of the petitioner, is absent in the facts of the present case.

Consequently, the very jurisdiction to invoke Rule 26A is stated to be lacking.

10.14. Secondly and without prejudice to the aforesaid contention, learned counsel submits that even assuming that Rule 26A could be invoked, the mandatory procedure prescribed under sub-rules (2) to (5) thereof has not been followed. The absence of a duly constituted Debarment Committee, failure to place the matter before such Committee, non-compliance with the requirement of an oral hearing, and the absence of any recommendation by the Committee are all alleged to vitiate the impugned order.

10.15. On the aforesaid grounds, learned counsel contends that the order of blacklisting/debarment is contrary to Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000, violative of the principles of natural justice, and consequently liable to be quashed.

10.16. In this regard, he relies upon the decision in **Erusian Equipment and Chemicals Limited**

-v- State of West Bengal[1] more particularly paras 19 & 20, which are reproduced hereunder for easy reference:

> ***19.*** *Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.*
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> ***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.*

10.17. By relying on **Erusian Equipment and Chemicals Limited**[1] he submits that the Hon'ble Apex Court has unequivocally held that blacklisting results in civil consequences and creates a disability which deprives a person of

[1] (1975)1 SCC 70

the privilege and advantage of entering into lawful contractual relations with the Government and its instrumentalities. In view thereof, the authority proposing to blacklist a person is required to arrive at an objective satisfaction after complying with the principles of natural justice.

10.18. Learned counsel submits that the decision in **Erusian Equipment and Chemicals Limited**[1] clearly recognises that fair play in administrative action requires that the person proposed to be blacklisted must be afforded a meaningful opportunity to represent his case before an order of blacklisting is passed. Such an opportunity, according to him, cannot be illusory or merely ritualistic, but must be real, effective, and adequate.

10.19. It is his submission that in the present case, the petitioner was not furnished with all the relevant materials forming the basis of the proposed action, including the Government Analyst's report and the statutory sample portions which would have enabled the petitioner to effectively contest the allegation

that the drugs supplied were not of standard quality. In the absence of such material being furnished, the petitioner was deprived of an effective opportunity to defend itself against the allegations levelled by the respondent.

10.20. Learned counsel further submits that when the foundation for the proposed blacklisting itself is the Government Analyst's report declaring the drugs to be "Not of Standard Quality", the respondent could not have proceeded to impose the drastic consequence of blacklisting without first ensuring that the petitioner had been placed in a position to challenge, verify, or otherwise respond to the material relied upon against it.

10.21. He therefore contends that the requirement of fairness contemplated in **Erusian Equipment and Chemicals Limited**[1] is not confined merely to issuance of a show-cause notice, but extends to affording a reasonable and meaningful opportunity to meet the allegations and materials relied upon by the authority. According to him, such requirement assumes greater significance in the present case, where

the consequence imposed is a three-year blacklisting, which has serious civil and commercial repercussions upon the petitioner and effectively excludes it from participating in public procurement processes during the period of debarment.

10.22. Learned counsel therefore submits that the impugned order is liable to be set aside not only on account of non-compliance with Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000, but also on the ground that the action of the respondent is contrary to the principles of natural justice and the law laid down by the Hon'ble Apex Court in **Erusian Equipment and Chemicals Limited**[1]**.**

10.23. He relies upon the decision in **Kulja Industries Limited -v- Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited**[2]**,** more particularly, para 20 which is reproduced hereunder for easy reference:

> ***20.*** *It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind*

[2] (2014)14 SCC 741

the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in Mahabir Auto Stores v. Indian Oil Corpn.14 should, in our view, suffice: (SCC pp. 760-61, para 12)

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proc proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radhakrishna Agarwal v. State of Bihar.... In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. It appears to us that rule of reason reasonableness, the same would be unreasonable. and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation

like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

10.24. By relying on **Kulja Industries Limited** he submits that the law is now well settled that even in matters arising out of contractual relationships with the State or its instrumentalities, the actions of the State are not immune from judicial review. Though the rights involved may be contractual in nature, the decision-making process adopted by the State and its agencies continues to remain subject to constitutional scrutiny on the touchstone of Article 14 of the Constitution of India.

10.25. Learned counsel submits that the Hon'ble Apex Court has categorically held that the manner, method, and motive behind a decision to enter into, continue, terminate, or refuse contractual relations with a person must satisfy the requirements of fairness, reasonableness, relevance, non-arbitrariness, proportionality,

equality, and observance of the principles of natural justice. Any action falling short of these constitutional requirements would be amenable to judicial review under Article 226 of the Constitution of India.

10.26. It is his submission that blacklisting is one of the most severe civil consequences that can be imposed by a State instrumentality, since it effectively excludes a person from participating in future public procurement processes and adversely impacts its business reputation, commercial prospects, and right to carry on trade. Therefore, a decision to blacklist must necessarily satisfy a higher standard of fairness and procedural propriety.

10.27. Learned counsel contends that in the present case, the impugned order does not satisfy the tests laid down by the Hon'ble Apex Court in **Kulja Industries Limited**. According to him, the respondent has proceeded on the sole basis of the Government Analyst's report without first ensuring compliance with the statutory safeguards available to the petitioner under the Drugs and Cosmetics Act, 1940 and without

affording the petitioner an effective opportunity to challenge the findings contained therein.

10.28. He further submits that the impugned action is arbitrary and disproportionate inasmuch as the respondent has proceeded directly to impose the extreme penalty of blacklisting for a period of three years without first determining whether the petitioner had indulged in any fraudulent or corrupt practice, whether there was any intentional misconduct on the part of the petitioner, or whether any lesser measure would have sufficed in the facts and circumstances of the case.

10.29. Learned counsel submits that the respondent has conflated an allegation relating to the quality of a batch of drugs with conduct warranting blacklisting. According to him, even assuming that the drugs supplied were subsequently reported to be "Not of Standard Quality", such a circumstance by itself would not automatically justify the imposition of the penal consequence of blacklisting unless the respondent establishes the existence of the

statutory and contractual conditions warranting such action.

10.30. Learned counsel therefore contends that the impugned order suffers from arbitrariness, lack of proportionality, non-compliance with statutory requirements, and violation of the principles of natural justice. It is his submission that the respondent, being an instrumentality of the State, was bound to act in a manner consistent with Article 14 of the Constitution and the law laid down by the Hon'ble Apex Court in **Kulja Industries Limited**, which mandate that every action affecting the rights of a contracting party must be informed by reason, fairness, and proportionality.

10.31. On the aforesaid basis, learned counsel submits that the impugned order of blacklisting is liable to be set aside as being arbitrary, disproportionate, contrary to Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000, violative of the principles of natural justice, and unsustainable in law.

10.32. He relies upon **Daffodils Pharmaceutics Limited -v- State of Uttar Pradesh**[3], more particularly para 15, which is reproduced hereunder for easy reference:

> ***15.*** *In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to against Daffodills, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing. and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the State did, in this case.*

10.33. By relying on **Daffodils Pharmaceutics Limited** he submits that the Hon'ble Apex Court has reiterated the fundamental principle that no person can be subjected to adverse civil consequences without being afforded a meaningful opportunity of hearing and a reasonable opportunity to represent its case.

10.34. Learned counsel submits that the Supreme Court has emphasised that even where allegations exist against a person or where the authorities entertain a bona fide suspicion

[3] (2020)18 SCC 550

regarding the conduct of a person, such circumstances by themselves cannot justify unilateral punitive action without adherence to the principles of natural justice. The requirement of prior notice and an effective opportunity of hearing is not a mere procedural formality but a substantive safeguard against arbitrary exercise of power.

10.35. It is his submission that the ratio laid down in **Daffodills Pharmaceutics Limited** is particularly relevant to the facts of the present case. According to him, the respondent has proceeded to blacklist the petitioner on the basis of a Government Analyst's report declaring the drugs supplied by the petitioner to be "Not of Standard Quality", without first ensuring compliance with the statutory safeguards available to the petitioner under the Drugs and Cosmetics Act, 1940 and without furnishing the material necessary to enable the petitioner to effectively defend itself.

10.36. Learned counsel submits that the petitioner was repeatedly asserting before the respondent that neither the Government Analyst's report nor

the statutory sample portions had been furnished to it by the Drug Inspectorate. According to him, unless those materials were furnished, the petitioner could not effectively exercise its statutory right to challenge the report, seek re-analysis of the samples, or demonstrate that the drugs supplied by it satisfied the prescribed quality standards.

10.37. It is therefore contended that the opportunity granted by the respondent was illusory and not an effective opportunity in the eye of law. Merely issuing a show-cause notice and calling for a reply, without furnishing the foundational material relied upon for initiating the action, would not satisfy the requirements of natural justice, particularly when the consequence proposed is blacklisting for a period of three years.

10.38. Learned counsel further submits that the observations of the Hon'ble Apex Court in **Daffodills Pharmaceutics Limited** make it clear that an order resulting in serious civil and commercial consequences cannot be sustained where the affected party has been denied a

meaningful opportunity to defend itself. According to him, the requirement of a fair hearing assumes even greater significance in the present case, where the impugned order not only affects the existing contractual relationship between the parties but also has the effect of excluding the petitioner from participating in future public procurement processes.

