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

*Date of Decision: 04.03.2020*

+ W.P.(C) 7647/2016

ABHAY KUMAR PANDEY ..... Petitioner  
Through: Petitioner in person

versus

NATIONAL AIDS CONTROL ORGANISATION ( MINISTRY OF  
HEALTH AND FAMILY WELFARE) AND ANR ..... Respondents

Through: Mrs. Suparna Srivastava & Mr. Akshit  
Navaney, Advs. for R-2  
Ms. Kavita Jha, Mr. Shammi Kapoor & Ms. Swati  
Agarwal, Advs. for R-3

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**

**D.N. PATEL, CHIEF JUSTICE (ORAL)**

1. This writ petition has been preferred as Public Interest Litigation with the following prayers:

*“i. Issue writ/direction in the nature of mandamus directing the respondents to procure DBS cards only through floating an open competitive tender for the Public at Large;*

*ii. quash/suspend all orders given or about to be given for procurement of DBS cards by the Respondent No.1 to M/s GE Health Care Bioscience Ltd. and;*

*iii. pass such other order(s) or further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of*

*this case, for which act of kindness the petitioner as in duty bound shall ever pray.”*

2. We have heard the party in person and counsel appearing for the respondents, it appears that respondent No.1 wanted to purchase Dried Blood Spots Cards for the year 2013 and 2014. The precise requirement of respondent No.1 was for Whatman 903 Dried Blood Spots Cards, which are filter papers also known as Dried Blood Spots Testing Cards.

3. Paras 2 to 6 of the counter affidavit filed by respondent No.1 read as under:

*“2. That I state that vide Order dated 13.8.2019, this Hon'ble Court has directed Respondent Nos.1 and 2 to place on record the following information:*

*(i) whether in the year 2013, any open tender was invited for Dry Blood Spot (DBS) Cards; and*

*(ii) whether in the year 2017 or in the year 2018, any open tender was invited for the aforesaid.*

*3. That I state that in the year 2013, an open tender for procurement of DBS Collection Kit was floated by M/s RITES (the procurement Agent of NACO). As intimated by M/s RITES, only one bid was received. Since the bidder firm had not submitted important documents viz. Checklist for technical specification, manufacturing licence, ISO 13485:2003 certificate, etc. and its bid was also higher than the last purchase price, M/s RITES had recommended to rebid this schedule.*

*4. That I state that rebidding for the procurement of DBS Collection Kit was done through M/s RITES in 2014. As intimated by M/s RITES, the price of the lowest bid received against this tender was abnormally higher than the last purchase price. In view of the same, M/s RITES had intimated that NACO may take the final decision as regards whether to*

*go ahead with the procurement as per lowest bid received in the said tender or not. Subsequently, the said tender was cancelled after obtaining the approval of the Competent Authority. In this regard, it is stated that:- "In this connection, it is stated that tender was cancelled after obtaining the approval of the Competent Authority as some deviation in specification of items were noticed. Normally, dilution of specification after opening of bid is not acceptable. In the scenario, the Competent Authority decided to cancel the instant tender and opted out for re-bidding/bidding, more competitive through more participation".*

*5. That as regards the second query, I state that in the year 2018, tender for the procurement of DBS Collection Kit was floated by the Central Medical Services Society (CMSS), a Central Procurement Agency (CPA) on 24.10.2018 and the said tender was opened on 27.11.2018.*

*6. That I state that, as per CMSS, The said tender was awarded to M/s Perkinelmer India Pvt. Ltd for Quantity of 180950 and M/s Surgeine Healthcare India Pvt. Ltd. for Quantity of 77550 on basis (lowest bid price basis)."*

4. Thus, it appears that initially notice tender was published and only one bidder had opted to participate. Since the bidder firm had not submitted important documents viz. Checklist for technical specifications, manufacturing licence, ISO 13485:2003 certificate, etc. and its bid was also higher than the last purchase price, M/s RITES had recommended to rebid this schedule. It further appears from the facts of the case that Dried Blood Spots Testing Cards which are filter papers – Whatman 903 were later on purchased by respondent No.3. Respondent No.3 is the owner of the trademark 'Whatman 903' purchased by the Government or Government instrumentality. It can also be purchased from the owner of such trademark. Moreover, the said purchase was for the year 2013 and 2014 as stated

hereinabove in the counter affidavit. Now the contract has been given to M/s Perkinelmer India Pvt. Ltd. for quantity of 180950. Similarly, part of the contract to supply the aforesaid filter papers have been given to M/s Surgeine Healthcare India Pvt. Ltd. for the quantity of 77550 on L1 basis (lowest bid price basis). Thus, it appears that there is no monopoly of respondent No.3 to provide such type of filter papers and now for the subsequent years the contract is given to another party. Moreover, the aforesaid two companies are not joined as party respondents. In view of the aforesaid facts that the contract was entered into by respondent Nos.1 to 3 for the year 2013 and 2014 for supply of Dried Blood Spots Cards – which are filter papers having the trademark ‘Whatman 903’. This contract period is already over.

5. Thus, it is submitted by the counsel for respondent No.1 that this is not a Public Interest Litigation and because of non-continuation of this petitioner in service, this writ petition has been preferred by the petitioner.

6. Moreover, new contract has been given to the two different firms as stated hereinabove. Hence, we see no reason to entertain this writ petition. Moreover, it appears that this petitioner was an employee of respondent No.1 whose contractual service was put to an end by respondent No.1 on 10<sup>th</sup> March, 2016. Thereafter he had filed O.A.No.1226/2019 before the Central Administrative Tribunal which was dismissed *vide* order dated 16<sup>th</sup> April, 2019. Writ Petition No.12659/2019 was preferred by this petitioner against dismissal of CAT order dated 16<sup>th</sup> April, 2019 in O.A.No.1226/2019 before this Court which was dismissed *vide* order dated 6<sup>th</sup> December, 2019.

7. In view of the above, this writ petition is disposed of.

**CM APPL.31500/2016** (*Stay*)

8. In view of the final order passed in W.P.(C) 7647/2016, the application becomes infructuous and the same is disposed of accordingly.

**CHIEF JUSTICE**

**C.HARI SHANKAR**

**MARCH 04, 2020**  
**ns**

