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

+ W.P.(C) 5757/2018 & CM APPL. 22375/2018

FEDERATION OF PHARMA ENTREPRENEURS Petitioner

versus

EMPLOYEES STATE INSURANCE CORPORATION Respondent

+ W.P.(C) 12049/2018 & CM APPL. 46667-46668/2018

FEDERATION OF PHARMA ENTREPRENEURS Petitioner

versus

EMPLOYEES STATE INSURANCE CORPORATION Respondent

Present: Mr.Sumit Chander, Ms.Barnali Basak and Ms.Smeeksha Pandey,
Advocates for the petitioner in both the matters.
Ms.Geeta Luthra, Sr.Adv. with Ms.Tejaswi Kumar Pradhan,
Ms.Shivani Luthra Lohiya and Ms.Asmita Narula, Advts. for the
respondent in both the matters.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **19.11.2019**

C.M.46668/2018 ((exemption) in W.P.(C) 12049/2018

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 5757/2018 & CM APPL. 22375/2018

W.P.(C) 12049/2018 & CM APPL. 46667/2018

The petitioner association has filed the present writ petitions seeking the following prayers :

In W.P.(C) 5757/2018

"a. issue a writ, order(s) or direction(s) in the nature of certiorari, mandamus or any other appropriate writ quashing the notice inviting tenders bearing nos. 142,143,144,145 and 146 dated 22.12.2017 and changes made by way of corrigendum

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dated 24.01.2018 as Annexure-7 to this writ petition and Tender bearing Nos. 142 A, 143 A, 144 A, 145 A, 146 A issued by respondent ESI holding the same to be illegal, arbitrary, unconstitutional and not maintainable under the law;

b. issue a writ of mandamus or any other appropriate writ, order(s) or direction(s) thereby directing the respondent to remove / delete / change the tender condition as stipulated in NITs No. 142 to 146 and corrigendum dated 24.01.2018 and NIT No. 142 A, 143 A, 144 A, 145 A, 146 A through which new clauses have been incorporated and substituted;"

Admittedly, prayer a of the writ petition has become infructuous."

In W.P.(C) 12049/2018

"a. issue a writ, order(s) or direction(s) in the nature of certiorari, mandamus or any other appropriate writ quashing the clause 17 (a) (i) and requirement of EMD at Page 6 of NIT bearing No. 147 issued by. respondent ESI holding the same to be illegal, arbitrary, unconstitutional and not maintainable under the law;

b. issue a writ of mandamus or any other appropriate writ, order(s) or direction(s) thereby directing the respondent to remove / delete / change the tender condition as stipulated in NITs No. 147 through which new clauses have been incorporated and substituted;"

Mr.Sumit Chander, learned counsel for the petitioner submits that the respondent had introduced tender conditions which would favour only multi-nationals and the members of the petitioner association would be seriously prejudiced. Counsel apprehends that although this tender stands awarded, the respondent may introduce these tender conditions in future tenders as well.

Ms.Geeta Luthra, learned senior counsel for the respondent submits that the present writ petition has become infructuous. She submits that the petitioner cannot anticipate as to what would be the tender conditions in the subsequent tenders. She further submits that the Railways and CGHS also have similar

conditions.

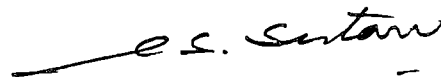
We have heard learned counsels for the parties.

Having regard to the fact that the tender has already been awarded, prayer (a) of the writ petition has become infructuous, the latter prayers in the writ petitions have also been rendered academic. Accordingly, we dispose of the writ petition, with liberty as prayed for by the petitioner, to challenge any subsequent tender which may be invited in future containing such tender conditions which the petitioner may deem arbitrary or illegal.

Legal objections of the petitioner with regard to clauses 16 (a) (iii) and 17 of the tender in W.P.(C) 5757/2018 and clause 17 (a) (i) of the tender in W.P.(C) 12049/2018 are kept open.

CM APPL. 22375/2018 in W.P.(C) 5757/2018
CM APPL. 46667/2018 in W.P.(C) 12049/2018

In view of the order passed in the writ petitions, the applications stand disposed of.


G.S.SISTANI, J



ANUP JAIRAM BHAMBHANI, J

NOVEMBER 19, 2019

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W.P.(C) 5757/2018 & W.P.(C) 12049/2018