

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.6133 of 2017
Date of Decision: July 25, 2017

Tarsem Chand

...Petitioner

Versus

Chandigarh Adm.Chandigarh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Arun Bansal, Advocate,
for the petitioner.

Mr.A.S.Narang, Advocate &
Mr.Saurabh Goel, Advocate,
for respondent Nos.1 & 2.

Mr.Kuldeep Tiwari, Advocate,
for respondent No.3.

AMIT RAWAL, J.

By invoking the provisions of Articles 226/227 of the Constitution of India, petitioner has sought quashing of the tender notice dated 14.3.2017 (Annexure P-1) for allotment of Jan Aushadhi Outlet at Government Medical College Hospital, Sector-32, Chandigarh (for short “GMCH-32”) and Government Multi Specialty Hospital, Sector-16, Chandigarh (for short “GMSH-16”), with a further prayer for issuance of a writ in the nature of mandamus directing the respondents to delete the clause/conditions H(ii) and H(iii) from the terms and conditions of the aforementioned tender being contrary to the principle of natural justice, with a further prayer for quashing the agreement dated 5.2.2014, being contrary

to the Scheme and bye-laws of Indian Red Cross Society.

Mr.Arun Bansal, learned counsel representing the petitioner submitted that various chemist shops are being leased out by respondent Nos.1 and 2 in many Government Hospitals to the respective highest bidders from time to time by inviting the tenders. In order to provide generic medicines to the patients, the respondents offered Chemist Shop No.5 at GMCH-32 to respondent No.3-Indian Red Cross Society on rent free basis under “Jan Aushadhi Scheme-Providing quality medicine at affordable prices for all”, i.e., generic medicines only. The same was leased out in the year 2014, but contrary to the bye-laws and guidelines.

He further submitted that the respondents have now come out with a tender notice dated 14.3.2017 (Annexure P-1) calling for the tenders for leasing out Jan Aushadhi outlets at GMCH-32 and GMSH-16 by fixing 27.3.2017 upto 5.00 PM the date for submission of the tenders. The petitioner, being into business of chemist shop for the last about fifteen years and having turnover of more than Rs.1.00 crore approximately every year, downloaded the tender notice from the website of the respondents. However, he was astonished to find conditions H(ii) and H(iii) to be unfair, unreasonable and unjust. By referring to the aforementioned conditions, he submitted that the same are against the salient features of the Scheme of the Central Government (Annexure P-3), which required the authorities to do the following act:-

- “i) provide low price quality medicines through dedicated stores;*
- ii) create awareness through education and publicity that high price of drug does not necessarily imply high efficacy and potency;*
- iii) create a demand for low priced generic medicines; and*

iv) *encourage doctors to prescribe generic medicines.*

The action of the respondents, thus, is wholly uncalled for and arbitrary as they intend to commercialize the system by fixing the aforementioned criteria of turnover and experience clause depriving the sale of generic medicine to the patients in terms of the Scheme, *ibid.* The action of the respondents in fixing the experience of three years of running medical store preferably in the hospital and as well as minimum turnover of Rs.2.5 crore in the last three years, i.e., balance sheets for the year ending 31.3.2014, 31.3.2015 and 31.3.2016 in the same trade is not only onerous but abrasive, much less repugnant. It tantamounts to depriving most of the class of the chemists and the others, who are running their shops in the vicinity of big hospitals or Government Hospitals. The respondents are bent upon to facilitate their own persons by preventing the eligible persons from participating in the tender process. There is no such clause in the other tender notices floated by the Chandigarh Administration qua chemist shops allotted in various Hospitals, i.e., PGI, GMCH-32 and GMSH-16, Chandigarh.

According to the learned counsel, the petitioner had acquired the knowledge that respondent No.3, after taking the premises on rent free basis from respondents No.1 and 2, further let out the same to some other persons vide agreement dated 5.2.2014 (Annexure P-4) to generate profits for themselves contrary to the Scheme. It was also contended that they were indulging into selling of medicines alongwith other non-generic and surgical items, whereas the aim and object, was to provide medicines at the lowest possible rates, i.e., on no profit no loss basis and, therefore, such an action is contrary to the bye-laws (Annexure P-6). The action of the

respondents in imposing the conditions is whimsical and suffers from vice of arbitrariness. The respondent, being a welfare State, is expected not to create discrimination but the process of inviting tender should be more transparent and, thus, urges this Court for setting-aside of the aforementioned tender notice.