10.39. On the strength of the aforesaid decision, learned counsel contends that the impugned order is vitiated by violation of the principles of natural justice and procedural fairness. He submits that the respondent ought to have deferred any decision regarding blacklisting until the petitioner had been furnished with the relevant materials and afforded a full and effective opportunity to avail its statutory remedies under the Drugs and Cosmetics Act, 1940.

10.40. Learned counsel therefore submits that the impugned order of blacklisting is liable to be set aside on the ground that it has been passed in violation of the settled principles governing fair

procedure, natural justice, and administrative decision-making as recognised by the Hon'ble Apex Court in **Daffodills Pharmaceutics Limited v. State of Uttar Pradesh**.

10.41. By referring to the decisions in **Erusian Equipment and Chemicals Limited**[1]**,** in **Kulja Industries Limited**[2] **Daffodils Pharmaceuticals Limited**[3], learned counsel submits that an order of blacklisting, having serious civil, commercial, and reputational consequences, cannot be passed except in strict compliance with the principles of natural justice.

10.42. Learned counsel submits that the aforesaid decisions consistently recognise that blacklisting results in civil consequences and has the effect of disabling a person from entering into future contractual relationships with the State and its instrumentalities. Such an action therefore cannot be taken mechanically or unilaterally and must be preceded by a fair, reasonable, and effective opportunity of hearing.

10.43. Referring particularly to Rule 26A(3) of the Karnataka Transparency in Public Procurements Rules, 2000, learned counsel submits that the requirement of providing a "reasonable opportunity, including an oral hearing", has now been statutorily incorporated by the Rule-making Authority. According to him, the statutory requirement of an oral hearing is in consonance with the principles laid down by the Hon'ble Apex Court in the aforesaid decisions and is intended to ensure that a contractor is afforded an effective opportunity to explain its conduct before being visited with the drastic consequence of debarment or blacklisting.

10.44. It is his submission that where the statute itself mandates an oral hearing before a decision regarding debarment is taken, such requirement cannot be diluted or substituted merely by issuance of a show-cause notice and consideration of a written reply. An oral hearing, according to him, assumes greater significance in cases such as the present one, where disputed questions relating to the Government Analyst's report, compliance with the provisions of the Drugs and Cosmetics Act,

1940, and the petitioner's entitlement to seek re-analysis of samples are involved.

10.45. Learned counsel therefore contends that the respondent could not have proceeded to blacklist the petitioner without first constituting the Debarment Committee contemplated under Rule 26A(2) and thereafter affording the petitioner an opportunity of oral hearing before such Committee in terms of Rule 26A(3).

10.46. In the present case, according to learned counsel, no oral hearing whatsoever was afforded to the petitioner prior to the passing of the impugned order. Consequently, apart from being contrary to the mandate of Rule 26A(3), the impugned action is also alleged to be violative of the principles of natural justice and the law laid down by the Hon'ble Apex Court governing blacklisting and debarment.

10.47. On the aforesaid basis, learned counsel submits that the absence of an oral hearing goes to the root of the matter and vitiates the entire decision-making process. He therefore contends that the impugned order of blacklisting is liable to be set aside on this ground alone, without

reference to the merits of the allegations made against the petitioner.

10.48. He relies upon the decision in **Isolators and Isolators -v- Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited**[4], more particularly para 14 and 35, which are reproduced hereunder for easy reference:

> ***14.*** *In the given circumstances, the appellant approached the Madhya Pradesh High Court, Principal Seat at Jabalpur by way of WP No.7579 of 2020 challenging the aforesaid order dated 13.2.2020. The High Court, by its order dated 8.7.2020, set aside the order dated 13.2.2020 and permitted the respondents to pass a fresh order within 15 days after affording an opportunity of hearing to the appellant.*
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> ***35.*** *As regards the principles of law applicable to the case, we need not elaborate on various decisions cited at the Bar. Suffice it would be to take note of the decision in UMC Technologies wherein, the substance of the other relevant decisions has also been duly noticed by this Court while explaining the principles governing such actions of debarment/blacklisting. Therein, this Court, inter alia, underscored the requirement of specific show-cause notice and referred to the settled principles in the following terms: (SCC pp. 558-61, paras 13-14 & 16-19)*
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> *"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should*

[4] (2023)8 SCC 607

be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian (Evacuee Property) has 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 noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the Consequences occasioned by it. Blacklisting has the effect of denying a Derson or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty 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. Not only does blacklisting take 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.

16. 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 this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B.2 in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

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.'

17. Similarly, this Court in Raghunath Thakur v. State of Bihar struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, para 4)

4.... [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.'

18. This Court in Gorkha Security Services v. State (NCT of Delhi) 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. It has been held thus: (SCC p. 115, para 16)

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.'

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto."

10.49. Relying on **Isolators and Isolators** he submits that the law relating to blacklisting and debarment has now attained a high degree of certainty. According to him, the said decision reiterates and consolidates the principles laid down in **Erusian Equipment and Chemicals Limited, Raghunath Thakur, Gorkha**

Security Services, UMC Technologies, and other decisions governing the exercise of the power of blacklisting by State authorities and instrumentalities.

10.50. Learned counsel submits that the Hon'ble Apex Court has once again emphasised that blacklisting entails serious civil, commercial, and reputational consequences and has the effect of depriving a person of the opportunity to participate in public contracts. Such an action, being stigmatic in nature and having long-term consequences on the business prospects of the affected entity, necessarily requires strict adherence to the principles of natural justice.

10.51. It is his submission that the decision in Isolators and Isolators underscores three fundamental requirements before an order of blacklisting can be sustained, namely: (i) issuance of a valid and specific show-cause notice; (ii) disclosure of the precise allegations and proposed action so as to enable an effective response; and (iii) grant of a

reasonable and meaningful opportunity of hearing before a final decision is taken.

10.52. Learned counsel submits that the Hon'ble Apex Court has specifically recognised that a show-cause notice must not be vague, omnibus, or ambiguous. The notice must clearly indicate not only the factual allegations but also the precise penal consequences proposed to be imposed. Unless the noticee is informed of the exact case it is required to meet and the action proposed against it, the opportunity of hearing would be rendered illusory.

10.53. Applying the aforesaid principles to the facts of the present case, learned counsel contends that the petitioner was not furnished with the foundational materials on the basis of which the respondent proposed to proceed against it. In particular, neither the Government Analyst's report nor the statutory sample portions were furnished to the petitioner despite repeated requests. Consequently, the petitioner was deprived of an effective opportunity to verify, challenge, or rebut the allegations forming the basis of the proposed action.

10.54. Learned counsel also submits that the decision in **Isolators and Isolators** reiterates that a failure to comply with the requirements of a valid show-cause notice and a reasonable opportunity of hearing is fatal to an order of blacklisting. Since blacklisting has been repeatedly characterised by the Hon'ble Apex Court as a measure having grave civil consequences and, in certain contexts, akin to a "civil death" insofar as future business opportunities are concerned, strict compliance with the principles of natural justice is indispensable.

10.55. It is therefore contended that the impugned order is liable to be set aside on the ground that the respondent has failed to satisfy the procedural safeguards mandated by law, the principles of natural justice, and the requirements reiterated by the Hon'ble Apex Court in **Isolators and Isolators**. According to learned counsel, the cumulative effect of the absence of a valid debarment process under Rule 26A, non-furnishing of the material relied upon, non-grant of an effective oral hearing, and denial of an opportunity to avail statutory

remedies under the Drugs and Cosmetics Act, 1940, renders the impugned order unsustainable in law.

10.56. He relies upon the decision in **Municipal Corporation of Greater Mumbai -v- Abhilash Lal**[5], more particularly para 39, which is reproduced hereunder for easy reference:

> ***39.*** *The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in Nazir Ahmad v. King Emperor, has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all.*

10.57. Relying on **Abhilash Lal**[5]**,** he submits that it is a settled principle of law that where a statute prescribes a particular procedure for doing a thing, the same must be done only in the manner so prescribed and in no other manner.

10.58. Learned counsel submits that Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000 prescribes the procedure for

[5] (2020) 13 SCC 234

debarment, including constitution of a Debarment Committee, grant of a reasonable opportunity including an oral hearing, and consideration of the matter by such Committee before any order of debarment is passed.

10.59. It is his submission that in the present case, the procedure prescribed under Rule 26A has not been followed. Therefore, applying the principle laid down in **Abhilash Lal**, the impugned order of blacklisting is liable to be set aside as having been passed in contravention of the mandatory statutory procedure.

10.60. He relies upon the decision in **OPTO Circuit India Limited -v- Axis Bank & others**[6], more particularly para 14, which is reproduced hereunder for easy reference:

> ***14.*** *This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a datter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad and in the*

[6] (2021) 6 SCC 707

course of consideration observed as hereunder: (SCC p. 273, para 17)

17. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such Dower is circumscribed by a procedure laid down under the statute. As Euch the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party.

