

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 18832-33/2006

Date of Decision: 11th April, 2008

OSWAL MEDICAL STORES & ANR. Petitioners
Through: Mr. Shashi Bhushan, adv.

versus

UOI & ORS. Respondents
Through: Mr. R.N. Singh, Adv. with
Mr. R.V. Sinha, adv. for R-1 to 4
Mr. Abhinit Das, adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed
to see the judgment? Not Necessary
2. To be referred to the Reporter or not? Not Necessary
3. Whether the judgment should be reported in the Digest?
Not Necessary

T.S. Thakur, J:

A tender submitted by the petitioner in response to a notice issued by the Joint Director, Central Government Health Scheme, Meerut for supply of medicines to the beneficiaries of the said scheme has been rejected on the ground that the petitioner did not have the requisite license for the sale of the allopathic drugs under the Drugs and Cosmetics Act, 1940. Aggrieved by the said rejection, the petitioner has filed the present writ petition *inter alia* for a writ of certiorari quashing the order of rejection and for a mandamus directing the respondents to appoint him as a local chemist for the supply of medicines to Central Government Health Scheme beneficiaries.

2. In terms of a tender notice dated 5th September, 2006, the Central Government Health Scheme, Surajkund Road, Meerut invited bids for day to day supply of drugs and medicines to the CGHS Dispensaries situated in Meerut and other dispensaries that may be opened from time to time. The successful bidder was to be appointed as an authorized chemist for a period of 2 years from the date of appointment unless short-closed by the Joint Director, CGHS, Meerut. Apart from other stipulations, the tender notice required the bidders to furnish copies of the relevant documents including a valid license in the specified form for various categories of allopathic drugs issued by the Drug Control Authority of the State under the Provisions of the Drugs and Cosmetics Act, 1940. Clause 24 of the General Conditions of the contract was in the following words:

**"24. DOCUMENTS ESTABLISHING BIDDERS
ELIGIBILITY AND QUALIFICATION:**

Bidder shall furnish as part of its bid, self attested copies of the following documents establishing the bidder's eligibility to bid and its qualification to perform the contract, if the bid is accepted, bidder shall produce originals for verification:

- (i) A no conviction certificate from the State Drug Controller stating that there is no case is pending against the firm under the Drugs and Cosmetics Act 7 & the rules made thereunder as well as under Drugs Price Control order issued from time to time.
- (ii) The supplier should hold valid licenses in specified form for various categories of Allopathic drugs issued by the Drug Control Authority of the state under the provisions of Drugs and Cosmetics Act, 1940.
- (iii) A copy of PAN allotted to the firm.
- (iv) Sales Tax registration and clearance certificate for the last three years from the concerned STO (Sales Tax Officer)
- (v) The turnover of all bidders should be atleast Rs.10(Ten) Lakh only in the last financial year. The bidder must submit documentary evidence like Profit and loss A/C, audited balance sheet in support of their claim.
- (vi) Bank A/c details – A/c Number, Type of A/c

Bank's name and Address with MICR code on the letter pad of the firm to facilitate the payment through ECS." (*emphasis supplied*)

3. The petitioner submitted a tender which was, in the opinion of the Purchase Committee appointed for the purpose, non-compliant with the terms and conditions of the notice aforementioned inasmuch as the petitioner did not have a duly renewed license in Form 21(C) for sale and distribution of medicines as per the Drugs and Cosmetics Act, 1940 – a requirement that was mandatory. This resulted in the rejection of the tender submitted by him, aggrieved whereof, the petitioner has filed the present writ petition as already noticed earlier.

4. In the counter-affidavit filed on behalf of the respondents 1 to 3, it is *inter alia* stated that the rejection of the tender submitted by the petitioner was justified in view of the fact that the petitioner had admittedly failed to produce a duly renewed license in the form prescribed under the Drugs and Cosmetics Act, 1940. It is also asserted that the acceptance of the bid of M/s Sahara Medical Store did not suffer from any illegality or perversity to warrant interference from this Court.

5. The counter affidavit filed by respondent No. 5 has similarly supported the acceptance of its bid and asserted that this Court had no territorial jurisdiction to entertain the present writ petition as the tenders were invited by an officer outside the jurisdiction of this Court and culminated in a contract for supply of medicines at Meerut which is beyond its territorial limits.

6. We have heard learned counsel for the parties and perused the record. The contract for supply of medicines on the terms settled between the parties was limited to a period of 2 years and is admittedly expiring in September, 2008. Out of a total period of 2 years, the contract has, thus, already worked itself out for a period of

one year and nearly five months leaving just about 7 more months to go. Interference with the contract at this point of time may not, therefore, be feasible having regard to the fact that any such interference would not only unsettle the arrangement made by the respondents but also adversely affect the interest of the beneficiaries of CGHS most of whom are retired senior citizens.

