

(2013) 09 DEL CK 0509

In the Delhi High Court

Case No : Writ Petition (C) 7369 of 2011

M/s. Sabharwal Medicos Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2013) 09 DEL CK 0509

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Pramod K. Sharma and Mr. S.C. Singhal, for the Appellant; Rajeeve Mehra, ASG, Mr. Ravinder Agarwal and Mr. Amit Yadav, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The only issue arising in these petitions is as to whether the decision of the respondents to blacklist the petitioners before this court and banning all business dealings with them can be said to be illegal or arbitrary, warranting quashing by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. Sabharwal Medicos Private Limited, petitioner in WP (C) No. 7369/2011; S.J. Enterprises, a partnership firm of Mr. Jitender Sabharwal and Ms. Meenu Sabharwal, petitioners in WP (C) No. 7370/2011, Siddhant Life Sciences Private Limited, petitioner in WP (C) No. 9118/2011 and Janak Medicos Agency, stated to be a proprietorship concern of Mr. Kulbhushan Wasan, petitioner in WP (C) No. 7375/2011 were supplying medicines to the respondents being the registered contractors for the purpose. It appears that certain news items appeared in the newspapers alleging use of forged tenders for supplying medicines to the respondents and registration of FIR under Sections 420/468/471 read with Section 120B of IPC by the CBI against certain persons. Vide letter dated 13.7.2011, the Office of the Director General, Armed Forces Medical Services, on receipt of information regarding prosecution by CBI, and referring to the said prosecution, on account of unethical practice of supply of

medicines on the basis of fake tenders, required Sabharwal Medicos Private Limited, petitioner in WP (C) No. 7369/2011, to explain as to why all business dealings with them should not be stopped. Vide separate communication dated 14.7.2011, Army Hospital (R & R) required Sabharwal Medicos Private Limited to clarify whether any case/inquiry was pending against them. The said clarification was sought with respect to newspaper report dated 26.6.2011, a copy of which was annexed to the said communication. Vide their response dated 18.7.2011, the petitioner, Sabharwal Medicos Private Limited defended the supply made by them but gave no specific response to the query with respect to case/inquiry, if any, pending against them. The petitioner responded to the notice dated 13.7.2011 by way of response dated 25.7.2011 enclosing therewith the response dated 18.7.2011 sent to Army Hospital (R & R) as well as a certificate from the Drug Controller, Department of Government of NCT of Delhi certifying that the said Company had not been convicted under the Drugs & Cosmetics Act, 1940, during the last five (5) years. Vide communication dated 9.8.2011, the petitioner was asked to submit an affidavit as to whether there was any prosecution/FIR lodged against them or not. Sabharwal Medicos Private Limited through its Director, Jitender Sabharwal, admitted that there was an FIR registered against Mr. Jitender Sabharwal by CBI on 27.4.2010. He also filed an affidavit stating therein that Sabharwal Medicos Private Limited was neither convicted nor blacklisted by any Government agency throughout the country.

2. Vide communication dated 26.9.2011 and considering the report received from the CBI, the respondents blacklisted Sabharwal Medicos Private Limited, S.J. Enterprises, Siddhant Life Sciences Private Limited and Janak Medicos Agencies and ceased all business dealings with the aforesaid entities in the Office of the Director General of Armed Forces Medical Supplies and all its Units.

3. In WP (C) No. 7375/2011, vide notice dated 13.7.2011 issued by the Office of the Director General, Armed Forces Medical Supply, referring to the prosecution being faced by the said firm on account of unethical practice of supply of medicines on the basis of fake tenders, Janak Medicos Agency was required to explain as to why all business dealings with it should not be stopped. Vide communication dated 14.7.2011 referring to the newspaper report dated 26.6.2011, Janak Medicos Agency was required to clarify whether case/inquiry pending against it. Mr. Kulbhushan Wasan, claiming to be the proprietor of Janak Medicos Agency vide response dated 15.7.2011 defending the supplies made by them, but did not reply to the query with respect to the case/inquiry, if any, pending against it.