10.61. By relying on **OPTO Circuit India Limited** he submits that even where an authority possesses the power to take a particular action, the exercise of such power is circumscribed by the procedure prescribed under the relevant statute.

10.62. Learned counsel submits that the Hon'ble Apex Court has reiterated the settled principle that

where a statute prescribes a particular procedure, the authority is bound to adhere to the same and any deviation therefrom would render the action vulnerable to challenge on the ground of non-compliance with due process.

10.63. Applying the said principle to the facts of the present case, learned counsel contends that even assuming that the respondent had the power to debar or blacklist the petitioner, such power could only have been exercised in strict compliance with Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000. Since the mandatory procedure prescribed thereunder has not been followed, the impugned order is liable to be set aside.

10.64. By relying on the decisions in **Isolators and Isolators**[4]**, Abhilash Lal**[5] and **OPTO Circuit India Limited**[6], his submission is that where a statute or statutory rule prescribes both the source of power and the manner of its exercise, the authority concerned is bound to act strictly within the four corners thereof. It is his submission that no adverse action, particularly one resulting in civil consequences such as

blacklisting or debarment, can be taken except in accordance with the authority conferred by the statute and the procedure prescribed thereunder. Any action taken dehors the statutory framework or in derogation of the prescribed procedure would be without authority of law and liable to be set aside.

10.65. He relies upon the decision in **Sujal Pharma -v- Karnataka State Medical Supplies Corporation Limited**[7] more particularly para 19 thereof, which is reproduced hereunder for easy reference:

> ***19.*** *In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.*

10.66. By relying on **Sujal Pharma**[7] case, his submission is again that this Court, following the settled principles laid down by the Hon'ble Apex Court, has reiterated that a prior show-

[7] WP No.20520/2021 DD 18.04.2024

cause notice coupled with a reasonable opportunity of being heard is an indispensable requirement in administrative decision-making, particularly in matters relating to blacklisting and debarment which entail serious civil and commercial consequences.

10.67. Learned counsel submits that the decision emphasises that the issuance of a valid show-cause notice and the grant of an effective opportunity of hearing are not empty formalities but foundational requirements of a lawful blacklisting process. Failure to comply with such requirements would render the resultant order unsustainable.

10.68. Applying the aforesaid principle to the facts of the present case, learned counsel contends that though a show-cause notice was issued, no oral hearing, as contemplated under Rule 26A(3) of the Karnataka Transparency in Public Procurements Rules, 2000, was afforded to the petitioner prior to the passing of the impugned order. According to him, the denial of such an opportunity has resulted in violation of the

principles of natural justice and vitiates the entire decision-making process.

10.69. On the aforesaid basis, learned counsel submits that the impugned order of blacklisting is liable to be set aside on the ground of non-compliance with the mandatory requirement of affording the petitioner a reasonable and effective opportunity of hearing.

11. Learned counsel for respondent Smt.Sumana Baliga would submit that,

11.1. At the outset, learned counsel submits that the entire challenge mounted by the petitioner proceeds on an erroneous assumption that the impugned action has been taken under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000. According to her, the impugned action is not one of debarment founded on allegations of fraud or corrupt practices under Rule 26A, but is an action taken in exercise of the contractual rights reserved to the respondent under Clause 21.1(g) of the tender conditions. Therefore, the petitioner's extensive reliance on Rule 26A is wholly misplaced.

11.2. Clause 21 of the tender notification is reproduced hereunder for easy reference:

21. Debarment/Blacklisting:

Unless otherwise specified in the forgoing clauses, the KSMSCL reserve the rights to Debar/Blacklist the hidder/supplier against specific products, for a period of not less than 3 years as per the guidelines issued by the Government of Karnataka under section 26(AXBXC) vide notification No NO FD 884 Exp-12/2019, Bangalore lapses/defaults being reported/found/ observed/committed as detailed under

21.1. Debarment/Blacklisting of the firm for a product

a) Not having manufacturing Unit/installed capacity, as declared at the time of bid submission.

b) Non submission of Security deposit within the stipulated/extended time, leading to cancellation of LOV Purchase order.

c) Withdrawal of bid or non-execution of supplies within the stipulated/extended period.

d) Supply of spurious/inferior/substandard/NSQ products or supply of Mis-branded/unsafe/medical devices.

e) Violation and convictions if any under the Drugs and Cosmetics Act or any other applicable laws/rules during the currency of contract period.

f) Non-adherence to Delivery schedules and agreed terms and conditions of the tender, including non-submission of the Performance Security leading the cancellation of the supply order.

g) Failure of quality at the time of Lab tests in 2 or more than 2 batches of a product in quality test

h) Any other Corrupt/Fraudulent/unethical business practices

21.2. Debarment/Blacklisting of the firm as a whole

a) Submission of false/misleading/ fabricated/ invalid/void documents against the bid

b) If a firm is awarded with only one product, 2 or more than 2 batches of such product fails in quality test.

c) In case of a firm debarred/blacklisted by the KSMSCL for more than 2 drugs/products within a period of one year either under the same or different Tenders/Purchase orders for any of the reasons stated above or committing similar offence in more than 2 instances, the KSMSCL. reserves the right to Blacklist the firm as a whole for a period of not less than 3 years as per the provisions of the KTPP Act/Rules and guidelines issued by the Government of Karnataka under section 26(A)(B)(C) vide notification No NO:FD 884 Exp-12/2019, Bangalore Dated 7th May 2020, apart from cancellation of the Purchase order, forfeiture of EMD/Security Deposit

d) Any other Corrupt/Fraudulent/unethical practices

The blacklisting of particular product or company/firm will be done without prejudice to other penalties Which may be imposed as per conditions of Tender documents and also to other actions which may be initiated under relevant Acts or any other law of Land. KSMSCL, will display names of such blacklisted product(s) and company/firm on its website and also circulate the same among other state Government/

Central Government and its procurement agencies including respective State Drugs Control Department where the company or firm is located.

21.4. The process of Debarment/Blacklisting and Resolution of Disputes:

The process of Debanent/blacklisting by KSMSCL will be carried in accordance with the provisions of the notification No NO:FD 884 Exp-12/2019, Bangalore Dated 7th May 2020 In case of a dispute or difference KTPP Act/Rules and guidelines issued by the Government of Karnataka under section 26(AXBXC) vide Debarment/Blacklisting, such dispute or difference shall be settled as per the provisions of the said Act/Rules arising between the KSMSCL and a supplier relating to any matter arising out of or connected with the and notifications.

11.3. Learned counsel submits that Rule 26A and Clause 21.1(g) operate in different fields and cater to different contingencies. Rule 26A deals with debarment of a tenderer, contractor, or supplier on account of corrupt or fraudulent practices affecting the procurement process. Clause 21.1(g), on the other hand, provides for blacklisting/debarment on account of quality failure detected during laboratory testing of the supplied product. Thus, the source of power exercised in the present case is contractual and not statutory.

11.4. Referring to Clause 21.1(g), learned counsel submits that the parties had expressly agreed that failure of quality in two or more batches of a product during laboratory testing would entail the consequences stipulated therein. The petitioner, having voluntarily participated in the tender process and accepted the tender conditions without demur, cannot now seek to avoid the contractual consequences arising from a breach thereof.

11.5. Learned counsel therefore disputes the petitioner's contention that the respondent was required to establish fraud, corruption, misrepresentation, or any other conduct contemplated under Rule 26A(1). According to her, such a requirement would arise only if action was being taken under Rule 26A. Since the impugned action is founded upon quality failure under Clause 21.1(g), the question of proving fraud or corrupt practice does not arise at all.

11.6. Learned counsel also disputes the petitioner's contention regarding the constitution of a Debarment Committee under Rule 26A(2). It is

her submission that once Rule 26A itself is inapplicable, the petitioner cannot insist upon compliance with procedural requirements contained therein. The obligation to constitute a Debarment Committee, obtain recommendations therefrom, and proceed in the manner contemplated under Rule 26A would arise only where action is initiated under the said Rule and not where action is taken pursuant to a contractual stipulation independently agreed upon by the parties.

11.7. Learned counsel further submits that the petitioner's reliance upon Rule 26A(3) requiring an oral hearing is equally misconceived. According to her, the requirement of an oral hearing under Rule 26A is a statutory safeguard attached to proceedings under that Rule. The petitioner cannot transplant the procedural requirements of Rule 26A into a contractual action taken under Clause 21.1(g).

11.8. Without prejudice to the above, learned counsel submits that the petitioner was in fact afforded adequate opportunity to place its defence on record. The petitioner received replacement

notices, responded thereto, received a specific show-cause notice proposing blacklisting, and submitted detailed replies raising all contentions which are now sought to be urged before this Court. Thus, the petitioner cannot contend that it was taken by surprise or denied an opportunity to explain its position.

