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

Date of Decision : 25.02.2020

\+ **W.P.(C) 10536/2018 & CM 41114/2018**

SUPER MEDICARE AGENCIES ..... Petitioner
Through: Mr.Sanjay Sehgal, Adv.

versus

STATE (NCT OF DELHI) & ORS ..... Respondents
Through: Mr.Ramesh Singh, GNCTD with Mr.Chirayu Jain, Mr.Ishan Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner praying for the following reliefs:

> *"1. Issue direction, writ or order to Respondent No. 2 to issue supply order to the petitioner;*
> *2. Issue direction, writ or order to Respondents not to declare fresh tender for the abovementioned medical equipment's required for the health facilities unless the completion of the present contract between the parties;"*

2. It is the case of the petitioner that the respondent no.4 had floated a tender on 16.03.2016 for supply of Medical Equipment for the proposed polyclinics, Mohalla clinics and other health facilities. The petitioner was declared L1 in Group-A of the said tender on 27.07.2017. By a communication dated 06.04.2018, the respondent no.5 informed the petitioner about acceptance of its bid for procurement of 254 units of Multipara Cardiac Monitor (Group-A) and called upon the petitioner to submit the Performance Security Deposit along with the Contract Form and Manufacturer Authorization Form within 15 days of the said letter. The petitioner duly complied with the requisition on 20.04.2018 and submitted all the documents including the bank guarantee for an amount of Rs.81,83,000/-. The respondents also released the Earnest Money Deposit of Rs.20 lacs to the petitioner as the Bank Guarantee had been submitted by it. However, as the supply order was not thereafter issued by the respondent, the present petition was filed.

3. The respondent in its counter affidavit has stated that the supply order was not issued to the petitioner pursuant to a complaint alleging major irregularities, being filed by one Krishna Health Care through the Anti Corruption Branch on 03.08.2018. It was further found that the equipment was also available in the Government e-Market Place (GeM) and in accordance with the General Financial Rules (GFR), 2017, an equipment which is available on GeM was to be procured only

through GeM. It is further contended that due to delay in finalization of the tender, it was felt that the indenting hospitals might have procured the equipment already from GeM. Therefore, the respondent took a decision on 11.02.2019 to cancel the tender and allow the remaining hospitals also to procure their monitors from GeM.

4. The counter affidavit does not state if the above decision was ever communicated to the petitioner. It is also to be noted that the present petition had been filed on or around 27.09.2018. It seems that the decision of the respondent has been taken only as a reaction to the notice issued by this Court on the present petition by its order dated 03.10.2018.

5. The learned counsel for the respondent has also produced before me the relevant file notings leading to the decision. The office noting clearly records that the equipment in question was not available on GeM at the time of floating of the tender or its finalization. It was available only thereafter.

6. As far as the complaint is concerned, it is not contended if any merit was found in such complaint.

7. Similarly, submission that the hospitals may have procured the equipment from GeM, apart from being a mere conjecture, even otherwise cannot be accepted as it has been admitted that the equipment was not available on GeM till much after finalization of the tender.

8. The respondent being bound by Article 14 of the Constitution of India even in matters of contract, cannot act in

an arbitrary manner. A concluding contract cannot be re-opened only because of certain subsequent developments. The respondent should have considered that the petitioner had not only signed the contract but had also acted adverse to its interest by furnishing the bank guarantee and procuring the equipment for making supplies to the respondent, which was to be made within a time bound manner.

9. The learned counsel for the respondent has placed reliance on the judgment of the Supreme Court in ***Rishi Kiran Logistics Pvt. Ltd. vs. Board of Trustees of Kandla Port Trust & Ors.*** (2015) 13 SCC 233 to contend that the remedy of the petitioner would be only in claim of damages as the decision of the respondent cannot be called arbitrary.

10. In my view, the said judgment would not be applicable to the facts of the present case. Admittedly, the equipment was not available on the GeM till after the finalization of the contract in favour of the petitioner. In the present case, the tender had been floated in the year 2016 and reached its finalization only in April, 2018. For almost two years, the equipment was not available on GeM. The petitioner cannot be made to suffer for such delay.

11. It is also to be noted that the decision of the respondent had not even been communicated to the petitioner and was taken only after filing of the present petition.

12. In view of the above, the decision of the respondent to terminate the contract is set aside. The respondent shall

consequently issue supply orders to the petitioner within four weeks from today as much time has already lapsed since finalization of the tender. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 25, 2020
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