The notice dated 13.7.2011 was responded to by Janak Medicos Agency through Shri Kulbhushan Wasan on 22.7.2011, the supplies made by it was defended. Vide communication dated 9.8.2011, Janak Medicos Agency was to file an affidavit stating that there was no prosecution/FIR lodged against them by Delhi Police or CBI. Responding to the said communication, Mr. Kulbhushan Wasan, informed that Mr. Sanjeev Wasan, Authorised Signatory of Janak Medicos Agency

has received a notice from the Court of Chief Metropolitan Magistrate, Delhi to appear on 17.9.2011.

4. Being aggrieved from the orders passed by the respondents blacklisting them and ceasing all business dealings with them, the petitioners are before this Court seeking quashing of the impugned order dated 26.9.2011.

5. In their counter affidavit, the respondents have stated that on coming across newspaper report with respect to a case registered by CBI in the year 2010 against Sabharwal Medicos and Janak Medicos Agency it was revealed that the petitioner Sabharwal Medicos Private Limited, in order to procure orders for supply of medicines to Armed Forces Medical Stores Depots forged bids on behalf of other companies. The forged bids were found in the computer of Director of Sabharwal Medicos Private Limited. It is further stated in the counter affidavit that investigation by the CBI revealed that the bids purporting to have been received from Sun Pharmaceuticals Limited were forged documents and the signatures on the said documents had been forged. The forged bids of Sun Pharmaceuticals Limited which did not even manufacture the drug in question, was found in the hard disk of the computer of the Director of Sabharwal Medicos Private Limited. The investigation further revealed that the medicine in question was supplied through Sabharwal Medicos Private Limited which received a payment of Rs. 96,480/- for the said supply. It is further stated in the counter affidavit that the same modus operandi was adopted in response to various rate enquiries during the period 2006-2008 and a chargesheet before the Court has already been filed by the CBI against Mr. Jitender Sabharwal, Director of Sabharwal Medicos Private Limited. It is further stated in the counter affidavit that Mr. Jitender Sabharwal was also a partner of S.J. Enterprises and Director of Siddhant Life Sciences Private Limited and was representing the aforesaid entities.

6. In their counter affidavit in WP (C) No. 7375/2011 the respondents have stated Mr. Sanjeev Wasan, who along with Mr. Jitender Sabharwal of Sabharwal Medicos Private Limited has been charge sheeted by the CBI is the partner/ proprietor of Janak Medicos Agency. It is also stated in the counter affidavit that the CBI had recommended blacklisting of Sabharwal Medicos Private Limited, S.J. Enterprises, Siddhant Life Sciences of Shri Jitender Sabharwal and Janak Medicos Agencies of Shri Sanjeev Wasan.

7. It is an undisputed legal proposition that the State has an inherent right either to enter or not to enter in a contract with any person though even in such matters, it is required to act fairly, reasonably and without actuated by any mala fide. A reference in this regard may be made to the following view taken in Patel Engineering Limited Vs. Union of India (UOI) and Another,

"The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry

on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.

As regards oral hearing the, the following was the view taken by the Apex Court:

Coming to the submission that R-2 ought to have given an oral hearing before the impugned order was taken, we agree with the conclusion of the High Court that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the Union of India and another Vs. M/s. Jesus Sales Corporation, held so even in the context of a quasi-judicial decision. We cannot, therefore, take a different opinion in the context of a commercial decision of State.

The following view taken by the Apex Court in Grosons Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others, is also relevant to the issue involved in these writ petitions.

2. Learned counsel appearing for the appellant, urged that seeing the nature the seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show cause notice were based along with show cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State government and the said relationship is not governed by any statutory Rules. There is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the fact of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based was not the requirement of principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted.