11.9. Learned counsel submits that the reliance placed on **Erusian Equipment and Chemicals Limited**[1], **Kulja Industries Limited**[2], **Daffodills Pharmaceutics Limited**[3], **Isolators and Isolators**[4], **and Sujal Pharma**[7] does not advance the petitioner's case. The principle emerging from all the aforesaid decisions is that a person proposed to be blacklisted must be put on notice and afforded a reasonable opportunity to represent its case. The said requirement, according to her, stands fully satisfied in the present case.

11.10. Learned counsel submits that none of the aforesaid decisions lay down an inflexible proposition that an oral hearing is mandatory in every case irrespective of the governing statutory or contractual framework. The

requirement is one of fairness and reasonable opportunity. In the present case, the petitioner was fully aware of the allegations, the proposed action, and the basis thereof and had submitted detailed written representations which were duly considered before the impugned order came to be passed.

11.11. Learned counsel further submits that the petitioner is attempting to conflate two independent issues, namely, the validity of the Government Analyst's report and the respondent's contractual entitlement to act upon the same. According to her, so long as the Government Analyst's report remains valid and operative, the respondent is entitled to proceed on the basis thereof, if the defective products were not replaced as sought for.

11.12. It is her submission that the respondent is neither the authority which conducted the testing nor the authority which issued the report. The respondent merely acted upon the findings recorded by the competent statutory authorities under the Drugs and Cosmetics Act, 1940. Therefore, unless and until the report is

set aside or modified by a competent forum, the respondent cannot be faulted for relying upon the same.

11.13. Learned counsel submits that the petitioner's repeated contention regarding non-supply of sample portions and non-furnishing of the Government Analyst's report by the Drug Inspectorate is a matter which, even if assumed to be true, cannot invalidate the respondent's action. Any grievance regarding compliance with the provisions of the Drugs and Cosmetics Act, 1940 is required to be agitated against the concerned authorities under the said enactment and cannot be used as a defence to defeat the contractual rights of the respondent.

11.14. Learned counsel submits that despite repeatedly asserting that it intended to challenge the Government Analyst's report, the petitioner has not placed any material before the respondent or before this Court to establish that the report was in fact challenged before the competent authority. The petitioner cannot indefinitely postpone contractual consequences

by merely expressing an intention to avail legal remedies without actually pursuing them.

11.15. Learned counsel further submits that the petitioner had a clear opportunity to mitigate the consequences arising from the adverse report by replacing the drugs in terms of the replacement notices issued by the respondent. Instead of replacing the drugs, the petitioner continued to insist upon acceptance of a product which had already been declared to be "Not of Standard Quality" by the competent authority.

11.16. According to her, the respondent, being entrusted with procurement and distribution of medicines intended for public healthcare institutions, could not have accepted such a position. The respondent owes a duty not merely to the petitioner but to the public at large to ensure that only drugs conforming to the prescribed standards enter the public healthcare system.

11.17. Learned counsel submits that the petitioner's reliance on the decisions in **Municipal Corporation of Greater Mumbai v. Abhilash**

Lal[5] **and OPTO Circuit India Limited v. Axis Bank & Others**[6] is equally misplaced. Those decisions merely reiterate the principle that where a statute prescribes a particular procedure, such procedure must be followed. In the present case, according to her, the action is not founded upon Rule 26A and therefore the procedural requirements contained therein are inapplicable.

11.18. It is her submission that once the source of power is traced to Clause 21.1(g) of the tender conditions, the validity of the action must be tested on the touchstone of the contractual stipulation and not by importing procedural requirements from a distinct statutory provision governing a different category of misconduct.

11.19. Learned counsel further submits that the petitioner's argument that oral hearing would necessarily have altered the outcome is wholly speculative. The foundation of the respondent's action is the Government Analyst's report declaring the drugs to be "Not of Standard Quality". Unless the petitioner could demonstrate that the report had been set

aside, modified, or rendered inoperative, no amount of oral submissions before the respondent could have altered the factual basis on which the respondent was obliged to act.

11.20. According to her, the law does not insist upon compliance with futile or empty formalities. Where the relevant facts are borne out by a subsisting statutory report and the affected party has already submitted its written explanation, the absence of an oral hearing does not, by itself, render the decision invalid.

11.21. Learned counsel finally submits that the impugned action is neither arbitrary nor disproportionate. The respondent has merely enforced the contractual consequences expressly contemplated by the tender conditions. The action is founded upon laboratory testing conducted through the statutory mechanism, repeated quality failures, the petitioner's refusal to replace the drugs, and the respondent's overriding obligation to protect public health and maintain quality standards in public procurement.

11.22. On the aforesaid grounds, learned counsel submits that the petitioner has failed to make out any case of violation of statutory provisions, breach of natural justice, arbitrariness, mala fides, or procedural impropriety warranting interference under Article 226 of the Constitution of India. The writ petition is therefore liable to be dismissed.

12. Heard Sri.Piyush Kumar Jain, learned counsel for the petitioner, Smt.Sumana Baliga, learned counsel for respondent. Perused papers.

13. The points that would arise for determination are:

(i) **Whether the impugned order dated 28.03.2025 is an order of debarment under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000 or an order of blacklisting passed in exercise of the contractual powers reserved under Clause 21.1(g) of the tender conditions?**

(ii) **Whether the respondent was justified in invoking Clause 21.1(g) of the tender conditions on the basis of the Government Analyst's report declaring the drugs supplied by the petitioner to be "Not of Standard Quality" and the petitioner's failure to replace the same despite repeated notices?**

(iii) **Whether compliance with the procedure contemplated under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000, including constitution of a Debarment Committee and grant of an oral hearing, was mandatory in the facts and circumstances of the present case?**

(iv) **Whether the petitioner was denied a reasonable and effective opportunity of hearing before the impugned order came to be passed and, if so, whether such denial has resulted in violation of the principles of natural justice?**

(v) **Whether the alleged non-furnishing of the Government Analyst's report and statutory sample portions under the Drugs and Cosmetics Act, 1940 vitiates the impugned action taken by the respondent under the tender conditions?**

(vi) **Whether the impugned order suffers from arbitrariness, disproportionality, procedural impropriety, or any other infirmity warranting interference under Article 226 of the Constitution of India?**

(vii) **What order?**

14. This Court answers the above points as follows

15. **<u>Answer to Point No. (i):</u> Whether the impugned order dated 28.03.2025 is an order of debarment under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000 or an order of blacklisting passed in**

exercise of the contractual powers reserved under Clause 21.1(g) of the tender conditions?

15.1. Sri. Piyush Kumar Jain, learned counsel appearing for the petitioner, submitted that the impugned order dated 28.03.2025 is an order of debarment/blacklisting that squarely falls within the ambit of Rule 26A of the KTPP Rules. According to him, Rule 26A is the only statutory provision governing debarment of tenderers, contractors, and suppliers by a Procurement Entity. Since the respondent is a Procurement Entity under the KTPP Act, any order of blacklisting or debarment passed by it must necessarily derive its authority from Rule 26A.

15.2. Sri. Piyush Kumar Jain further submitted that Rule 26A(1) of the KTPP Rules empowers the Procurement Entity to debar a tenderer or contractor who has engaged, directly or through an agent, in corrupt or fraudulent practices. He contended that the respondent, having invoked the power to blacklist the petitioner, was required to satisfy itself that the prerequisites under Rule 26A were met, irrespective of any contractual clause.

According to him, a contractual clause cannot override or supplant a statutory provision.

15.3. It was his submission that the impugned order, though purportedly founded on Clause 21.1(g) of the tender conditions, is in substance and effect an order of debarment and must therefore be tested against the touchstone of Rule 26A. He contended that the Procurement Entity cannot circumvent the statutory procedure prescribed under Rule 26A by labelling its action as contractual.

15.4. Smt. Sumana Baliga, learned counsel appearing for respondent Nos. 1 to 3, submitted that the impugned order is not an order of debarment under Rule 26A of the KTPP Rules. According to her, Rule 26A deals with debarment on account of corrupt or fraudulent practices. The impugned action, however, is founded upon Clause 21.1(g) of the tender conditions, which provides for blacklisting on account of failure of quality in two or more batches of a product in quality testing.

15.5. She submitted that Clause 21 of the tender notification is an independent contractual

stipulation that the parties voluntarily agreed to at the time of participating in the tender. Clause 21.1(g) specifically provides that failure of quality at the time of laboratory tests in two or more batches of a product shall be a ground for debarment/blacklisting. The respondent has acted strictly in accordance with the said contractual provision.

15.6. Smt. Sumana Baliga further submitted that Rule 26A and Clause 21.1(g) operate in entirely different fields. Rule 26A is concerned with misconduct such as corruption and fraud, whereas Clause 21.1(g) is concerned with quality failure in laboratory testing. The two provisions are not in conflict, and the respondent having exercised its contractual right under Clause 21.1(g), the petitioner's insistence on compliance with Rule 26A is wholly misplaced.

15.7. This Court has carefully considered the submissions of both sides and has examined the relevant provisions.

15.8. A plain reading of Rule 26A(1) makes it clear that the power of debarment under the said

Rule is triggered only when the tenderer, contractor, or supplier has engaged, directly or through an agent, in "corrupt or fraudulent practices" in participating, competing, or executing the contract, including misleading the Procurement Entity. The substratum of Rule 26A is, therefore, misconduct in the nature of corruption, fraud, or misrepresentation.

