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

\+ W.P.(C) 11773/2018

AMOOLYA KUMAR SHARMA ...... Petitioner

Through: Mr.Tarique Siddiqui, Adv. with Ms.Reetika Gupta, Mr.Aamir Zaidi, Adv.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms.Maninder Acharya, ASG with Mr.Jasmeet Singh, CGSC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **30.10.2018**

1. The petitioner has filed this public interest litigation and challenge made is to a tender notice issued by the Employees' State Insurance Corporation ('ESIC'), a statutory authority created under the Employees' State Insurance Act. By referring to the tender documents (Annexure-P13) issued on 10th October, 2018, the grievance made is that for the purpose of procuring medicines/drugs and dressing material from various pharmaceutical concerns guidelines issued by the Ministry of Finance in the Department of Expenditure as contemplated in the Manual for Procurement of Goods, 2017 (Annexure-P11) has been violated.

2. It is stated that under Clause 1.10.2 of the said Manual certain drugs are reserved to be procured only from certain agencies or pharmaceutical concerns which are Central Public Sector Enterprise ('CPSE') or undertaking. *Inter alia* contending that in violation of the said mandate of

the policy in the tender in question procurement is being made from pharmaceutical companies which do not fall in the category of Central Public Sector undertaking or autonomous body, the prayer made is to quash the entire process of tender.

3. Admittedly, the petitioner has filed this petition in public interest and he claims to be a citizen interested in welfare of the public and claims that it has been filed for the welfare and benefit of pharmaceutical CPSEs run and managed by the Central Government.

4. Taking note of the facts and circumstances of the case, we are of the considered view that in the matter of issuance of a tender for procurement of medicines by a statutory corporation, at the instance of the petitioner whose antecedents are not properly disclosed, we are not inclined to interfere into the matter and exercise our extraordinary jurisdiction under Article 226 of the Constitution that also in a public interest litigation. If the tender or procurement is contrary to the policy of the Government, the aggrieved persons would be the pharmaceutical concerns who would been deprived of the benefit as per the policy or the supplier of such medicine.

5. At the instance of a petitioner, in a public interest litigation, we are not inclined to go into the various issues involved in the matter which include as to whether the scheme referred to in the form of a guidelines can be implemented by a *mandamus*; whether the scheme of the Government is applicable to a statutory Corporation like the ESIC. The procurement of medicines being for a hospital or dispensary functioning under the ESIC, we see no reason to make an indulgence into the matter with regard to the grievance of the petitioner. The petitioner may take up the issue with the ESIC and it would be for the Corporation to evaluate the requirement of the

Government policy, its applicability on the Corporation and proceed in accordance with law.

6. With the aforesaid observation, finding no indulgence to be made in the matter, the petition stands disposed of.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

OCTOBER 30, 2018
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