

GAHC010091142023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2315/2023

SHREE PACETRONIX LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956,
HAVING REGISTERED OFFICE AT-
PLOT NO. 15, SECTOR 2,
PITHAMPUR, DIST. DHAR (M.P.)- 454775.

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE
DEPARTMENT,
ESTABLISHMENT BRANCH (HEALTH-A AND HEALTH-B) BLOCK D
(GROUND FLOOR),
ASSAM SECRETARIAT, DISPUR,
GUWAHATI- 781006.

2:ASSAM MEDICAL COLLEGE HOSPITAL
THROUGH THE OFFICE OF THE SUPERINTENDENT

BARBARI
DIBRUGARH
ASSAM- 786002.

3:CENTRAL DRUGS STANDARD CONTROL ORGANISATION
THROUGH THE DRUGS CONTROLLER GENERAL OF INDIA

FDA BHAVAN
ITO
KOTLA ROAD

NEW DELHI- 110002

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

04.05.2023

Heard Mr. G.N. Sahewalla, learned senior counsel assisted by Mr. M. Sahewalla, learned counsel for the petitioner, who submits that the petitioner is a manufacturer of pacemakers who has not been allowed to participate in the tender notice dated 05.04.2023, on account of the respondents requiring the pacemaker to be supplied to be FDA USA for "Approval and European Conformity certificate of the Pacemaker".

2. The grievance of the petitioner is that the pacemakers manufactured by the petitioner have the regulatory approval of the Indian Government only and does not have the approval of the USA Government. Though, the petitioner has participated in the tender process, as the petitioner had been allowed to participate in the tender process in the earlier tenders issued by the respondent no. 2, the petitioner apprehends that his bid will be disqualified at the time of opening the technical bid.

3. The learned senior counsel for the petitioner submits that the petitioner has also submitted a representation dated 09.03.2023, requesting the respondents to modify the eligibility criteria, so that a level playing field is made out for all manufacturers of pacemakers, both US approved as well as Indian approved, for

supply of pacemakers in terms of the Tender Notice dated 05.04.2023. He submits that the said representation has not been decided by the authorities till date.

4. Mr. B. Gogoi, learned counsel for the respondents submits on instructions that that the petitioner has also participated in the Tender Notice dated 05.04.2023 and in this regard, he has produced letter dated 03.05.2023, issued by the Superintendent, Assam Medical College Hospital, Dibrugarh, which shows that Shree Pacetronix Ltd., Cannon Devices Private Limited and India Medtronic Pvt. Ltd. had participated in the tender process pursuant to the Tender Notice dated 04.04.2023. He submits that there is no Tender Notice dated 05.04.2023 and the same has to be read as 04.04.2023. He further submits that the technical bids of the petitioner and the other tenderers have been opened, but no decision has been taken till date. He also submits that as no final decision has been taken with regard to the technical bids, the petitioner's representation dated 09.03.2023 can be examined and decided by the respondents.

5. In view of the above submissions made by the learned counsels for the parties, this Court is of the view that the petitioner's representation dated 09.03.2023 should be examined and decided by the respondents. Accordingly, the respondent No. 2 shall examine and take a decision on the petitioner's representation dated 09.03.2023, by way of a speaking order at the earliest. Till a decision is taken by the respondent authorities, no final decision on the technical bids of the tenderers should be made in pursuant to the Tender Notice dated 05.04.2023. It is needless to add that the speaking order should be communicated to the petitioner.

6. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant