

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.912/2021

Jangoraitad Adivasi Vekas Sanstha,
a Public Charitable Trust registered under
the provisions of Maharashtra Public Trust
Act, 1950 having its registered office at 306,
Opp. Volleyball Ground, Laxmi Nagar, Nagpur
440 022 acting through its President, Shri
Prabodh S/o Chandrashekhar Vekhande,
aged 53 Yrs., Occ. Private, R/o Laxmi Nagar,
Nagpur.

..Petitioner.

..Vs..

1. Union of India,
Ministry of Defence, through Defence
Secretary, Department of Defence
Ministry, 101-A, South Block, New
Delhi - 110 011.
2. Ordnance Factory Board,
through Director General, Ordnance
Factories & Chairman, OFB 10, Shahid
Khudiram Bose Road, B.B.D Bagh, Kolkata,
West Bengal - 700 001.
3. General Manager,
Ordnance Factory, Chandrapur.
4. Chandan Deshmukh,
Junior Works Manager, Ordnance Factory,
Chandrapur.
- Both (3) & (4) officiating at Ordnance
Factory Chanda Estate, Bhadravati,
District - Chandrapur 442 501.
5. Janaushadhi Medical Kendra
acting through its Proprietor, Mr. Chandraprabha

Ramesh Govardhan, aged adult, Room
No.1 & 2, House No.747, Shyam Nagar
Ward, Bhagatsingh Chowk, Ballarsha
Bypass Road, Chandrapur - 442 401.

6. Janaushadhi Kendra,
through its Proprietor, Rakesh Rajeshrao
Samarth, House No.2530/11, Ward No.21,
Sai Nagar, Opp. Pragati Hall, Umred Road,
Dighori, Nagpur - 9.

..Respondents.

Shri R.S. Giripunje, Advocate for the petitioner.
Ms Megha Munshi, Advocate for respondent Nos.2 and 3.
Shri Prashant H. Khobragade, Advocate for respondent Nos.5 and 6.

CORAM :- **SUNIL B. SHUKRE AND**
ANIL S. KILOR, JJ.
DATED :- **5.8.2021.**

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent.

2. In the subject tender process, the petitioner has been found to
be not qualified to take part in the further tender process in view of
the petitioner not fulfilling the condition of possession of valid drug
licence which is condition No.2(b) of the terms and conditions of the
said tender notice dated 12.6.2020.

3. According to learned counsel for the petitioner, the petitioner
does fulfill this condition and in support, he invites our attention to

the copy of the Licence Retention Letter (page 35). Learned counsel for respondent Nos.1 to 3 and learned counsel for respondent Nos.5 and 6 both submit that the Licence Retention Letter only shows that condition No.2(b) of the terms and conditions of the tender notice is not fulfilled by the petitioner.

4. On perusal of the Licence Retention Letter, we find ourselves in agreement with the submissions made on behalf of respondent Nos.1 to 3 and respondent Nos.5 and 6. The drug Licence Retention Letter is a document which sufficiently indicates the name of the person or entity to whom the license has been issued. It shows the name of the licensee as “Tripura Jan Aushadhalay (Proprietary), House No.38/2, PNo.R/4, S. No.G12, Jangoraitad Aadhivasi V. S Swapnashila Apartment, Besa – 444 001, Taluka Nagpur Urban, District Nagpur, I/c Person : Prabodh Chandrashekhar Vekhande (Mobile 9225220895). Thus, the Licence Retention Letter is indicative of the fact that the drug licence has been issued in the name of “Tripura Jan Aushadhalay”.

5. A copy of one drug licence, has also been filed on record by the petitioner. This licence shows that licence No.NAG-12750, Dated 03/09/2015 in form [20C] has been granted on 3rd September, 2015

to “Tripura Jan Aushadhalay” for sale of the homeopathic medicines at the terms shown therein. So, in this license also, the name of the licensee is same as in the Licence Retention Letter.

6. Thus, the above referred two documents unmistakably show that the drug licence has been issued to “Tripura Jan Aushadhalay” and not to the petitioner society. Learned counsel for the petitioner submits that petitioner being proprietor of “Tripura Jan Aushadhalay” it would have to be held that the drug licence has been in fact been issued to the petitioner society. Such an argument cannot be accepted for the reason that dealings in drugs, whether they are in the nature of procurement, storage or sale, have to be done only by the licensee specifically named in the drug licence and not by anybody else in his or in its own name representing himself to be the owner or the partner or the proprietor of the licensee specifically named in the drug licence. If it were not so, the authorities empowered to take penal action under the Drugs and Cosmetics Act or any other relevant law, would find it difficult to book the wrong doer or offender under the law.

7. In the instant case, the contract to be awarded as per the tender notice is of supply of generic allopathic medicines. One drug licence that we notice here at page 48 is in respect of homeopathic medicines.

The Licence Retention Letter (page 35) refers to four licences bearing Nos.127746, 127748, 127747 and 127749. These four licenses as per the Licence Retention Letter, have been allowed to be retained in the name of “Tripura Jan Aushadhalay”. Copies of these original drug licenses have not been produced on record. So, we have to rely only upon the Licence Retention Letter and by doing so, we find that even the Licence Retention Letter shows that the licensee is “Tripura Jan Aushadhalay” (Proprietary) and not the petitioner society. It is a different matter that the petitioner society is a proprietor of Tripura Jan Aushadhalay but when it comes to procurement, storage and sale of the licensed drugs, same has to be done in the name of Tripura Jan Aushadhalay and not in the name of petitioner society and that is the requirement of law as found by us earlier and that being so, we find nothing wrong in the action of respondent Nos.1 to 3 in disqualifying the petitioner from the subject tender process. There is no merit in the petition. Writ petition stands **dismissed**. Rule stands discharged. No costs.

JUDGE

JUDGE