8. In the cases before this court, show cause notice was given by the respondents to Sabharwal Medicos as well as Janak Medicos. Both of them responded to the show cause notice. While responding to the show cause notice received by them neither Sabharwal Medicos nor Janak Medicos sought any opportunity of personal hearing nor did either of them seek any document or other material from the respondents. By giving show cause notice to them, the respondents duly complied with the requirement of the principles of natural

justice. Therefore, it cannot be said that the order of blacklisting was passed in violation of the principles of natural justice.

9. Admittedly, chargesheet has been filed by CBI against Mr. Jitender Sabharwal, who is the Director of Sabharwal Medicos Private Limited, Sidhaant Life Sciences and a partner of S.J. Enterprise, and the trial is pending. Admittedly, a chargesheet has also been filed by CBI against Mr. Sanjeev Wasan who is the son of Mr. Kulbhushan Wasan, petitioner in WP (C) No. 7375/2011. This is also an admitted case that Mr. Sanjeev Wasan was the authorized signatory of Janak Medicos and has been dealing with the respondents on behalf of the said entity. It was Mr. Sanjeev Wasan who submitted an affidavit to the respondents along with a forwarding letter dated 20.9.2009 which he signed as authorized signatory of Janak Medicos. In the said affidavit also Mr. Sanjeev Wasan claimed to be the authorized signatory of the aforesaid entity. It is inconceivable that in the matter of supplying medicines to the respondents Mr. Sanjeev Wasan was acting without instructions from and on consultation with his father, Mr. Kulbhushan Wasan. During the course of investigation conducted by it, CBI found that it was Mr. Sanjeev Wasan, who had committed various offences for the purpose of supplying medicines to the respondents. Form 20-B & Form 21-B under the provisions of Drugs & Cosmetics Act, 1940 to Janak Medicos also stipulate that the sale of drugs shall be made under the supervisions of Mr. Sanjeev Wasan. Therefore, the blacklisting of Janak Medicos on account of the misconduct attributed to Mr. Sanjeev Wasan would be eminently justified.

10. The following are the acts of misconduct constituting various criminal offences attributed to Mr. Jitender Sabharwal and Mr. Sanjeev Wasan in the chargesheet filed against him:

The allegations are in brief that for supply of various medicines to Armed Forces Medical Stores Depots (AFMSD), Delhi Cantt. During the year 2006-2008, forged bids on behalf of companies of tendered items were submitted at various rate enquiries mentioned in foregoing paras for different medicines by accused Jitender Sabharwal and Sanjeev Wasan on behalf of firms/companies. Further accused Jitender Sabharwal, Director, M/s. Sabharwal Medicos, M/s. Sidhaant Life Sciences Private Ltd. and Partner M/s. S.J. Enterprises, WZ - 294, A & B Nangal Raya, New Delhi and Shri Sanjeev Wasan partner Janak Medicos, Shop No.-1, DDA Market, Janakpuri, New Delhi-58 entered into criminal conspiracy with each other during the period 2006 - 2008 and in pursuance of the said criminal conspiracy they cheated the AFMSD, Delhi Cantt by submitting forged bids in various rate enquiries and getting the supply orders.

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Investigation has established that the bids of M/s. Cadila, Ipca, M/s. Tablets India, and M/s. Glenmark and fake/forged. Concerned officials of above companies have stated that they neither received nor submitted the bids. The signatures of the employee of the firms/companies on the bids are forged. The

forged bids of M/s. Glenmark, M/s. IPCA and M/s. Tablets India were found in the hard disc of the computer of Jitender Sabharwal (A-1).

Investigation has received that M/s. Cosme Pharma which manufactures Polyethylene Glyco, had authorized its distributor M/s. Janak Medicos owned by accused Sanjeev Wasan (A-2) to procure RE, quote rates, supply goods and collect the payment vide authority letter dated 26.3.2007. Accused Sanjeev Wasan (A-2) had quoted the - per sachet after consulting the firm which was reduced to Rs. 79/- per sachet after negotiation. Accused Sanjeev Wasan supplied the medicine 1000 sachets and received the payment of Rs. 8,53,478/- in his account.

