2026 INSC 1143

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP (Civil) No (s). 14499-14500 of 2026)

M/S JPEE DRUGS ....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH AND OTHERS ....RESPONDENT(S)

O R D E R

Mehta, J.

1. Heard.

2. Leave granted.

3. Brief facts essential for disposal of the appeal are stated below.

4. The appellant is a licenced firm engaged in the business of manufacturing and supplying medicines to Government hospitals. It participated in a bidding process pursuant to a Notice Inviting Tender[1] issued for supply of drugs to various Government district

[1] For short, "NIT".

hospitals in the State of Madhya Pradesh by the Department of Public Health and Family Welfare through M.P. Public Health Services Corporation Limited, Bhopal[2]. The bid of the appellant-firm was accepted for supply of drugs, namely, Ascorbic Acid (Vitamin C) Tablets IP 500 mg and Ethambutol Hydrochloride Tablets IP 400 mg. Pursuant to the acceptance of tender, the appellant-firm entered into an agreement for supply of the aforesaid drugs and thereafter supplied the same to various Government hospitals and health centres in the State of Madhya Pradesh.

5. Subsequently, a show-cause notice dated 23rd September, 2024, was issued to the appellant-firm seeking explanation as to why it should not be blacklisted on the ground that the drugs supplied by it pursuant to the work order, had failed the quality test. The test reports declaring the concerned batches as Not of Standard Quality[3] were also forwarded along with the show-cause notice.

6. As per the test reports, four batches of the drugs supplied by the appellant-firm, namely, three

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[2] For short, "MPPHSCL".
[3] For short, "NSQ".

batches of Ascorbic Acid (Vitamin C) Tablets IP 500 mg and one batch of Ethambutol Hydrochloride Tablets IP 400 mg, were declared as NSQ. The show-cause notice also indicated that, as per the tender document, in case any one batch was found to be NSQ, the particular product of the firm would be blacklisted/debarred for a period of not less than two years. Upon blacklisting/debarment of such three products or upon three NSQ batches of one or more products being found under a tender, the firm would be blacklisted for a period of not less than three years.

7. The appellant-firm replied to the notice, denying the allegation that it had supplied non-standard drugs, and contended that the drugs had failed the quality test on account of improper storage conditions and improper handling after their supply, for which the manufacturer and supplier could not be held responsible.

8. The Managing Director, MPPHSCL, passed two separate orders dated 30th September, 2024, observing that no reply to the show-cause notice had been received from the appellant-firm and accordingly directed recovery of the value of the

batches of drugs which had been declared NSQ. By one of the said orders, the appellant-firm was debarred for a period of two years from supplying Ethambutol Hydrochloride Tablets IP 400 mg and was directed to deposit the batch value of Rs.3,47,375/-. By the other order, the appellant-firm was blacklisted for a period of three years and prohibited from participating in future tenders issued by MPPHSCL on account of three batches of Ascorbic Acid (Vitamin C) Tablets IP 500 mg having been declared NSQ, and was directed to deposit the aggregate batch value of Rs.6,77,219/.

9. Thereafter, another order dated 1st October, 2024, came to be passed, whereby the reply/representation submitted by the appellant-firm was considered and rejected, and the blacklisting and debarment decisions dated 30th September, 2024 were reiterated.

10. Being aggrieved, the appellant preferred Writ Petition No.31343 of 2024 before the High Court of Madhya Pradesh at Jabalpur[4]. The said writ petition came to be disposed of by order dated 27th October,

[4] Hereinafter, referred to as the "High Court".

2025. Thereafter, the appellant-firm preferred Review Petition No.2223 of 2025, while respondents Nos.2 and 3 preferred Review Petition No.2101 of 2025. Both review petitions came to be dismissed by a common order dated 12th February, 2026. The orders dated 27th October, 2025, and 12th February, 2026, are under challenge in the present appeals by special leave.

Submissions on behalf of the parties: -

11. Learned senior counsel, Shri Siddharth Bhatnagar, representing the appellant-firm, urged that notice was issued to the appellant-firm on 23rd September, 2024 and seven days' time was granted to file the reply. The reply was, as a matter of fact, submitted on 30th September, 2024 within the time specified, but without even waiting for the reply, the impugned orders were passed in hot haste on 30th September, 2024, blacklisting the appellant-firm for three years and the products of the firm for two years.

12. It was submitted that, in terms of the provisions contained in Section 25(3) and (4) of the Drugs and Cosmetics Act, 1940, the report of the Government Analyst is not rendered conclusive where the person from whom the sample was taken, within the

prescribed period, notifies his intention to adduce evidence in controversion thereof, in which event, the sample may be subjected to further examination by the Central Drugs Laboratory. It was, therefore, urged that the appellant-firm could not have been proceeded against solely on the basis of the first laboratory report without affording it the opportunity contemplated under law to controvert/dispute the same.