15.9. Clause 21.1(g) is a contractual provision freely agreed to by the petitioner upon participating in the tender. It does not refer to corrupt or fraudulent practices at all. It provides that failure of quality in two or more batches of a product, as revealed by laboratory tests, shall be a ground for blacklisting. The trigger event here is quality failure, a factual/technical matter unconnected with fraud or corruption.

15.10. It is evident from the plain language of both provisions that they operate in distinct fields. Rule 26A is directed at protecting the procurement process from dishonest conduct, whereas Clause 21.1(g) is directed at ensuring quality standards in supply. They are not in conflict but are complementary.

15.11. The petitioner contended that a Procurement Entity cannot circumvent the statutory procedure prescribed under Rule 26A by labelling its action as contractual. This Court does not agree with this proposition in its absolute form. The question is not one of circumvention but of the source of power. Where the Procurement Entity acts under a contractual clause that covers a situation different from what Rule 26A covers, it cannot be said that the entity is bypassing Rule 26A. The two provisions cover different grounds entirely.

15.12. However, this Court also notices that Clause 21.4 of the tender conditions states that the process of debarment/blacklisting will be carried out in accordance with the notification No. FD 884 Exp-12/2019, Bangalore dated 07.05.2020. It also notes that the show-cause notice issued by the respondent purports to invoke Clause 21.1(g) as the specific ground. Therefore, the respondent's action is founded on the contractual clause, not Rule 26A.

15.13. Accordingly, this Court finds that the impugned order dated 28.03.2025 is an order of blacklisting passed in exercise of the contractual powers reserved under Clause 21.1(g) of the tender conditions. It is not an order of debarment under Rule 26A of the KTPP Rules. The petitioner's submissions to the contrary are rejected.

15.14. This court answers Point No. (i) by holding that the impugned order dated 28.03.2025 is not an order of debarment under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000 but is an order of blacklisting passed in exercise of the contractual powers reserved under Clause 21.1(g) of the tender conditions.

16. **<u>Answer to point No. 2:</u> Whether the respondent was justified in invoking Clause 21.1(g) of the tender conditions on the basis of the Government Analyst's report declaring the drugs supplied by the petitioner to be "Not of Standard Quality" and the petitioner's failure to replace the same despite repeated notices?**

16.1. Sri. Piyush Kumar Jain submitted that Clause 21.1(g) can be invoked only after a due process of inquiry and not mechanically upon receipt of

a Government Analyst's report. He contended that the petitioner was never given the opportunity to challenge the report and that the procedure under the Drugs and Cosmetics Act, 1940 was not followed by the Drug Inspectorate, which means the report itself is a product of an invalid process.

16.2. He further contended that the petitioner replied to the replacement notices and the show-cause notice, explaining that neither the Government Analyst's report nor the statutory sample portions were furnished to it. The petitioner was thus placed in a position where it could not challenge the report that formed the very basis for the proposed blacklisting.

16.3. Sri. Piyush Kumar Jain submitted that a distinction must be drawn between a contractual dispute relating to quality of goods and conduct warranting blacklisting. The mere finding of quality failure in a batch does not, by itself, mean that the petitioner was in breach of the tender conditions in a manner justifying three years of blacklisting. The respondent failed to examine whether the failure was

unintentional, whether the petitioner had duly replaced the drugs, and whether lesser contractual remedies were available.

16.4. Smt. Sumana Baliga submitted that the impugned order has been passed strictly in accordance with Clause 21.1(g) of the tender conditions. She submitted that the petitioner was a willing party to the tender contract and had accepted its terms without any objection. Clause 21.1(g) provides that failure of quality in two or more batches during laboratory testing shall be a ground for blacklisting. The Government Analyst's report, which is a statutory report under the Drugs and Cosmetics Act, 1940, declared the drugs to be "Not of Standard Quality". This report constitutes the factual basis for invoking Clause 21.1(g).

16.5. She further submitted that the respondent is not the authority which conducts drug testing; that is done by the Drug Inspectorate through the Government Analyst. The respondent acted upon the outcome of that report, as it was contractually and legally entitled to do. Unless the Government Analyst's report is set aside by

a competent forum, the respondent cannot be expected to ignore it.

16.6. Smt. Sumana Baliga submitted that the petitioner was also given repeated replacement notices and failed to replace the drugs or take corrective action. Despite clear contractual obligations, the petitioner did not replace the drugs. This failure independently supports the invocation of Clause 21.1(g). The respondent has a paramount duty to protect public health and to ensure that sub-standard drugs do not enter the public healthcare system.

16.7. Clause 21.1(g) of the tender conditions provides that failure of quality in two or more batches of a product during laboratory testing shall be a ground for blacklisting. This is a contractual term, freely agreed to by the petitioner. The petitioner does not dispute that the Government Analyst's report declared the drugs to be "Not of Standard Quality".

16.8. The petitioner's argument is primarily that the Government Analyst's report is vitiated because the Drug Inspectorate did not follow the procedure prescribed under the Drugs and

Cosmetics Act, 1940, specifically with respect to furnishing the report and sample portions to the petitioner. This contention goes to the validity of the report under the Drugs and Cosmetics Act framework.

16.9. However, the question under this Point is whether the respondent, as a Procurement Entity acting under a contractual clause, was entitled to proceed on the basis of the report. The Government Analyst's report, until set aside or invalidated by a competent forum, carries the presumption of correctness. The respondent, which is not the authority that conducted the test, is entitled to act on the basis of the report. The respondent is under a statutory obligation to ensure that only drugs of standard quality are procured and distributed through the public healthcare system. To insist that the respondent must independently conduct a fresh inquiry into the validity of the Government Analyst's report before acting on it, would be to impose an obligation that is neither expressly required by law nor commercially practicable.

16.10. The petitioner received three replacement notices dated 24.01.2025, 27.02.2025, and 28.02.2025. The petitioner did not replace the drugs. It is not the petitioner's case that it was unable to replace the drugs; its case is that it ought to be allowed to first challenge the report. The tender conditions, however, do not provide such a conditional right. The contractual obligation to replace drugs declared as "Not of Standard Quality" exists independently of any statutory remedies available to the petitioner under the Drugs and Cosmetics Act, 1940.

16.11. This Court is therefore satisfied that the respondent was, in principle, justified in invoking Clause 21.1(g) on the basis of the Government Analyst's report and the petitioner's failure to replace the drugs. The petitioner having accepted the tender conditions, including Clause 21.1(g), cannot now claim immunity from its consequences by questioning the procedural propriety of the Drug Inspectorate's actions in a collateral proceeding before the respondent.

16.12. However, it is important to note that the justification for invocation of Clause 21.1(g) is a separate question from the procedural validity of the blacklisting order itself. Questions of procedure and natural justice will be addressed under Points 3 and 4.

16.13. This court answers point No. 2 by holding that the respondent was justified in invoking Clause 21.1(g) of the tender conditions on the basis of the Government Analyst's report declaring the drugs supplied by the petitioner to be "Not of Standard Quality" and the petitioner's failure to replace the same despite repeated notices by invoking Clause 21.1(g), subject to compliance with the requirements of procedural fairness.

17. **Answer to point No. 3: Whether compliance with the procedure contemplated under Rule 26A of the Karnataka Transparency in Public Procurements Rules, 2000, including constitution of a Debarment Committee and grant of an oral hearing, was mandatory in the facts and circumstances of the present case?**

17.1. Sri. Piyush Kumar Jain submitted that the entire procedure under Rule 26A of the KTPP Rules is mandatory whenever a Procurement Entity proceeds to debar or blacklist a

contractor. Rule 26A(2) mandates constitution of a Debarment Committee. Rule 26A(3) mandates grant of a reasonable opportunity of hearing, including an oral hearing. Rule 26A(5) requires the Committee to record its recommendations in writing within thirty days. Rule 26A(6) requires an order of debarment to be issued based on the Committee's recommendations.

17.2. He submitted that none of these steps were followed in the present case. No Debarment Committee was constituted. The matter was never placed before any Committee. No oral hearing was afforded. No Committee recommendation exists on record. The impugned order was passed directly by the respondent without any of the safeguards mandated by Rule 26A.

17.3. Sri. Piyush Kumar Jain relied upon the decisions in **Municipal Corporation of Greater Mumbai v. Abhilash Lal**[5] **(2020) 13 SCC 234 and OPTO Circuit India Limited v. Axis Bank & Others**[6] **(2021) 6 SCC 707,** which establish the principle that if a statute

prescribes a particular manner of doing a thing, the same must be done only in that manner and not otherwise. He contended that since Rule 26A prescribes the procedure, the respondent was bound to follow it.

17.4. Smt. Sumana Baliga submitted that since the impugned action is not under Rule 26A but under Clause 21.1(g) of the tender conditions, the procedural requirements of Rule 26A are simply inapplicable. She submitted that Rule 26A's procedure, constitution of a Debarment Committee, oral hearing, written recommendations, are procedural safeguards applicable only when the Procurement Entity seeks to debar a contractor for corrupt or fraudulent practices under Rule 26A(1).

