IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.14996 of 2017
Date of Decision:13.07.2017

Grampus Laboratories

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Hardeep Singh, Advocate,
for the petitioner.

ANIL KSHETARPAL J.

1. Grampus Laboratories-petitioner has filed the present petition under Articles 226/227 of the Constitution of India, inter-alia, praying for issuance of a writ in the nature of certiorari seeking quashing of the condition No.2 of the Tender document (Annexure P-2) laying down eligibility condition-minimum annual turnover of Rs.100 crores with respect to grant of Annual Rate Contract for supply of Allopathic Veterinary Medicines for a period of 1 year.

2. The petitioner has asserted that in the previous financial year i.e. 2016–17, the eligibility condition for participating in the tender was kept at annual turnover of Rs.10 crores with respect to rate contract for purchase of Allopathic Veterinary Medicines and the petitioner was awarded the contract. Petitioner claims that the increase in minimum eligibility criteria requiring annual turnover from Rs.10 crores to Rs.100 crores with respect to Allopathic Veterinary Medicines is arbitrary, mala fide, unfair and illegal.

3. The petitioner has pleaded that minimum annual turnover has been

increased from Rs.10 crores to Rs.100 crores intentionally to keep small companies out of reckoning. It has further been claimed that other Milk Producer Cooperative Unions, namely, Ropar District Cooperative Milk Producers Union Ltd. had also invited tenders for supply of veterinary medicines for the year 2017–18 and the minimum annual turnover required for participating in the tender process was kept at Rs.10 crores. According to the petitioner, the Controller of Stores, Punjab had also invited tenders for purchase of medicines and the minimum eligibility condition there also was kept at annual turnover of Rs.5 crores only. The fixing of turnover at Rs.100 crores has been assailed on the plea that such a drastic increase in the annual minimum turnover is arbitrary.

4. A perusal of Annexure P-2, E-Tender Notice along with detailed terms and conditions, shows that with respect to Allopathic Veterinary Medicines, the minimum annual turnover prescribed is Rs.100 crores, whereas, with respect to Ayurvedic/Indigenous Veterinary Medicines, the minimum annual turnover required for participating in the tender has been kept at Rs.10 crores annually.

5. The challenge to Condition No.2 as prescribed in the eligibility criteria in Annexure P-2 has been made primarily on the ground that the increase in the minimum annual turnover from Rs.10 crores to Rs.100 crores is arbitrary, discriminatory and it has been done just to keep small companies out of reckoning.

6. The scope of judicial review in the matters of award of tender is well established. The Supreme Court in *Directorate of Education and others Vs. Educomp Datamatics Ltd. and others,* 2004(4) SCC 19, delving into the issue had opined that there are inherent limitations in the exercise of powers of judicial review in contractual matters. The scope of judicial

review is further reduced, particularly when challenge is to the terms of invitation to tender as they are in the realm of contract. The government or the authority should have free hand in setting the terms of tender. The government or the authority inviting tender must have reasonable freedom at its hands. The courts would interfere in such decisions only if it is established that the decision is arbitrary, discriminatory, mala fide or actuated by bias. The relevant observations read thus:-

> *"12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."*

7. The aforesaid view was reiterated by the Apex Court in *Association of Registration Plates Vs. Union of India and others, 2005 (1) SCC 679,* where while dealing with the terms and conditions of notice inviting tender for supply of High Security Registration Plates for motor vehicles, it was held that in the matter of formulating conditions of tender document and awarding a contract, greater latitude is required to be

conceded to the State authorities. It was further observed that unless the action of tendering authority is found to be malicious and misuse of its statutory powers, tender conditions are unassailable.

8. Similarly, in *M/s. Michigan Rubber (India) Ltd. Vs. State of Karnataka and others,* 2012(8) SCC 216, where the petitioner had challenged the new prequalification criteria laid down by the Karnataka State Road Transport Corporation for supply of tyres, tubes and flaps, the Supreme Court laid down as under: –

> *"23. From the above decisions, the following principles emerge:*
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> *(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*
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> *(b) fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;*
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> *(c) In the matter of formulating conditions of a tender*

document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24) Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) Whether the public interest is affected.

If the answers to the above questions are in the negative, then there should be no interference under Article 226."

9. According to the learned counsel, the action of the authorities

in fixing the minimum annual turnover at Rs.100 crores was arbitrary and discriminatory in nature, in as much as, in the notice inviting tenders issued by Ropar Milk Producers Union Ltd, the minimum eligibility condition relating to annual turnover had been fixed at Rs.10 crores whereas in the present case, eligibility of minimum turnover has been kept at Rs.100 Crores annually. Similarly, in the case of the Controller of Stores, Punjab the eligibility condition prescribed was annual turnover of Rs.5 crores.

10. We do not find any substance in the said submission. The Ludhiana District Cooperative Milk Producers Union Ltd - respondent No.2 is an independent body. Each District Cooperative Milk Producers Union has its own requirements. It is within the domain of the principal to prescribe terms and conditions keeping in view its requirements. Learned counsel for the petitioner was unable to demonstrate as to how the said condition was arbitrary or was violative of Article 14 of the Constitution of India. The Court would not intervene unless the decision or the terms and conditions prescribed are found to be patently arbitrary, malicious and actuated by bias, which is missing in the present case.

11. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(ANIL KSHETARPAL)
JUDGE

13.07.2017
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Whether speaking/reasoned Yes
Whether Reportable No