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

+ W.P.(C) 3378/2020

SAHARA MEDICAL STORE

..... Petitioner

Represented by: Mr.Sujoy Gaur, Advocate.

versus

UNION OF INDIA & OTHERS

..... Respondents

Represented by: Mr. Chetan Sharma, ASG with
Mr.Vikram Jetley, CGSC for R1 to
R3-Union of India

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

15.07.2020

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1. The hearing has been conducted through Video Conferencing.
2. By this petition, the petitioner, inter alia, prays for quashing of the order dated 5th May, 2020 debarring the petitioner for a period of three years; seeks directions to allow the petitioner to participate in the tender proceedings for the empanelment of Authorized Local Chemist (Meerut) for the year 2020-2023; to allow the petitioner to file the tender bids and compensation.
3. The prayer Nos. (II) and (III) seeking directions to participate in the tender proceedings and submit the tender bids have already become infructuous and thus, this Court is only concerned with regard to the prayer (I) i.e. seeking quashing of the order dated 5th May, 2020 debarring the petitioner for a period of three years and in case, the petitioner makes out a case in its favour, cost of litigation and compensation.
4. Case of the petitioner is that the petitioner had been bidding for

supplying of medicines to all Wellness Centres of CGHS in Meerut. On 15th December, 2016, one such tender was floated wherein, both the petitioner and Rattan Medical Store participated. Since Rattan Medical Store who was the highest bidder did not supply the medicines, a notice was issued for non-supply of medicines to the CGHS Wellness Centres and an appointment letter was issued to the petitioner for a period of three years which contract was to expire in April, 2020. On 9th September, 2019, a letter was received from the Joint Secretary, CGHS, New Delhi regarding distribution of expired medicines by CGHS, Meerut in respect of one Smt. Padma Devi, a CGHS beneficiary, on which, three members Grievance Redressal Committee was constituted on 16th September, 2019. On the same day, the representative of the petitioner appeared before the Committee and submitted a detailed reply. The Committee gave its findings that no injection Nandrolone Decanoate 25 MG was issued to the patient or to her attendant nor was the same prescribed. The petitioner again received a letter dated 13th November, 2019 regarding variations in the batch number in LP voucher, variation in company name, rate variation and expiry dates of medicines for which the petitioner again filed an explanation. On 30th January, 2020, AD Meerut informed about a case of one Mr. Amit Sahu to whom proper medicines were not supplied and thereon, a penalty of encashment of 10% performance bank guarantee on the petitioner was imposed with the warning that in case of repetition of violation of the terms and conditions of empanelment, the petitioner would be suspended from empanelment under CGHS. In the meantime, a fresh tender notice was issued on 20th January, 2020. Simultaneously, an audit was required to be carried out against Rattan Medical Store on which a Committee submitted

its report on 20th April, 2020. On 20th April, 2020, the competent authority also directed AD Meerut to take appropriate action against the petitioner, scrap the E-Tender floated on 20th January, 2020 and also debar the petitioner as a supplier of medicines for a period of three years. Hence the writ petition.

5. In response to the writ petition, reply affidavit has been filed on behalf of the respondents-Union of India. As per the respondents, in an earlier tender finalised in December, 2016, Rattan Medical Store was the H1 bidder and was thus offered contract to supply medicines to all the CGHS Wellness Centres in Meerut, however, Rattan Medical Store did not come forward to accept the contract nor deposited performance guarantee, with the result that the EMD of Rattan Medical Store was forfeited and to mitigate the sufferings of beneficiaries of the CGHS of Meerut, the petitioner, who was the H2 bidder was offered the contract to supply medicines at H1's discounts as per the terms and conditions of the tender published in December, 2016. Since the petitioner i.e. Sahara Medical Store also expressed its inability, the tender was cancelled and was republished on 24th January, 2017. This time, the tender was awarded to two successful bidders, the petitioner being one of them and hence, Centres were allotted to them.

6. A complaint was received from one Mr. Amit Sahu regarding supply of expired medicines by Ms. Sahara Medical Store, the petitioner which was investigated into and it was established that the petitioner had supplied expired medicine to a CGHS beneficiary Smt. Padma Devi on 6th September, 2019 with expiry date printed as June, 2019, whereas the expiry date in indent was 30th June, 2020. In the letter dated 19th September, 2019, the petitioner had admitted its mistake of supplying the expired medicine

however assured that no such incident will take place in future.

7. It is this letter which is the bone of contention. Though the petitioner denied having issued the said letter, however, the respondents have placed on record material to show that the signatures and everything on the said letter matches with that of the petitioner, hence, no case is made out for quashing the order dated 5th May, 2020 debarring the petitioner from participating in the bid.

8. During the course of arguments, learned counsel for the petitioner has submitted that no action has been taken against Rattan Medical Store, however, whether any action was taken against Rattan Medical Store, is not the scope of consideration before this Court.

9. Considering the fact that the allegations against the petitioner were of supply of medicines/drugs which had expired, this Court finds no error in the order of the respondents dated 5th May, 2020 debarring the petitioner from taking participation in the tender proceedings as stated in para (I) of the prayer.

10. Writ petition is dismissed.

11. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 15, 2020

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