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

% *Date of Judgment : 15th November, 2019*

- + W.P.(C) 11821/2019, C.M.48463/2019
LARK LABOURATORIES (INDIA) LTD. Petitioner
versus
EMPLOYEES' STATE INSURANCE CORPORATION
..... Respondent
- + W.P.(C) 11822/2019, C.M.48465/2019
LARK LABORATORIES (INDIA) LTD Petitioner
versus
EMPLOYEES' STATE INSURANCE CORPORATION & ORS
..... Respondents
- + W.P.(C) 11823/2019, C.M.48468/2019
LARK LABOURATORIES (INDIA) LTD. Petitioner
versus
EMPLOYEES' STATE INSURANCE CORPORATION AND ORS.
..... Respondents

Present: Mr.Ravi Gupta, Sr.Adv. with Mr.Ankit Jain, Ms.Diya Kapoor
and Mr.Abhay Pratap Singh, Advocates for the petitioner in all
the matters.
Mr.Shlok Chandra, Mr.Rishabh Tomar and Mr.Chandratanjay
Chaube, Advocates for Respondent no.1 in all the matters.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. With the consent of the parties, these writ petitions are taken-up for final hearing and disposal at the admission stage itself.
2. For the sake of brevity the facts of W.P.(C) 11821/2019 are being noticed and a common order is being passed in all three writ petitions.

3. As per allegations contained in W.P.(C) 11821/2019, a tender was invited by the respondent for supply of drugs for the use of its medical institutions all over India, vide e-tender enquiry no. U-25/12/148/2018-MET.V (147A) dated 22.05.2019. The petitioner participated in the tender and deposited an amount of Rs.5 lakhs towards earnest money. The petitioner was informed by a communication dated 12.09.2019 that the petitioner was found to be technically ineligible on the ground that a valid drug-list was not enclosed with the drug license. Petitioner was also informed that in case the petitioner wanted to submit any representation against the reasons for rejection, the same could be submitted by 16.09.2019.
4. It is the case of the petitioner that a representation was prepared and submitted on 13.09.2019, clarifying the entire position. It was pointed-out that a certificate dated 04.07.2019 was obtained from the Drug Control Organization, Government of Rajasthan which clearly mentioned that the petitioner has all the requisite licenses and the said licenses are valid. Certificate dated 04.07.2019 was sent to the respondent vide e-mail dated 13.09.2019. After considering the representation, the respondent rejected the same and the petitioner was informed that the technical bids stood rejected by an order dated 04.10.2019.
5. Counsels for the parties are in agreement that as per the tender conditions, particularly the check list of documents online, clause XII provides that a bidder must submit "*XII. Attested photocopy of Drug Manufacturing License with list of products approved*". Admittedly,

Drug Manufacturing License was submitted but the list of approved products was not.

6. Mr.Ravi Gupta, learned senior counsel appearing for the petitioner, while relying on Drug Control License, submits that in fact no such list was provided to the petitioner alongwith the licence by the Drug Control Organization. He submits that to meet this objection, the following documents were submitted to the respondents:
 - (i) Manufacturing and Market Standing Certificate dated 21.06.2019; and
 - (ii) A certificate issued by the Government of Rajasthan dated 04.07.2019.
7. The sum and substance of the submissions of Mr. Gupta is that the petitioner cannot be made to suffer on account of the list of drugs not having been provided by the Government of Rajasthan while issuing the drug licence. He submits that the petitioner has placed on record documents to substantially satisfy the respondent that the license pertains to the drugs in question; and accordingly the respondent should not have taken such a harsh stand by rejecting the petitioner's technical bid.
8. Learned counsel for the respondent on the other hand submits that the matter was examined by the Technical Evaluation Committee, which decided that the tender was technically non-responsive.
9. We have heard learned counsels for the parties and have considered their rival submissions.
10. No doubt, one of the tender conditions prescribes that the applicant must submit not only the drug license but also a list of drugs to which

the licence pertains. However, we find that the two documents dated 21.06.2019 and 04.07.2019 relied upon by the petitioner *prima facie* do show that the petitioner has a valid drug license for the drugs listed in these documents.

11. Accordingly, with the consent of the parties, in view of the peculiar facts of the case, we remand the matters back to enable the Technical Evaluation Committee to re-examine the issue in the light of two documents which have been provided by the petitioners; and satisfy themselves as to whether in fact the petitioners have a valid drug license for the drug(s) in question. The petitioner would make a representation in this behalf to the respondent and the representation shall be decided before the finalization of the tender.
12. With the aforesaid directions, the writ petitions are disposed of.
13. It is made clear that the order passed today shall not be treated as precedent for other tenders.
14. The committee would decide the matter expeditiously.
15. *Dasti.*

C.M.48463/2019 in W.P.(C) 11821/2019

C.M.48465/2019 in W.P.(C) 11822/2019

C.M.48468/2019 in W.P.(C) 11823/2019

16. The applications stand disposed of in view of the order passed in the writ petitions.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 15, 2019/rb