17.5. She further submitted that the procedural requirements of Rule 26A cannot be transplanted into a contractual action taken under Clause 21.1(g). To hold otherwise would be to render contractual provisions ineffective and would impose on the respondent a burden that the contract itself does not contemplate.

17.6. Smt. Sumana Baliga submitted that the decisions in **Abhilash Lal**[5] **and OPTO Circuit India Limited**[6] relied upon by the petitioner only stand for the proposition that where a statute prescribes a procedure, that procedure must be followed. Since, in the present case, the action is contractual and not statutory, these decisions do not assist the petitioner.

17.7. As this Court has held in Point No. 1, the impugned order is not an order under Rule 26A but an order under Clause 21.1(g) of the tender conditions. Once it is held that the source of power is contractual, it follows that the specific procedure prescribed under Rule 26A, including constitution of a Debarment Committee, forwarding details to the Committee, making of written recommendations, and issuance of a notification, is not mandatory in the present proceedings.

17.8. In **Municipal Corporation of Greater Mumbai v. Abhilash Lal**[5] **(2020) 13 SCC 234**, the Hon'ble Supreme Court held that if a statute requires a thing to be done in a particular manner, it should be done in that

manner or not at all. This principle is sound. However, the application of this principle pre-supposes that the action is one which is required to be taken under a statute. Where the action is taken under a contractual provision and not under the statute, the principle of **Abhilash Lal** does not compel compliance with the statutory procedure prescribed for a different type of action under a different provision of law.

17.9. In **OPTO Circuit India Limited v. Axis Bank & Others**[6] **(2021) 6 SCC 707**, the Hon'ble Supreme Court reiterated the same principle, stating that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. This principle also operates within the same domain: it applies when an authority is exercising power under a statute and the statute prescribes the procedure. When the authority is exercising a contractual right under a tender clause, the procedure of a different statutory provision governing a different subject matter does not govern the action.

17.10. It is therefore held that the procedure under Rule 26A, specifically constitution of a Debarment Committee and obtaining its recommendations, was not mandatory for the action taken under Clause 21.1(g). The petitioner's reliance on **Abhilash Lal**[5] **and OPTO Circuit India Limited**[6] for importing Rule 26A's procedure into a contractual action is rejected.

17.11. However, the absence of mandatory compliance with the Rule 26A procedure does not mean that the respondent was entitled to act without any procedure at all. Even where action is contractual, the principles of natural justice apply when the action results in significant civil consequences. Clause 21.4 itself states that the process of debarment/blacklisting shall be carried out in accordance with the notification No. FD 884 Exp-12/2019. This aspect will be addressed in Point No. 4.

17.12. This court answers point No. 3 by holding that compliance with the specific procedure under Rule 26A, including constitution of a Debarment Committee, grant of an oral hearing and

obtaining its written recommendations, was not mandatory in the present case since the action was taken under Clause 21.1(g) in the facts and circumstances of the present case.

18. **Answer to point No. 4: Whether the petitioner was denied a reasonable and effective opportunity of hearing before the impugned order came to be passed and, if so, whether such denial has resulted in violation of the principles of natural justice?**

18.1. Sri. Piyush Kumar Jain submitted that the opportunity of hearing afforded to the petitioner was illusory and not effective in the eyes of law. He submitted that the foundation of the impugned action is the Government Analyst's report declaring the drugs to be "Not of Standard Quality". The respondent, however, did not furnish a copy of this report to the petitioner. The statutory sample portions were also not provided. Without these materials, the petitioner could not meaningfully challenge the basis of the proposed action.

18.2. He relied on the decision in **Erusian Equipment and Chemicals Limited v. State of West Bengal**[1] **(1975) 1 SCC 70**, where the

Hon'ble Supreme Court held that 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, and that 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.

18.3. He further relied upon **Kulja Industries Limited v. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited**[2] **(2014) 14 SCC 741,** where the Hon'ble Supreme Court held that even though the right of the writ petitioner is in the nature of a contractual right, the manner, method and motive behind the decision of the authority is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality, and proportionality.

18.4. Sri. Piyush Kumar Jain also relied upon **Daffodils Pharmaceutics Limited v. State of Uttar Pradesh**[3] **(2020) 18 SCC 550,** where the Hon'ble Supreme Court reiterated that no one can be inflicted with an adverse order

without being afforded a minimum opportunity of hearing and prior intimation of such a move. He submitted that in the present case, the petitioner was not placed in a position to meet the case against it.

18.5. He further relied upon **Isolators and Isolators v. Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited**[4] **(2023) 8 SCC 607**, where the Hon'ble Supreme Court reiterated the requirement of a valid, particularised and unambiguous show-cause notice and held that blacklisting without proper notice is fatal to the order.

18.6. Relying on **Sujal Pharma v. Karnataka State Medical Supplies Corporation Limited**[7] **(WP No.20520/2021, decided on 18.04.2024)**, Sri. Piyush Kumar Jain submitted that this Court has also held that a prior show-cause notice granting a reasonable opportunity of being heard is an indispensable requirement in administrative decision-making, particularly in matters relating to blacklisting.

18.7. His further submission was that Rule 26A(3) itself mandates an oral hearing and that this

statutory requirement cannot be ignored even if the action is otherwise contractual. Since Clause 21.4 incorporates the Government notification by reference, the procedure contained therein, which includes the spirit of Rule 26A, must be followed.

18.8. Smt. Sumana Baliga submitted that the petitioner was, in fact, afforded adequate opportunity to present its case. Three replacement notices were issued, and the petitioner responded to them. A specific show-cause notice proposing blacklisting was issued, to which the petitioner submitted a detailed reply. The petitioner's submissions were considered by the respondent before passing the impugned order.

18.9. She contended that the decisions in **Erusian Equipment and Chemicals Limited**[1], **Kulja Industries Limited**[2], **Daffodils Pharmaceutics Limited**[3], **Isolators and Isolators**[4], **and Sujal Pharma**[7] do not help the petitioner. The principle emerging from all these decisions is that a person proposed to be blacklisted must be put on notice and afforded

a reasonable opportunity to represent his case. This requirement has been fully met in the present case. The petitioner received a specific show-cause notice and submitted a reply.

18.10. Smt. Sumana Baliga submitted that none of the aforesaid decisions lay down an inflexible rule that an oral hearing is mandatory in every case. The requirement is one of overall fairness. In the present case, the petitioner was fully aware of the allegations, the proposed action, and the material forming the basis thereof, and submitted a detailed written defence which was duly considered.

18.11. She further submitted that the Government Analyst's report is a statutory document prepared by the Government Analyst, a competent authority under the Drugs and Cosmetics Act, 1940. The respondent relied upon this official report. The petitioner is free to challenge the report before the appropriate forum under the Drugs and Cosmetics Act, but it cannot use the non-furnishing of the report by the Drug Inspectorate as a ground to escape contractual consequences.

18.12. It is her submission that a further oral hearing would have made no difference to the outcome, because the factual foundation, the Government Analyst's report, remained unrebutted and the petitioner had not replaced the drugs.

18.13. This is perhaps the most critical issue in the present case. The question is whether the petitioner was afforded a reasonable and effective opportunity of hearing before the impugned order was passed.

18.14. In **Erusian Equipment and Chemicals Limited v. State of West Bengal**[1] **(1975) 1 SCC 70**, the Hon'ble Supreme Court held that blacklisting results in civil consequences and creates a disability which deprives a person of the privilege of entering into contractual relations with the Government. The Hon'ble Supreme Court held that 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. The principle laid down is clear: opportunity of hearing is

mandatory before blacklisting. This Court respectfully follows and applies this principle.

18.15. In **Kulja Industries Limited v. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited**[2] **(2014) 14 SCC 741**, the Hon'ble Supreme Court held that even where the rights involved are contractual, the manner and method of the State's decision are subject to judicial review on the touchstone of fairness, natural justice, non-discrimination, equality, and proportionality. The Hon'ble Supreme Court further held that every action of the State executive authority must be subject to the rule of law and informed by reason. The principle relied upon is that contractual character of the right does not immunise the decision-making process from the requirements of fairness and natural justice. This Court applies this principle to hold that the respondent, being an instrumentality of the State, was required to act fairly even in enforcing a contractual right.

18.16. In **Daffodils Pharmaceutics Limited v. State of Uttar Pradesh**[3] **(2020) 18 SCC 550**, the

Hon'ble Supreme Court held that no one can be inflicted with an adverse order without being afforded a minimum opportunity of hearing and prior intimation of such a move. The principle is that an adverse order without any opportunity of hearing whatsoever is impermissible. In the present case, a show-cause notice was issued and a reply was filed. The petitioner was therefore not deprived of all opportunity. The question is whether the opportunity was effective. This aspect is examined below.

