

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.22528 of 2008
and M.P.Nos.2 & 3 of 2008

Sankar Labs
Rep. by its Proprietor
Mr.A.Gurupatham

...Petitioner

Vs

1. Tamil Nadu Medical Services Corporation Ltd.,
Rep. by its Managing Director,
Egmore, Chennai 8.

2. State of Tamil Nadu
rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

3. State of Tamil Nadu,
rep. by Secretary to Government,
Small Industries Department,
Fort St. George, Chennai 600 009.

..Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned provisional L1 rates arrived at by the respondent Corporation for the supply of Drugs and Medicines for the tenders floated in the website of the 1st respondent and evaluation of tenders such as selecting and awarding contract to lower tender [L1] and quash the said method of evaluation and consequently direct the 1st respondent to implement the provisions of Tender Transparency Act 2000 and Rules made thereunder by applying the Price preference.

For Petitioner : Mr.M.Sriram

For Respondents : Mr.Dev Eshwar
for M/s.Shivakumar & Suresh, for R1
Mr.B.Anand, G.A., for RR2 & 3

ORDER

Heard the learned counsels appearing on either side and perused the materials available on record.

2. The petitioner has come forward with this Writ Petition for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned provisional L1 rates arrived at by the respondent Corporation for the supply of Drugs and Medicines for the tenders floated in the website of the first respondent and quash the said method of evaluation and consequently direct the first respondent to implement the provisions of Tender Transparency Act 2000 and Rules.

3. The learned counsel for the petitioner fairly submitted that the issue involved in this Writ petition is squarely covered by the order of this Court in a Batch of Writ Petition in W.P.No.28780 of 2003 reported in CDJ 2008 MHC 5187, wherein at paragraph 76, it has been held as follows:

"76. Though the Bench has made an observation that differential price which is claimed by way of price preference shall be paid to the Respondents, this Court is not inclined to pass an order for refund of amount for the differential price which is claimed by way of price preference. This is because as per Sec.10 (3) of the Act, notwithstanding anything contained in sub-sec.(2) if the Tender Accepting Authority decides that the price of the lowest tender is higher with reference to the prevailing market rate or the schedule of rates, he may negotiate for a reduction of price with that tenderer. Notwithstanding 15% of price preference available to the domestic SSI units, as per Sec.10(3), the Tender Accepting Authority may negotiate with L1 tenderer to come down to the market rates for the tender period from 01.11.2003 to 31.03.2005, the drugs were already supplied at the rates indicated thereon. Since the goods were already supplied, now the exercise as contemplated u/s.10(3) of the Act to negotiate with the tenderer to come down to the market rate cannot be done. Such exercise cannot be traced back to the past supply. Therefore, the directions of the Division Bench that the Writ Petitioners shall be paid differential price which is claimed by way of price preference cannot be implemented at this distant point of time."

4. In the light of the above decision of this Court, the petitioner is not entitled for the relief sought for in the Writ

Petition. In the result, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pvs

To

1. The Managing Director,
Tamil Nadu Medical Services Corporation Ltd.,
Egmore, Chennai 8.

2. The Secretary to Government,
State of Tamil Nadu
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

3. The Secretary to Government,
State of Tamil Nadu,
Small Industries Department,
Fort St. George, Chennai 600 009.

+1cc to Mr.M.Sriram, Advocate SR.No.60068

+1cc to M/s.Shivakumar & Suresh, Advocate SR.No.60637

+1cc to Government Pleader SR.No.60217

W.P.No.22528 of 2008

NRKJ(CO)
GMY(26/08/2019)

सत्यमेव जयते

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