13. Shri Bhatnagar further submitted that, in any event, the High Court, in the impugned judgment, has taken note of Clause 6 of Annexure IX appended to the Tender Document, which specifically mandates that where a sample fails the quality test and is reported to be NSQ, one more sample from the same batch shall be drawn and sent to another laboratory for quality testing and that blacklisting can follow only upon confirmation of the test result by the second laboratory. Clause 6 of Annexure IX reads as under: -

"ANNEXURE – IX
"PROCEDURE FOR BLACKLISTING OF PRODUCT/TENDER"
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BLACKLSITING FOR QUALITY FAILURE.

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(6) If the sample fails in quality test and report is received certifying that sample is not of standard quality, one more sample shall be drawn from the same batch and to be sent to other laboratory for quality testing. On confirmation of the test result by the second laboratory, firm will be black listed as per terms. In case when the second report is contradictory to the first report, the Govt. lab or third laboratories report will be final and if the sample has been tested by the Govt. Lab at any stage, its report will be conclusive & final.

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14. He urged that, admittedly, the show-cause notice was issued immediately after the first analysis report was received from the laboratory and no effort was made to draw a second sample and for examination by another laboratory.

15. It was submitted that the contention of the respondents that no request had been made on behalf of the supplier for drawing a second sample and sending the same to another laboratory was

immaterial, as Clause 6 of Annexure IX to the Tender Document mandatorily required the procuring entity to draw a second sample from the same batch and send it to another laboratory for quality testing.

16. Shri Bhatnagar urged that the High Court, in the impugned order, had itself noted that the supplied medicines had not yet expired and could, therefore, be subjected to testing by another laboratory. However, despite issuing directions for fresh testing of the samples at the Central Government Laboratory, the High Court declined to quash the blacklisting orders and instead made their fate contingent upon the outcome of the said testing.

17. It was submitted that the decision to blacklist the appellant-firm and debar the two products was punitive in nature and tantamounts to civil death and, having been taken without following the procedure prescribed under the Tender Document and the principles of natural justice, the impugned orders deserve to be quashed, with costs imposed upon the respondents.

18. Learned senior counsel for the respondents, Shri S.K. Gangele, on the other hand, urged that the High Court had already intervened in the matter and

directed that fresh samples of each batch be drawn and sent to the Central Government Laboratory for testing. He submitted that, under the directions issued by the High Court, if the samples upon fresh analysis were confirmed to be NSQ, the blacklisting orders would remain in force, whereas, if the samples were found to conform to the prescribed standards, the said orders would stand quashed. Hence, until and unless the second sample is tested, the appellant-firm cannot be allowed to participate in any tender or to sell the drugs which have been found to be sub-standard. However, he was not in a position to dispute the fact that the show-cause notice had been issued without complying with the mandatory requirement prescribed under Clause 6 of Annexure IX to the Tender Document, referred to *supra*.

Discussion and Analysis: -

19. It is evident that the High Court itself found the action of the authorities to be flawed, inasmuch as the blacklisting orders were passed without complying with the mandatory requirement under Clause 6 of Annexure IX to the Tender Document, namely, drawing a second sample from the concerned batch and sending it to another laboratory for quality

testing. Having held so, we are of the view that it was not justified for the High Court to defer quashing the blacklisting orders contingent upon the fresh quality test reports being received.

20. In any event, the direction issued by the High Court required fresh samples of the medicines to be drawn and sent for analysis to the Central Government Laboratory within 15 days from the date of the order. It is pertinent to note that, even by the time the review petitions were considered by the High Court, the fresh samples had not been drawn and no report from the second laboratory had been obtained. This is evident from the common order dated 12th February, 2026, passed in the review petitions wherein MPPHSCL contended that the medicines directed to be re-tested were not in its custody but were in the possession of the State Government, being the recipient of the supply, whereupon the High Court reiterated its earlier direction and required the State Government to facilitate compliance therewith.

21. The appellant-firm thereafter assailed both the order dated 27th October, 2025, and the common review order dated 12th February, 2026, before this Court. Significantly, even by the time this Court, *vide*

order dated 26th May, 2026, this Court stayed the operation of the impugned orders to the extent of the blacklisting of the appellant-firm, the re-testing exercise had not been undertaken.

22. The period of fifteen days stipulated in the original order passed by the High Court for drawing fresh samples and sending them for analysis remained uncomplied for over six months by the time this Court stayed the operation of the impugned orders to the extent of blacklisting the appellant-firm. It is also to be noted that even the rate contracts under Tender T-279, pertaining to Ascorbic Acid (Vitamin C) Tablets IP 500 mg, and Tender T-528, pertaining to Ethambutol Hydrochloride Tablets IP 400 mg, had expired on 11th April, 2024 and 11th October, 2025, respectively.