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Investigation has established that the bid of M/s. Sun Pharmaceuticals Industries Ltd. is fake/forged. Shri Chetan Gupta, Manager, Corporate Affairs of M/s. Sun Pharmaceuticals Industries Ltd. has stated that his firm neither received RE No. 235 nor submitted the bid. The sign of the employee on the bid is forged. He has never authorized Shri Jitender Sabharwal (A-1) to submit the bid on behalf of the company and his company does not manufacture Inj Abciximab. The forged bid of M/s. Sun Pharmaceuticals Industries Ltd. was found in the hard disc of the computer of accused Jitender Sabharwal.

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...Investigation has established that the bid of M/s. Sun Pharmaceuticals Industries Ltd. and M/s. Claris are fake/forged. They have never submitted the bids. The signatures of the employees of the firms/companies on the bids are forged. The stamp of the companies/firms on the bids are also not there. Further the companies/firms do not manufacture Human Albumin. Investigation has revealed that M/s. Reliance Life Sciences has received the RE N 239. The companies/firms manufacture Human Albumin. Shri Jitender Sabharwal (A-1) has quoted the rate of Rs. 2381/- and submit the bid after consulting the companies/firms. Accordingly he has quoted the rates in the bid and Mrs. Tina Issar, employee of Shri Jitender Sabharwal (A-1) has signed the bid and supplied the 410 bottles of Human Albumin and received the payment of Rs. 9,52,350/- through his account. The forged bids of M/s. Sun Pharmaceuticals Industries Limited and M/s. Claris Life Science Pvt. Ltd. was found in the hard disc of the computer seized from the office of Jitender Sabharwal.

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Investigation has established that the bid of M/s. Med India and M/s. Eill Lilly are fake/forged. The concerned official of the said two companies have stated that they have neither received nor submitted the bids. The signatures of the employees of the companies/firms on the bids are forged. The stamp of the companies/firms on the bid are also not there. Moreover, the companies/firms do not manufacture Recombinant Folli.

Investigation has revealed that M/s. L.G. Life Sciences has received the RE No. 554/08-09. The firm manufactures Recombinant Folli and supplied 160 units costing Rs. 180469/- through its distributor Shri Jitender Sabharwal (A-1) of M/s. Sabharwal Medicos who received the payment from AFMSD, Delhi Cantt. in this account. The forged bids of M/s. Med India and M/s. Elli Lily was found in the hard disc of the computer seized from the office of Jetender sabharwal

(A-1).

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Investigation has established that the bids of M/s. Dr. Reddy and M/s. Cipla are fake/forged. The letterheads are also forged. They have never submitted the bids. The signatures of the employees of the companies/firms on the bids are forged. The stamps of the companies/firms on the bids are also not there. Further, the companies/firms do not manufacture Nimodipine.

Investigation has revealed that M/s. USV Ltd. has received the RE No. 358/2006-2007. The firm manufacturers Inj. Nimodipine. The firm has quoted the rate in this RE and received the supply order and supplied the medicine through their distributor M/s. S.J. Enterprises. Accused Jitender Sabharwal of M/s. S.J. Enterprises supplied 301 units of Inj. Nimodipine and received the payment of Rs. 1,49,914.86.

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Investigation has established that the bids of M/s. Sun Pharmaceuticals Industries Ltd. and M/s. Ipca are fake and forged. The letterheads are also forged. The official of the company stated that they have never submitted the bids. The signatures of the employees of the companies/firms on the bids are forged stamps of the companies/firms on the bids are also not there. Further the companies/firms do not manufacture Tab, Doxazone.

Investigation has established that M/s. Cipla has participated in this RE. The company manufactures Tablet Doxazone. The firm has quoted the rate and received the supply order and supplied the medicine through their distributor M/s. S.J. Enterprises. Accused Ji Sabharwal of M/s. S.J. Enterprises supplied 34720 tablets of Doxazone and received the payment of Rs. 1,49,783/- in his account.