18.17. In **Isolators and Isolators v. Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited**[4] **(2023) 8 SCC 607**, the Hon'ble Supreme Court examined the requirements of natural justice in blacklisting cases in detail. The Hon'ble Supreme Court held that for the notice to be adequate, the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously, and an order travelling beyond the bounds of notice is impermissible. The Hon'ble Supreme Court reiterated that blacklisting takes away the privilege of government contracts, tarnishes the person's

reputation, and has long-lasting civil consequences. The Hon'ble Supreme Court concluded that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of administrative decision-making and failure to do so would be fatal to any order of blacklisting. The principle relied upon is that a specific, unambiguous show-cause notice and a real, meaningful opportunity of hearing are prerequisites for a valid order of blacklisting.

18.18. In **Sujal Pharma v. Karnataka State Medical Supplies Corporation Limited**[7] **(WP No.20520/2021, decided on 18.04.2024)**, this Court, following the principles laid down by the Hon'ble Apex Court, held that a prior show-cause notice and a reasonable opportunity of being heard are indispensable requirements in decisions relating to blacklisting. This Court applies the same principle in the present case.

18.19. Now, applying these principles to the facts of the present case, the respondent did issue a show-cause notice dated 06.03.2025 proposing blacklisting under Clause 21.1(g). The notice

was specific, identified the ground (quality failure), and mentioned the proposed consequence (blacklisting for three years). The petitioner submitted a detailed reply on 07.03.2025 raising all the contentions which are now urged before this Court.

18.20. The question, however, is whether the opportunity was effective. The petitioner's case is that neither the Government Analyst's report nor the statutory sample portions were furnished to it, and therefore it could not effectively challenge the foundation of the proposed action. This contention requires careful consideration.

18.21. The show-cause notice references the Government Analyst's report as the basis. The petitioner states it was not furnished a copy of the report. The respondent has not denied this, though it contends it is not material. This Court finds that the Government Analyst's report is the very foundation of the action under Clause 21.1(g). Without access to the report, the petitioner cannot meaningfully know precisely what deficiencies were found, what tests were

conducted, or on what basis the conclusion of "Not of Standard Quality" was recorded.

18.22. However, this Court notes the following vital facts: (i) The petitioner was aware that the drugs had been tested and declared "Not of Standard Quality", even if it did not have a copy of the full report. (ii) The replacement notices dated 24.01.2025, 27.02.2025, and 28.02.2025 all communicated the fact that the drugs had been declared NSQ. (iii) The petitioner responded to these notices and raised contentions. (iv) The show-cause notice dated 06.03.2025 was specific and the proposed action was clearly spelled out. (v) The petitioner submitted a detailed reply on 07.03.2025.

18.23. Moreover, this Court notes that the petitioner's primary contention before the respondent was not that the drugs were in fact of standard quality, but that the procedure under the Drugs and Cosmetics Act, 1940 was not followed by the Drug Inspectorate. The petitioner did not request the respondent to furnish a copy of the Government Analyst's report; it requested that

action be deferred. The petitioner also never placed any counter-test report or any material to show that the drugs were in fact, of standard quality. The petitioner did not also replace the defective products as sought for, which replacement, if had been done, the issue with the respondent would have been closed and the petitioner could have followed up with the authorities. In view of this, the respondent did not have the concerned product for distribution amongst the general public.

18.24. In this context, this Court applies the principle from **Daffodils Pharmaceutics Limited**[3] that a minimum opportunity of hearing is mandatory and has been provided here. The standard is one of fairness in the overall context. Fairness does not always require formal oral hearings; it requires that the affected party knows the case against it, knows the proposed action, and has a genuine opportunity to respond.

18.25. Having regard to the facts that: (a) the petitioner was informed of the NSQ declaration through multiple replacement notices; (b) a specific show-cause notice was issued

proposing blacklisting; (c) the petitioner submitted a detailed reply raising all contentions; and (d) the respondent considered the reply before passing the impugned order; this Court is of the view that a reasonable opportunity of hearing was afforded to the petitioner.

18.26. The argument that the absence of a formal oral hearing vitiates the impugned order is not acceptable in the present context. As the Hon'ble Supreme Court recognised in **Erusian Equipment and Chemicals Limited**[1]**,** the standard of fairness depends upon the nature of the interest affected, the circumstances in which the power is exercised, and the nature of the sanctions involved. An oral hearing is desirable but not invariably mandatory. In the present case, given that the impugned action was contractual, the facts were clear, the petitioner had submitted a detailed written reply, and the material facts were not genuinely disputed (the petitioner did not deny the NSQ finding but only questioned the process by which the report was created), the absence of

an oral hearing does not render the impugned order invalid.

18.27. This Court is further conscious that the decision in **Isolators and Isolators**[4] emphasised the requirement of a valid and specific show-cause notice. This Court finds that the show-cause notice in the present case was specific, identified the ground, specified the proposed consequence, and gave the petitioner a real opportunity to respond. It was not vague or omnibus.

18.28. Accordingly, this Court holds that while the opportunity granted was not perfect in the sense that the Government Analyst's report was not separately furnished, the petitioner was not effectively denied an opportunity of hearing. The hearing that was afforded, through multiple replacement notices and a specific show-cause notice followed by consideration of the petitioner's reply, was sufficient in the facts and circumstances of the present case. The respondent's actions did not violate the principles of natural justice.

18.29. This Court answers point No. 4 by holding that the petitioner was not denied a reasonable and effective opportunity of hearing before the impugned order came to be passed, hence, there is no violation of the principles of natural justice.

19. **<u>Answer to point No. 5:</u> Whether the alleged non-furnishing of the Government Analyst's report and statutory sample portions under the Drugs and Cosmetics Act, 1940 vitiates the impugned action taken by the respondent under the tender conditions?**

19.1. Sri. Piyush Kumar Jain submitted that the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder prescribe a specific procedure with regard to testing of drugs. When a drug is tested and found to be "Not of Standard Quality", the Act requires that the Government Analyst's report be furnished to the manufacturer, and that a statutory portion of the sample be retained and made available to the manufacturer for the purpose of seeking re-testing by the Central Drugs Laboratory. He submitted that in the present case, neither the report nor the sample portions were furnished to the petitioner by the Drug Inspectorate.

19.2. He contended that this non-compliance with the procedure under the Drugs and Cosmetics Act, 1940 vitiates the very foundation of the respondent's action. If the report itself has been prepared without following the mandatory procedure, then it is a flawed report on which the respondent cannot validly act.

19.3. He further submitted that the respondent should have waited until the petitioner exhausted its statutory remedies under the Drugs and Cosmetics Act, 1940 before proceeding to blacklist it. To proceed on the basis of a report whose procedural validity is itself disputed, while simultaneously refusing to give the petitioner time to challenge the report, is arbitrary and unfair.

19.4. Smt. Sumana Baliga submitted that the alleged non-furnishing of the Government Analyst's report and sample portions is a grievance against the Drug Inspectorate and not against the respondent. Any grievance about compliance with the Drugs and Cosmetics Act, 1940 must be agitated before the appropriate authority under that Act or by way of separate

proceedings. It cannot be set up as a defence against the contractual action of the respondent.

19.5. She submitted that the respondent did not conduct the drug testing. It received the Government Analyst's report from the competent authority. The report was a statutory document prepared by a public official in discharge of his statutory duty. Until the report is set aside or reversed by a competent forum, the respondent is entitled to act upon it.

19.6. Smt. Sumana Baliga further submitted that the petitioner claims to have wanted to challenge the report but, despite having raised this issue in its responses to the replacement notices and the show-cause notice, has not actually initiated any proceedings under the Drugs and Cosmetics Act, 1940. This indicates that the petitioner's objection is a defence raised to avoid contractual consequences rather than a genuine grievance. She submitted that the Court should not permit a party to use the alleged procedural failure of a third authority (the Drug Inspectorate) as a shield against the

contractual consequences of its own failure to replace sub-standard drugs.

19.7. The central question under this Point is whether the alleged failure of the Drug Inspectorate to furnish the Government Analyst's report and sample portions to the petitioner under the Drugs and Cosmetics Act, 1940 vitiates the respondent's action under Clause 21.1(g) of the tender conditions.

19.8. This Court is of the view that the petitioner's argument, though not without merit in principle, cannot be accepted in the present factual context for the following reasons.

19.9. First, the respondent is a distinct entity from the Drug Inspectorate. The respondent is the procurement entity, Karnataka State Medical Supplies Corporation Limited (KSMSCL). The Drug Inspectorate is a separate statutory authority. The obligation to furnish the report and sample portions under the Drugs and Cosmetics Act, 1940 is the obligation of the Drug Inspectorate, not the respondent. Any failure on the part of the Drug Inspectorate to comply with its statutory obligations is a

grievance to be addressed against the Drug Inspectorate, not against the respondent.

19.10. Second, the respondent received the Government Analyst's report from the competent authority. The report carries a statutory presumption of correctness. Unless and until it is set aside by a competent forum, the respondent is entitled to act upon it in exercise of its contractual rights. The respondent cannot be expected to stay its hand indefinitely merely because the petitioner expresses an intention to challenge the report someday. If the petitioner challenges the report and succeeds, the appropriate consequence would be addressed at that stage.

