

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.42414 of 2016

ORDER:

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner seeking to declare the conditions in tender notice Rc.No.Plng/I/1115/2016/MS, dated 10-11-2016 issued by respondent No.3, as illegal and arbitrary, and consequently, set aside the same.

2. Brief facts of the case are as follows:

The petitioner obtained licence under the provisions of A.P. Drugs and Cosmetics Act, 1940 (for short 'the Act') for running a medical shop in the year 2012. The said licence is valid till 07.08.2017. Sri Venkateswara Institute of Medical Sciences, Tirupathi (SVIMS), which is a super specialty hospital with more than 750 beds, also granted licence in favour of the petitioner for a period three years, for establishment of a Medical store in its campus through proceedings dated 2.7.2016, on the conditions of payment of licence fee of Rs.21,00,999/- per month with 10% escalation of licence fee every year. Further, the case of the petitioner is that the State of Andhra Pradesh issued G.O.Ms.No.516, Health, Medical and Family Welfare (M1) Department, dated 14.10.2005. As per the said G.O., the preference will be given to the D. Pharmacy holders to participate in tenders for establishment of medical shops in the Super Specialty Hospitals, Teaching Hospitals and Autonomous Hospitals like Nizam's Institute of Medical Sciences, Sri Venkateswara Institute of Medical Sciences and Mehindi Nawaz Jung Institute of Oncology and Regional Cancer Center, Hyderabad etc. The said G.O. is in vogue even after bifurcation of the State of Andhra Pradesh, and the said G.O. is being followed by the State of Andhra Pradesh and the State of Telangana, for issuing licences.

Contrary to the guidelines in the said G.O., the 3rd respondent issued tender notice, dated 10.11.2016, inviting tenders from the eligible tenderers for running Pharmacy in its premises, and in the said tender notice, the 3rd respondent inserted two onerous conditions i.e., the average annual turnover for the last five financial years shall not be less than Rs.7.00 crores per shop and the bidders should be in the Pharmacy field for a minimum period of 5 years as on 31.12.2016 and they should have run a Pharmacy at a Medical Council of India recognized Super Specialty Hospital of more than 500 beds for a period of five years. Challenging these two conditions, the present writ petition is filed by the petitioner.

3. The learned Counsel for the petitioner submitted that the licence for establishment of Medical Stores/shops will be considered basing on several factors like quoting of licence fee, fulfilling of the eligibility conditions etc., that too for a period of two or three years and the granting of licence in favour of particular tenderer by Super Specialty Hospital continuously for a period of five years is highly impracticable. He further submitted that the turn over will depend on the number of licences given by Super Specialty Hospital and by the time of giving licence to the petitioner by the Super Specialty Hospital, there are three medical shops and the approximate business in the premises of SVIMS would be 15 to 16 Crores per year and it would be highly impracticable to an eligible tenderer, who is already given a licence by a Super Specialty Hospital to fulfill the condition of annual turn over of Rs.7 Crores per shop. He further submitted that if the 3rd respondent is allowed to proceed with the tender process, there would be few eligible tenderers to satisfy the same and there is every likelihood of drastic reduction of licence fee due to lack of adequate competition in the tender process and the same would cause much loss to the exchequer of

the 3rd respondent and deprive the rights of the eligible tenderers to participate in the Tender Process.

4. Learned Government Pleader for Medical Health opposed the contentions raised by the learned Counsel for the petitioner.

5. The main contention raised by the learned Counsel for the petitioner is that the conditions in tender notice impugned are contrary to the guidelines in G.O.Ms.No.516, dated 14.10.2005. The said G.O. stipulates some guidelines for establishment or maintenance of Medical Shops effectively in all Government Hospitals in the State. It is pertinent to note that as per the guidelines of the said G.O., the bids should be called for a lease period of two years with an escalation of 10% per year in excess of the bid for the first year. The said G.O. was issued in the year 2005 and pursuant to the said G.O., there should have been some tender notifications issued by the respective institutions. But, the petitioner has not filed any such notifications or notices so as to consider whether they have been issued in consonance with the said G.O. or not.

6. Secondly, it is pertinent to note that the petitioner was granted licence by SVIMS, which is a Super Specialty Hospital of 750 beds, very recently in the year 2016 itself and he established his shop in the field of medical in the year 2012. According to him, while issuing the licence, the SVIMS contemplated simple conditions whereas the NIMS issued the notice impugned contrary to the said conditions by imposing onerous conditions, among which the condition stated to have been onerous is five years experience in the pharmacy field and running of pharmacy at MCI recognized Super Speciality Hospital of more than 500 beds for a period of 5 years. In this regard, as already stated, the petitioner started his running

business in the SVIMS-super Specialty hospital from the year 2016 itself. Simply because he is not having such experience to meet the condition stipulated by the NIMS, he ought not to have questioned the notice impugned. In order to ensure the effective functioning of Hospitals and to provide good health care services to the patients, the NIMS might have imposed such conditions. It is also not brought to the notice of this Court as to whether any such other G.Os have been issued in this regard after the changed circumstances of the State of Andhra Pradesh, i.e., after bifurcation.

7. Admittedly, the NIMS and the SVIMS are the autonomous one. In the interest of the administration of the respective institutions and in the interest of the patients, the respective institutions are at liberty to take precautionary measures to see the proper running of the medical shops in its vicinity without there being any inconvenience for providing good health care services to the patients.

8. According to the petitioner, he started running the business in medical field from the year 2012, whereas the notice in question was issued in the year 2016. Even assuming that the case of the petitioner can be considered under G.O.Ms.No.516, he has not been even said to have complied with condition No.8 of the said G.O., which reads thus:

“Tenders are to be invited from Registered Firms/Pharmacists/Individuals having experience of minimum of 5 years of running Medical Shops.”

9. Now coming to the case on hand, it can be said that the petitioner has not even completed five years experience as on the date of notice impugned herein. When once he is not eligible to come under the zone of

consideration pursuant to G.O. relied upon by him, he cannot question the notice issued by the NIMS on the pretext of such G.O.

10. In the above circumstances, this Court does not see any merits in this writ petition to interfere with the conditions imposed in the notice impugned herein.

11. Accordingly, the Writ Petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand dismissed.

Dated: 9.03.2017
Nn

RAJA ELANGO, J



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9.3.2017

Nn.