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Investigation has established that the bids of M/s. Wallace, M/s. Dr. Reddy, M/s. Sun Pharmaceuticals Industries Ltd., M/s. Ranbaxy and M/s. Bharat Serum are fake and forged. The letterheads are also forged. The official of the above companies stated that they have never submitted the bids. The signatures of the employees of the companies/firms on the bids are forged. The stamps of the companies/firms on the bids are also not there. Further these companies/firms do not manufacture Inj. Imipenem.

Investigation has established that M/s. MSD has participated in this RE. The

company has quoted the rate and received the supply order and supplied the medicine. Accused Jitender Sabharwal supplied 990 voils and received the payment of Rs. 95830/-.

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Investigation has established that the bids of M/s. Sun Pharmaceuticals Industries Ltd., M/s Cipla, M/s. Ipca & M/s. Sunij Pharma are forged. The letterheads are also fake/forged. They have never submitted the bid. The signatures of the employees of the companies/firms on the bids are forged. The stamps of the companies/firms on the bids are also not there. Further the companies/firms do not manufacture Tab. Simvastatin.

Investigation has established that M/s. Themis Medicare has participated in this RE i.e. company manufacture Tab. Simvastatin. The company has quoted the rate and received the supply order and supplied the medicine through accused Sanjeev Wasan (A-2) of M/s. Janak Medicos. Accused Sanjeev Wasan (A-2) supplied 32500 tab of Simvastatin and received the payment of Rs. 1,47,321.53 in his account.

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Investigation has established that the bids of M/s. Dr. Reddy, M/s. Shantha and M/s. Sun Pharmaceuticals Industries Ltd. are forged. The letterheads are also fake/forged. They have never submitted the bids. The signatures of the employees of the companies on the bids are fake and forged. The stamps of the firms/companies on the bids are also not there. Further, the firms/companies do not manufacture Thalodamide.

Investigation has established that M/s. Cytomed has participated in this RE.

The company manufacture Tab. Thalodamide. The company has quoted the rate and received the supply order and supplied the medicine through accused Jitender Sabharwal (A-1) of M/s. Sabharwal Medicos. Accused Jitender Sabharwal supplied 6550 tab of

Thalodamide and received the payment of Rs. 1,49,864/- in his account.

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Investigation has established that the bids of M/s. Sun Pharmaceuticals, Industries Ltd. and M/s. Astra Zencea are forged. The letterheads are also forged. The official of the companies stated that they have never submitted the bids. The signatures of the employees of the companies on the bids are forged. The stamps of companies on the bids are forged. The stamps of companies on the bids are also not there. Further the firms/companies do not manufacture Tab Thalodamide.

Investigation has established that M/s. Cytomed has participated in this RE. The company manufacture Tab. Thalodamide. The company has quoted the rate and

received the supply order and supplied the medicine through accused Jitender Sabharwal (A-1) of M/s. Sabharwal Medicos. Accused Jitender Sabharwal supplied 6500 tab of Thalodamide and received the payment of Rs. 1,49,024/- in his account. During investigation bid no. 260 and 258 which were not awarded to accused Jitender Sabharwal or accused Sanjeev Wasan were found to be genuine.

Investigation has established that the tender were processed properly and approved by the competent authority. However, submission of forged bids of companies was not in his knowledge of the employees of AFMSD.

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Vide report no. CFSL - 2011/G - 0064 dated 26.4.2011 the expert has opined that the format of the following REs are available in the CPU of the computes recovered from the office of Shri Jitender Sabharwal (A-1):

Investigation has further established that Shri Jitender Sabharwal (A-1), has unauthorizedly and fraudulently with the intention to cheat the AFMSD and to get the supply order in his favour; kept the bids of RE 1670, 235, 239 and 554 in the CPU of his office computer and used the same.

Thus, accused persons Jetender Sabarwal (A-1) and Sanjeev Wasan (A-2) have procured the tenders by filing fake/forged bids of different companies and cheated the AFMSD and therefore committed offences punishable under sections 120B, 420, 468 and 471 of IPC.

11. Primarily it is for the authority competent to order blacklisting/debarring to decide, whether the facts & circumstances of the case justify blacklisting/debarring or not. The Court cannot substitute its own views for the view of the competent authority in this regard and cannot interfere with the decision taken by it, unless it is shown that the decision is taken by an authority which was not competent in this regard was taken without following the principles of natural justice or is otherwise wholly arbitrary or perverse in nature. Even otherwise, it would be difficult to dispute that the forged bids could be submitted only by in conspiracy with the person, who ultimately got the order, in connection to which the said forged bids were submitted. A perusal of the charge-sheet would show that it is the petitioners before this Court who got the orders in question. The State, in my view, is entitled to take decision, not to enter into any contract with a person, who resorts to forgeries for the purpose of securing orders from it, thereby polluting the tendering process itself. Once the investigation by a State Agency is carried out and it culminates in filing of a charge-sheet, the State cannot be expected to wait for the outcome of the prosecution and in the meanwhile, continue to deal with persons whose conduct has come under a serious cloud. To take a different view will place unreasonable fetters one the right of the State not to enter into contracts with persons, whom it finds to be undesirable.

The order of black-listing a company, pursuant to filing of a charge-sheet against

a director of the company, and during pendency of the trial was upheld by this Court in Shoghi Communications Ltd. Vs. Union of India (UOI) and Another, In any case, considering that the decision taken by the respondents to blacklist the Companies/partnership firm of Mr. Jitender Sabharwal and M/s. Janak Medicos, a proprietorship concern of Mr. Kulbhushan Wasan, is an objective decision based upon the chargesheet filed by CBI, the said decision cannot be said to be arbitrary, illegal or perverse so as to warrant interference by the Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

12. It is true that neither Sidhaant Life Sciences nor S.J. Enterprise is alleged to have supplied medicines on the strength of forged documents, the fact remains that both these entities are also engaged in the business of supplying medicines to the respondents and are, at least, partly owned and controlled by Mr. Jitender Sabharwal. Considering the misconduct attributed to Mr. Jitender Sabharwal, the respondents, in my view, were justified in blacklisting/debarring these two entities as well. Their exclusion from the ambit of blacklisting/debarring would enable Mr. Jitender Sabharwal to continue to have business dealings with the respondents through these two entities, thereby defeating the very purpose of blacklisting/debarring Mr. Jitender Sabharwal and M/s. Sabharwal Medicos from such dealings. It would be pertinent to note here that the entire shareholding of Sidhaant Life Sciences Private Limited is held by Mr. Jitender Sabharwal and his mother whereas M/s. S.J. Enterprise is a partnership firm owned by Mr. Jitender Sabharwal and Ms. Meenu Sabharwal.

13. It is true that the impugned order does not contain details of the forgery alleged to have been committed by Mr. Jitender Sabharwal and Mr. Sanjeev Wasan but that to my mind would be of no consequence considering that having been charge sheeted by CBI both of them were aware of the specific allegations which led to blacklisting of the petitioners and there was a broad reference to supply of medicines by obtaining fake tenders, in the impugned order.

14. In Delhi Development Authority and Another Vs. UEE Electricals Engg. (P) Ltd. and Another, , a three Judges Bench of the Apex Court held that while considering the challenge to administrative decision, the Courts will not interfere as if they are sitting in appeal over the decision. The following view taken by the Apex Court with respect to the relations between a Company and its Directors are pertinent for the purpose of the cases before this Court:

17. Though in a legalistic sense an incorporated body like a company and its Directors are separate entities for certain purposes, in many companies they act as alter ego. For the acts of the Director, the concept of vicarious and constructive liabilities operates so far as the company is concerned. The acts of the company are done primarily through the Directors or the employees. In a case like the one at hand, the stand of respondent No. 1 - Company that even if one of its Directors has assaulted an employee of the appellant-Authority, yet it is of no consequence when deciding the tender application. The strained relationship between a contractor and the contractee can have its implications in

working out the contract.