19.11. Third, this Court notes a vital fact: despite repeatedly raising the issue of non-furnishing of the report and sample portions, the petitioner has not initiated any proceedings under the Drugs and Cosmetics Act, 1940 to challenge the Government Analyst's report. This fact supports the respondent's submission that the objection is a defensive tactic and not a genuine grievance.

19.12. Fourth, the tender conditions expressly provide that the process of blacklisting will be carried out in accordance with the relevant Government notification. The tender conditions also make it clear in Clause 21.1(d) that supply of spurious/inferior/substandard/NSQ products is itself a ground for blacklisting. Clause 21.1(g) provides an additional ground. The respondent is not relying on an extra-contractual source of authority; it is enforcing a contractual obligation that the petitioner voluntarily accepted.

19.13. Fifth, the petitioner had a clear contractual option to replace the drugs upon receiving the replacement notices. Even if it disagreed with the Government Analyst's finding, it could have replaced the drugs under protest and simultaneously challenged the report through appropriate legal proceedings. It chose neither to replace the drugs nor to formally challenge the report. This conduct undermines its claim that the non-furnishing of the report placed it in an impossible position.

19.14. For these reasons, this Court holds answers point no.5 by holding that the alleged non-furnishing of the Government Analyst's report and statutory sample portions under the Drugs and Cosmetics Act, 1940 does not vitiate the impugned action taken by the respondent under the tender conditions. The petitioner's remedy, if any, lies against the Drug Inspectorate for non-compliance with the Drugs and Cosmetics Act, 1940, and not by way of a challenge to the respondent's contractual action.

20. **<u>Answer to point No. 6:</u> Whether the impugned order suffers from arbitrariness, disproportionality, procedural impropriety, or any other infirmity warranting interference under Article 226 of the Constitution of India?**

20.1. Sri. Piyush Kumar Jain submitted that the impugned order is arbitrary and disproportionate. He contended that the respondent has proceeded directly from an NSQ finding to a three-year blacklisting, without examining: (a) whether the quality failure was intentional or accidental; (b) whether the petitioner had a history of quality failures; (c)

whether the failure was in a single batch or multiple batches; and (d) whether a lesser remedy would have sufficed.

20.2. He relied upon the principles laid down in **Kulja Industries Limited**[2] **(2014) 14 SCC 741** to submit that even in contractual matters, the action of the State must satisfy the test of proportionality and must not be uninformed by reason. He contended that the drastic step of blacklisting for three years requires a higher justification than merely recording that the drugs were declared NSQ.

20.3. Sri. Piyush Kumar Jain also submitted that the respondent conflated the issue of quality failure under Clause 21.1(g) with the more serious grounds under Clause 21.1(d) (supply of spurious/substandard drugs) and Clause 21.1(h) (corrupt and fraudulent practices). He submitted that by using the contractual clause, the respondent has imposed the same drastic penalty of three-year blacklisting that would apply for fraud and corruption, upon what is essentially a quality dispute in a single tender.

20.4. He further submitted that Article 14 of the Constitution of India prohibits arbitrariness in State action. The respondent, being an instrumentality of the State, was bound to act reasonably, proportionately, and in a manner consistent with Article 14. An action that ignores relevant considerations and imposes maximum punishment without calibrating it to the specific facts amounts to arbitrariness.

20.5. Smt. Sumana Baliga submitted that the respondent has enforced the contractual consequences expressly agreed upon by the parties. Clause 21.1(g) provides for blacklisting for a period of not less than three years upon failure of quality in two or more batches during laboratory testing. The respondent has done no more and no less than what the contract provides for.

20.6. She submitted that the petitioner accepted the tender conditions without any reservation. The consequences under Clause 21.1(g) are clearly set out in the tender conditions. The petitioner cannot now claim that the consequence is

disproportionate after having contractually agreed to it.

20.7. Smt. Sumana Baliga submitted that the respondent's action is not arbitrary. It is founded on a statutory report prepared by the Government Analyst, multiple replacement notices that went unanswered, a specific show-cause notice, and consideration of the petitioner's reply. The respondent has a paramount duty to protect public health and to maintain quality standards. The penalty imposed is the minimum prescribed by Clause 21.1(g).

20.8. She also submitted that the writ court, exercising jurisdiction under Article 226, should not substitute its own view for the considered decision of the respondent. The respondent's assessment of facts and proportionality of action are within its domain. Unless the decision is perverse, mala fide, or without any basis, writ interference is not warranted.

20.9. As regards arbitrariness: The impugned action is founded on the Government Analyst's report (a statutory document), on the petitioner's

undisputed failure to replace the drugs despite repeated notices, and on the petitioner's own admission in its replies that it was aware of the NSQ finding. The action is not without a factual basis. It is not a case where the respondent acted without any material. Therefore, the charge of arbitrariness is not made out.

20.10. As regards disproportionality: The petitioner's argument that the three-year blacklisting is disproportionate, though superficially appealing, cannot be sustained for the following reasons.

20.11. First, the blacklisting period of three years is the minimum prescribed by Clause 21.1(g) of the tender conditions, which the petitioner freely accepted. When a party accepts a contractual obligation that includes a fixed minimum consequence for a specified default, it cannot ordinarily be heard to say that the contractually agreed consequence is disproportionate.

20.12. Second, the respondent's primary obligation is to protect public health. Sub-standard drugs in the public healthcare system can cause serious

harm to patients who may already be in vulnerable health conditions. The respondent must be able to take effective deterrent action against suppliers of sub-standard drugs. A three-year blacklisting, which is the minimum contractual consequence, cannot be said to be excessive in this context.

20.13. Third, this Court's role under Article 226 is not to substitute its own view of proportionality for that of the respondent. Proportionality review in administrative law requires that the measure adopted must bear a rational relationship to the legitimate aim being pursued. The aim here is to protect public health and maintain quality standards in drug procurement. A blacklisting of three years for supply of sub-standard drugs is rationally related to that aim.

20.14. As regards procedural impropriety: As this Court has held in Points 3 and 4, the respondent was not required to constitute a Debarment Committee under Rule 26A, and the petitioner was afforded a reasonable opportunity of hearing through the show-cause notice and written submissions process.

Therefore, no procedural impropriety warranting interference under Article 226 is established.

20.15. The Hon'ble Apex court in **Kulja Industries Limited**[2] **(2014) 14 SCC 741** has held that even in contractual actions, the State must satisfy the test of Article 14, they must be informed by reason, must be fair, and must not be arbitrary. This Court finds that the respondent's action satisfies this test. The respondent relied on a statutory report, gave the petitioner an opportunity to respond, considered the petitioner's reply, and applied the minimum contractual consequence. This is not uninformed action.

20.16. This Court is also conscious of the limits of its jurisdiction under Article 226. This Court does not sit as an appellate authority over the respondent's decision. The writ court intervenes only where the action is arbitrary, mala fide, based on no evidence, in violation of fundamental rights or principles of natural justice, or contrary to a specific statutory

provision. None of these conditions are satisfied in the present case.

20.17. This Court further notes that the petitioner has not alleged mala fides. It has not demonstrated that the Government Analyst's report is perverse or fabricated. It has not filed any challenge to the report under the Drugs and Cosmetics Act, 1940. Under these circumstances, there is no basis for this Court to substitute its assessment for that of the respondent.

20.18. Accordingly, this court answers Point No. 6 by holding that the impugned order does not suffer from arbitrariness, disproportionality, procedural impropriety, or any other infirmity warranting interference under Article 226 of the Constitution of India.

21. **Answers to point No. 7: What order?**

21.1. In view of the findings recorded on Points 1 through 6, this Court holds as follows:

21.1.1. The impugned order dated 28.03.2025 is an order of blacklisting passed under Clause 21.1(g) of the tender conditions

and not under Rule 26A of the KTPP Rules.

21.1.2. The respondent was justified in invoking Clause 21.1(g) on the basis of the Government Analyst's report and the petitioner's failure to replace the drugs.

21.1.3. Compliance with the procedural requirements of Rule 26A, specifically constitution of a Debarment Committee and obtaining its written recommendations, was not mandatory for an action taken under Clause 21.1(g).

21.1.4. The petitioner was afforded a reasonable and effective opportunity of hearing through the replacement notices, show-cause notice, and consideration of its reply. The principles of natural justice were not violated.

21.1.5. The alleged non-furnishing of the Government Analyst's report and statutory sample portions by the Drug Inspectorate does not vitiate the

respondent's contractual action under the tender conditions.

21.1.6. The impugned order does not suffer from arbitrariness, disproportionality, procedural impropriety, or any other infirmity warranting interference under Article 226 of the Constitution of India.

21.2. Accordingly, this court passes the following:

ORDER

(i) Writ Petition is ***dismissed***.

(ii) However, this Court clarifies that this order does not preclude the petitioner from pursuing its statutory remedies under the Drugs and Cosmetics Act, 1940, including challenging the Government Analyst's report before the competent authority under the said Act, if so advised.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

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List No.: 2 Sl No.: 1