7. Even independent of what is stated above, we do not find anything illegal or perverse about the rejection of the tender submitted by the petitioner. As noticed earlier one of the requirements, which was in its very nature mandatory in character was that the chemist should have held a valid license for sale and storage of drugs to be supplied to the CGHS dispensaries. The petitioner was not in a position to demonstrate either before the Purchase Committee or before us that the license issued to him had been duly renewed for the period during which he was to be registered as local CGHS Chemist. Learned counsel for the petitioner, however, strenuously argued that the petitioner had made an application for renewal and deposited the fee and that grant of renewal would, therefore, be a matter of course. He further argued that since the petitioner was actually running a chemist shop it clearly proved that he held a license, no matter, the same was not renewed in the form prescribed by Rule 63(B). In support of that submission, he relied upon the observations made by the Joint Director, Central Government Health Scheme, Meerut in her letter dated 14th September, 2006 addressed to the Deputy Director, Administration, CGHS, New Delhi. He also contended that the fact that the petitioner had been allowed to continue making the supplies beyond the period of its previous enlistment also showed that the petitioner was licensed to carry on its business.

8. We regret our inability to accept that submission of the learned counsel. Rule 61 of the Drugs and Cosmetics Act, 1940 framed under Section 18 of the Drugs and Cosmetics Act, 1940 *inter alia* forbids distribution, sale or storage or exhibition or distribution of drug or cosmetics except under and in accordance with law. Violation of the said provision is an offense punishable under the Act. Rule 61 of the Drugs and Cosmetics Rules, 1945 in turn provides that a license for sale, stock, exhibit or offer for sale or distribute the drugs of the specified type shall be issued in the forms stipulated thereunder. Rule 63 stipulates the duration of a license while Rule 63 (A) of the Rules provides for the form in which the renewal has to be granted. Rule 63(A) reads:

“63A. Certificate of renewal of sale licence.--A
certificate of renewal of a sale licence in Forms 20,
20A 20B[20F, 20G], 21, 21A and 21B shall be issued
in Form 21C.]”

9. Reference may also be, at this stage, made to form 21(c) of the forms prescribed under the Rules. The form is as under:

FORM 21 - C
[See Rule 63-A]

*Certificate of renewal of [licence to sell, stock or exhibit or offer for sale
or distribute] drugs*

1. Certified that licence No.....in [Form 20, 20A, 20-B,
20-F, 20-G, 21, 21-A, 21-B], granted on the.....to.....for sale
of the following drugs at the premises situated at.....has been
renewed for a period from.....to.....

2. Categories or particulars of drugs.....

3. Name (s) of qualified person (s) in-charge.....

Date..... *Licensing Authority*

10. It is not in dispute that the petitioner did not have a renewal certificate in the above form on the date he submitted the bid nor has any such renewal been granted to him till date. The mere fact that the petitioner has applied for the grant of a renewal may not,

therefore, suffice. The argument that since an application for renewal has been filed and the requisite fee deposited, the license should be deemed to have been renewed has not impressed us. The Rules do not, in our opinion, envisage a deemed renewal nor was any provision to that effect brought to our notice. The Purchase Committee as also the Director of Health, Government of India was, therefore, justified in taking the view that an essential requirement of the tender notice had not been satisfied by the petitioner inasmuch as he had not been able to demonstrate renewal of the requisite license in its favour. So also, the fact that the petitioner had made some supplies even beyond the period of its previous enlistment had expired, did not, in our opinion, make any difference. What has to be seen is whether the rejection of the tender submitted by the petitioner suffers from any illegality or perversity. Our answer to that question is in the negative. The requirement of a proper and duly renewed license under the Drugs and Cosmetics Act, 1940 being a mandatory requirement not only under the tender notice but also under the statute, the failure in compliance of that requirement was sufficient to justify rejection of a bid offered by the petitioner. Such being the position, the fact that the petitioner's presence would have saved some money for the State Exchequer is rendered wholly inconsequential. While financial angle is important, no public authority can ignore the requirement of the statute especially where the supplies of drugs and medicines are concerned nor can the authority afford to deviate from the conditions of the tender notice to benefit any single party. Similarly, just because the rejection of the petitioner's tender may have given rise to a single tender situation also would be immaterial. What is significant is that that the tender notice issued in the instant case was not the first in the sequence. An earlier tender notice had also been issued in

response to which only one bidder had responded resulting in the issue of a fresh tender notice. All told the grievance of the petitioner on account of the alleged loss to the Exchequer by reason of a single tenderer being left in the fray, would not in itself provide a good ground for us to interfere having regard to the fact that the petitioner was not himself eligible to make the supplies. The grievance against the allotment of the work to respondent No. 5 is in any case not coming from a party who was otherwise eligible or had shown interest in the tendered supplies.

11. In the result this writ petition fails and is hereby dismissed but in the circumstances without any order as to costs.

T.S.THAKUR,J

ARUNA SURESH, J

APRIL 11, 2008
anb