18. This is not a case where the appellant-Authority can be said to have acted in a mala fide manner or with oblique motives. If the Authority felt that in view of the background facts, it would be undesirable to accept the tender, the same is not open to judicial review in the absence of any proved mala fide or irrationality. The impugned judgment of the High Court is indefensible and is set aside. The appeal is allowed. Costs made easy.

It was contended by the learned counsel for Mr. Kulbhushan Wasan that the medicines were supplied by M/s. Janak Medicos at a rate much lower than the rate at which the medicines were procured from another vendor. Even if true, this, in my view, would be of no consequence since the allegation against Mr. Sanjeev Wasan and Mr. Jitender Sabharwal is of forging documents, submitting forged documents and cheating the respondents by submitting forged documents.

15. The learned counsel for the petitioners relied upon *Kaveri Infrastructure Pvt. Ltd. Vs. Delhi Jal Board and Others*, ; *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, *R.K. Machine Tools Ltd. & Anr. Vs. Union of India 2010 (III) AD (Del.) 191*; *Mekaster Trading Corporation Vs. Union of India (UOI) and Others*, and whereas the learned counsel for the respondents relied upon *Shoghi Communications Ltd. Vs. Union of India & Anr.*, (supra); *Kaveri Infrastructure Pvt. Ltd. Vs. Delhi Jal Board & Ors.* case (supra); *Grosos Pharmaceuticals (P) Ltd. & Anr.* case (supra); *DDA & Anr. Vs. UEE Electricals Engg. (P) Ltd. & Anr.* (supra); *Whale Stationery Products Ltd. and Others Vs. Union of India (UOI) and Another*,

In *Kaveri Infrastructure Pvt. Ltd. Vs. Delhi Jal Board & Ors.* (supra), the impugned order permitted the petitioner company to execute the ongoing works already awarded but was debarred from participating in fresh tenders till the CBI case against it was finally decided. It was also found that in other cases where criminal cases were pending other concerns or firms were permitted to bid with Delhi Jal Board. The Court observed that such treatment exposed the stand of the Board, and also felt that unspecified time frame would also cause immense hardship if the proceedings drag on for unduly long period. The Court also felt that Delhi Jal Board ought to have issued some kind of notice and afforded reasonable opportunity of hearing to the petitioner before passing the impugned order. However, the cases before this court, not only was the show cause notice duly served upon Sabharwal Medicos and Janak Medicos, there is no allegation of a discriminatory treatment having been meted out to the petitioners. The issue of indefinite period of blacklisting/debarring can be taken care of by suitably modifying the impugned order. This judgment, therefore, does not help the petitioners.

In *Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal & Anr.* (supra), the Supreme Court held that fair play requires that opportunity should be given to the person concerned to represent his case before passing an order of

blacklisting. Noticing denial of such an opportunity to the appellant before it, the Apex Court directed the authorities to give an opportunity to the petitioners to represent their case. This judgment does not help the petitioners in any manner, since show cause notice was duly served upon them and no personal hearing was sought by them from the respondents.

In *Mekaster Trading Corporation Vs. Union of India & Ors.* case (supra), the petitioner before this Court had given a detailed explanation in response to the show cause notice. However, the order of blacklisting contained no finding with regard to the representation made by them which was summarily rejected in a slipshod manner. However, the order impugned in the present cases before this Court is based upon the chargesheet filed by the CBI against Mr. Jitender Sabharwal and Mr. Sanjeev Wasan and pendency of the said criminal case against them is an admitted case of the parties. The reply submitted by Sabharwal Medicos and Janak Medicos contained no explanation with respect to specific allegations contained in CBI chargesheet against Mr. Jitender Sabharwal and Mr. Sanjeev Wasan. This judgment, therefore, cannot be applied to the cases before this Court. Since Mr. Jitender Sabharwal and Mr. Sanjeev Wasan were already aware of the allegations against them, it was not obligatory for the respondents to incorporate detailed charges against them in the show cause notice or in the order blacklisting the petitioners.