During the course of hearing, Mr.Bansal drew the attention of this Court to the order dated 27.04.2017 passed during the pendency of the writ petition. Civil Writ Petition No.5550 of 2017 was filed by the party to whom the Indian Red Cross Society had rented out the premises, which was disposed of, yet the present occupant continued to be in possession.

Mr.Kuldeep Tiwari, learned counsel representing respondent No.3 submitted that in the contract matters, the scope of judicial review is very limited until and unless there are allegations of malafide or arbitrariness. In the absence of the same, this Court cannot enlarge the scope of judicial review under Articles 226/227 of the Constitution of India. He has also drawn the attention of this Court to the order dated 23.3.2017 which reads thus:-

“Present: Mr.Arun Bansal, Advocate for the petitioner.

Mr.Kuldeep Tiwari, Advocate for respondent No.3.

Issue notice of motion.

Respondent No.3 waived services. Mr.Kuldeep Tiwari, Advocate having accepted notice on his behalf.

The petitioner is at liberty to submit his tender entirely without prejudice to his rights and contentions in this petition. In other words, the mere fact of the petitioner submitting a tender would not be construed as his having given up any rights and contentions in the writ petition.

Adjourned to 27.04.2017.

A copy of this order be given to the learned counsel for

the parties under the signatures of Bench Secretary of this Court.”

He further submitted that despite having given opportunity by this Court, the petitioner has not participated in the E-tender process. Out of nine outlets, two are of “Jan Aushadhi” Stores situated at GMSH-16 and GMCH-32. The licence was be for a period of five years on the terms and conditions specified in E-Tender notice. Detail of the participants in the tender has been given in para 4 of the written statement, which shows that the petitioner had not participated in the E-tender process, therefore, he has no locus to challenge the E-tender process.

As regards, the decision of Civil Writ Petition No.5550 of 2017, he submitted that in pursuance to the observations rendered in the aforementioned writ petition, advance notice dated 28.2.2017 has been issued to the tenants seeking eviction in accordance with law and, thus, urges this Court for dismissal of the writ petition.

We have heard the learned counsel for the parties, appraised the paper book, the documents and the submissions and having bestowed our considered thought, are of the view that there is no force and merit in the submissions of Mr.Bansal.

Mr.Bansal has not been able to substantiate grounds in bringing the matter within the ambit of judicial review, for, it is within the domain of the authorities to impose the conditions, i.e., H(ii) and H(iii), which read thus:-

“H(ii) The bidder should have minimum experience of three years of running medicine store preferably in a hospital;

H(iii) The bidder should have minimum turnover of Rs.2.5 crore in the last three balance sheets for the year ending 31.3.2014, 31.3.2015 and 31.3.2-16 in the same trade duly

attested or approved by the C.A.(copy of which should be attached.”

The petitioner was unable to demonstrate that the aforementioned conditions were against the salient features of the Scheme in any manner. The authorities are well within their jurisdiction to fix the terms and conditions to ensure that financially sound persons participate in the bid. Imposition of conditions, *ibid*, in our view, shall not be held to be illegal or unsustainable in the absence of any allegation of malafide and arbitrariness.

The scope of interference under Articles 226/227 of the Constitution came to be debated in many judgments, i.e., **Jagdish Mandal Versus State of Orissa and others**, 2007 (14) SCC 517, **Tata Cellular Versus Union of India**, (1994) 6 SCC 651 and **Michigan Rubber (India) Ltd. Versus State of Karnataka and Ors.**, (2012) 8 SCC 216 and following the aforementioned judgments, in recent judgment, i.e., **Maa Binda Express Carrier and another Versus Northeast Frontier Railway and others**, AIR 2014 (SC) 390, the Hon'ble Supreme Court had held that the High Court should be circumspect in exercising judicial review, in essence should exercise the judicial restraint in the tender matters until and unless serious questions touching the legality and propriety affecting the validity of the tender process arises. No circumstance or case has been made out at the behest of the petitioner, which would fall within the ratio decidendi culled out in the judgments cited supra. Learned counsel for the petitioner was unable to substantiate that the conditions H(ii) and H(iii) were violative of Article 14 of the Constitution of India being arbitrary, discriminatory or was a result of malafides.

For the foregoing reasons, we do not find any illegality or perversity in the action of the respondents in calling for the tender, warranting interference by this Court.

Resultantly, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 25, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No