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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2573/2016 & CM Nos.10945/2016, 21740/2016,
25165/2016, 4729/2017

NARENDRA CHAUDHARY PARTNER EASTERN
DRUG & SANITARY PRODUCTS AND ANR

..... Petitioners

Through : Mr.S.S.Mishra, Adv.

versus

UNION OF INDIA AND ANR

..... Respondents

Through : Ms.Shiva Laxmi, CGSC with
Mr.Sumit Rajput, Adv. for UOI
Mr.Manish Kr., Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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12.05.2017

The petitioner's grievance is that its bid for supply of pharmaceuticals products was rejected arbitrarily. During the pendency of the proceedings the respondents have granted their contract to third parties. They have subsequently tendered for later periods and finalised the bids. In these circumstances the grievance articulated has been rendered infructuous. Learned counsel further submits that the respondent agency has proceeded to consider the bids of parties that were ineligible given the expression wording of bid conditions contained in para 3 which read as follows :

“3.xi.Firm should submit a non-conviction certificate issued by the State Drug Controller, to the effect that the manufacturer has not been convicted under the Drugs and Cosmetics Act, 1940 and rules thereunder during the preceding three years for any of the drugs for which he has quoted price and that no case/proceedings is pending against the manufacturer in any Court of Law in India under the Drugs & Cosmetics Act. Non-conviction certificate must have been issued on or after 20.06.2015 from the Drug Controller of the concerned state.”

It is urged in this regard that the several firms were allowed to participate and furnish their bids despite their ineligibility on account of failing to match the criteria in para 3.xi. The petitioner has relied upon a letter/representation dated 16.3.2016, written to the Union Labour Minister which is a part of the record as annexure P-6 (file along with a writ petition). This letter contains a list of violation of the norm by specific parties who are facing prosecutions or who had faced prosecution under the Drug Cosmetic Act and thus according to the petitioner were ineligible for participation in the tender process.

This Court is of the opinion that since the petitioners made grievance with respect to its exclusion no longer certifies and that the award of tender to a third party by itself cannot be challenging factor and hence the main relief cannot be granted. At the same time the grievance articulated in the letter of 16.3.2016 and 10.9.2016 (annexed to CM 4729/2017) and the particulars given have to be inquired into. The respondents have till date not furnished any reply

to these allegations. In the circumstances the second respondent is hereby directed to inquire into the matter as to the correctness of the allegations contained in the letters dated 16.3.2016 and 10.9.2016 relied upon by the petitioners referred to in the previous paragraph and take necessary action in accordance with the contract – if awarded in said parties, provided the details are ascertained to be correct. Needless to add in case any action is proposed against such parties it will be preceded by appropriate hearing and in accordance with law. The process of inquiry and further action shall be completed within 10 weeks and intimation given directly to the petitioner.

The writ petition and pending applications are disposed of in above terms.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

MAY 12, 2017
VLD