In *R.K. Machine Tools Ltd. & Anr. Vs. Union of India* (supra), the impugned decision to put on hold all the contracts with the petitioner-companies was taken without any show cause or opportunity of hearing to them. This Court while setting aside the impugned order left it open to the respondents to proceed in accordance with law in a time bound manner, provided they complied with the principles of natural justice. This judgment also does not apply to the facts of the cases before this Court because show cause notice was duly served before passing the impugned order and even the chargesheet against them was filed before the show cause notice dated 13.7.2011 was issued to them. In fact, the chargesheet has been filed along with the writ petitions. Therefore, it cannot be said that the petitioners were not aware of the specific charges against Mr. Jitender Sabharwal and Mr. Sanjeev Wasan.

Even if it is assumed that the chargesheet was received by Mr. Jitender Sabharwal and Mr. Sanjeev Wasan after M/s. Sabharwal Medicos and Janak Medicos had already responded to the said notice, I find that no attempt was made by them to submit a supplementary reply/representation in the light of the chargesheet which, according to the petitioners, was received by Mr. Jitender Sabharwal in August, 2011. As regards Mr. Sanjeev Wasan is concerned, it is stated in WP (C) No. 7375/2011 that the court summon was issued to him on 12.8.2011 requiring him to appear on 17.9.2011. A copy of the chargesheet admittedly was received by him on that date.

16. A perusal of the impugned order dated 26.9.2011 would show that no duration of the blacklisting/debarring has been fixed in the said order, meaning

thereby that the impugned order has the effect of permanent blacklisting/debarring of the petitioners before this Court.

In *Vinay Construction Co. and Others Vs. Municipal Corporation of Delhi and Another*, this Court rejected the contention that there can be indefinite period of blacklisting, holding that since blacklisting carries a very severe consequence and needs to be for a prescribed period.

In Writ Petition No. 17517 of 2002 titled *A. Rajendran vs. The General Manager* decided on 16.10.2003, the Madras High Court, noticing that the order of blacklisting the petitioner did not specify the period of blacklisting, quashed the said order, thereby upholding the contention that blacklisting could not be for an indefinite period.

Conceding that blacklisting/debarring cannot be for an indefinite period, the learned Additional Solicitor General stated, on instructions, that the impugned order would remain in force only during the pendency of the criminal prosecution pending against Mr. Jitender Sabharwal/Mr. Sanjeev Wasan. The concession given by the learned Additional Solicitor General, to my mind, is not sufficient since it is not possible to say as to how much time the trial against these two persons will take to conclude. An order blacklisting/debarring a person during the pendency of the criminal prosecution against him is in the nature of blacklisting/debarring for an indefinite period. An order of this nature must necessarily indicate a definite time period after which the blacklisting/debarring is to come to an end. In these circumstances it becomes imperative for the Court to suitably modify the impugned order so as to restrict the blacklisting/debarring to a definite period. In my view, considering the facts & circumstances of the case, the period of debarring/blacklisting of the petitioners before this court should be restricted to five (5) years from 26.9.2012, with a rider that if Mr. Jitender Sabharwal is discharged or acquitted of all the charges against him before expiry of the aforesaid term of five (5) years, the debarring/blacklisting would also come to an end from the date of his discharge/acquittal. Similarly, if Mr. Sanjeev Wasan is discharged or acquitted of all the charges against him, debarring/blacklisting of M/s. Janak Medicos, which is stated to be a proprietorship concern of Mr. Kulbhushan Wasan, will also come to an end from the date of his discharge/acquittal. The impugned orders are modified accordingly.

The writ petitions are dismissed except to the extent the impugned order dated 26.09.2011 is modified hereinbefore. There shall be no order as to costs.