23. The batch-wise particulars available on record further reveal that Batch No. JDT-7744 of Ascorbic Acid (Vitamin C) Tablets IP 500 mg was due to expire in January, 2026; Batch No. JDT-8316 of the same drug was due to expire in July, 2026; and Batch No. JDT-8054 of Ethambutol Hydrochloride Tablets IP 400 mg was due to expire in April, 2026. As regards Batch No. JDT-8007 of Ascorbic Acid (Vitamin C)

Tablets IP 500 mg, the batch-specific laboratory material records the expiry date as January, 2026, whereas the show-cause notice indicates March, 2026 as the expiry date. Even proceeding on the latter date, the last date of all four batches has since expired. The direction for re-testing, which was intended to facilitate an independent determination of the quality of the drugs in question, has, in these circumstances, lost its purpose and stands frustrated by efflux of time.

24. The aforesaid circumstances assume significance when considered in conjunction with the mandatory procedure prescribed under Clause 6 of Annexure IX to the Tender Document. The said clause expressly contemplated the drawal of a second sample from the same batch and its transmission to another laboratory for testing, upon receipt of an adverse report declaring the drug to be not of standard quality. Admittedly, this procedure was not followed before the impugned orders of blacklisting and debarment came to be passed.

25. The significance of ensuring an effective opportunity for further analysis of a drug sample was considered by this Court in ***Medipol***

Pharmaceutical India Pvt. Ltd. v. Post Graduate Institute of Medical Education & Research[5]. In doing so, this Court considered, *inter alia*, the decisions in ***Medicamen Biotech Ltd. v. Rubina Bose, Drug Inspector***[6], and ***Laborate Pharmaceuticals India Ltd. v. State of Tamil Nadu***[7], which underscore the importance of preserving an effective opportunity to have a disputed drug sample tested by a superior laboratory. The underlying principle finds expression in the safeguards contemplated under Section 25(3) and (4) of the Drugs and Cosmetics Act, 1940. The Court held that where delay predominantly attributable to the State or its instrumentalities results in the loss of an effective opportunity to have a sample retested by a superior laboratory, the adverse action founded upon the disputed analysis cannot be sustained. The principle is relevant to the present controversy, having regard to the express procedure prescribed under Clause 6 of Annexure IX and the subsequent loss of an effective opportunity for re-testing. The

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[5] (2021) 11 SCC 339.
[6] (2008) 7 SCC 196
[7] (2018) 15 SCC 93.

relevant extract from the judgment in ***Medipol*** *(supra)* is reproduced hereinbelow for ready reference: -

> "12) Though the aforesaid judgments pertain to criminal prosecutions under the Drugs and Cosmetics Act, Prevention of Food Adulteration Act and Insecticides Act, yet, they lay down that a valuable right is granted to a person who is sought to be penalized under these Acts to have a sample tested by the Government Analyst that is found against such person, to be tested by a superior or appellate authority, namely, the Central Drugs Laboratory. These judgments lay down that if owing to delay which is predominantly attributable to the State or any of its entities, owing to which an article which deteriorates with time is tested as not containing the requisite standard, any prosecution or penalty inflictable by virtue of such sample being tested cannot then be sustained. **We have seen that on the facts of this case, the sample drawn and analyzed by the Government Analyst was delayed for a considerable period, resulting in the sample being drawn towards the end of its shelf life. Even insofar as the samples sent to the Central Drugs Laboratory, there was a considerable delay which resulted in the sample being sent and tested 8 months beyond the shelf life of the product in this case. It is thus clear that the valuable right granted by Section 25 of the Drugs and Cosmetics Act kicks in on the facts of this case, which would necessarily render any penalty based upon the said analysis of the sample as void.**"
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> [Emphasis supplied]

26. The aforesaid principle fully applies to the controversy at hand. Though the present proceedings arise from administrative and contractual action and not from a prosecution under the Act, the appellant-firm was subjected to serious civil consequences of blacklisting and debarment on the basis of the Government Analyst's reports. The failure to follow the procedure expressly stipulated in Clause 6, followed by the non-compliance with the High Court's direction for re-testing within the stipulated period, has deprived the appellant-firm of an effective opportunity to challenge the very reports forming the foundation of the impugned action. The subsequent expiry of the batches has rendered that opportunity nugatory. In these circumstances, the respondents cannot be permitted to sustain the impugned punitive action on the strength of reports which the appellant-firm was denied an effective opportunity to controvert despite its entitlement under the Tender document. The procedural infirmity, coupled with the irretrievable deprivation of the opportunity for re-testing, renders the orders of blacklisting and debarment unsustainable in law.

27. As a consequence, the orders dated 30th September, 2024, and 1st October, 2024, passed by the competent authority are hereby quashed.

28. Concomitantly, the impugned judgment and order dated 27th October, 2025, and the common review order dated 12th February, 2026, passed by the High Court, are set aside to the extent that they declined to quash the impugned orders and made their continuance contingent upon the outcome of re-testing.

29. The appeals are allowed accordingly.

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

.....J.
(VIKRAM NATH)

.....J.
(AUGUSTINE GEORGE MASIH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
OCTOBER 06, 2026.