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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 492/2018, CM Nos. 34905-34906/2018

M/S AGGARWAL MEDICAL & GENERAL STORE & ORS

..... Appellants

Through: Mr. A.K. Bhardwaj, Adv.

versus

EMPLOYEES STATE INSURANCE CORPORATION

..... Respondent

Through: Mr. Sanjeev Anand, Adv. with
Mr. Nimit Mathur, Ms. Sonam Anand
& Mr. Varun Bala, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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29.08.2018

CM No. 34906/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

LPA 492/2018

1. The present appeal has been filed by the appellants challenging the order dated July 27, 2018 and August 20, 2018. The case of the appellants is that on April 04, 2018 the respondent ESIC had published the e-tender enquiry documents for the purpose of empanelment of authorized Local Chemist for day to day supply of Drugs (Allopathic) and Dressings and

Consumables for the ESIC Dispensaries / Hospitals, located in Delhi / New Delhi and Noida / Greater Noida. The appellants' Tender was accepted and the respondent entered into a contract with them. It appears that the respondent intended to procure medicines from Kendriya Bhandar and accordingly proceeded to terminate the appellant's contracts vide communication dated July 20, 2018.

2. When the matter was listed on July 27, 2018, the learned Single Judge had issued notice both on the writ petition and the interim application being CM 29857/2018. It was the case of the appellants before the learned Single Judge that they had already arranged for necessary stocks for ensuring continuous supplies to the respondent and that the immediate termination of the contract would cause grave prejudice to them. The learned Single Judge had permitted the appellants to continue supplying the drugs in question for a further period of 45 days from the date of the order, to enable the appellants to offload their stocks. It was also further directed by the learned Single Judge that if the appellants were unable to supply any particular medicine to the respondent, then they shall inform the respondent in advance so that the respondent can procure the same from Kendriya Bhandar. This arrangement was made by the learned Single Judge to avoid any prejudice

being caused to the appellants.

3. It appears the CM 33296/2018 was filed by the appellants seeking stay of the impugned letter dated July 20, 2018 issued by the ESIC. The learned Single Judge has also observed that a similar prayer was sought by the appellants in CM 29857/2018 which is now listed on November 15, 2018. The learned Single Judge observed that the reasons for which the order was passed on July 27, 2018 was to enable the appellants to exhaust their stock. According to him, the order dated July 27, 2018 was the appropriate order that could be passed. Mr. A.K. Bhardwaj would submit that when the writ petition and CM 29857/2018 have been adjourned to November 15, 2018, there was no reason for the learned Single Judge to give a period of only 45 days to exhaust their stocks. On a query to Mr. A.K. Bhardwaj, whether it is the case of the appellants that they cannot exhaust their existing stocks within a period of 45 days, no answer was forthcoming.

4. He also states the observation of the learned Single Judge that the respondent could procure the medicines from Kendriya Bhandar is untenable. We are unable to agree with the said submission made by the learned counsel for the appellants for the simple reason that the same is in

the eventuality, that the appellants are unable to supply any particular medicine to the respondent, then they shall inform the respondent in advance so that the respondent can procure the same from Kendriya Bhandar. In any case, the respondent has filed its counter affidavit and the learned Single Judge has fixed the writ petition and the CM 29857/2018 on November 15, 2018 and there is also an observation in para 3 of order dated August 20, 2018 that the question whether any further relief is to be granted to the appellant would be considered in the pending application / writ petition.

5. We therefore, do not see any reason to interfere with the impugned orders passed by the learned Single Judge. The appeal is dismissed.

CM No. 34905/2018 (for direction)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 29, 2018/aky