

03.01.2022.
Court No.13
Item No. 22
ap

**W.P.A. No. 19667 of 2021
(Through Video Conference)**

**M/s. Swaroop Pharmaceuticals Pvt. Ltd.
Versus
The State of West Bengal & Ors.**

Mr. Swarup Banerjee,
Mr. Abdul Hadi.

...For the petitioner.

Mr. Samrat Sen,
Ms. Manali Ali.

...For the State.

Affidavit-of-service filed in Court today be taken
on record.

The writ petitioner is aggrieved by an order dated 7th October, 2021 passed by the Deputy Director of Health Services (E&S), West Bengal imposing penal measures in terms of Clause 27 of the Notice Inviting Tender dated 24th November, 2020. The petitioner has been blacklisted.

The brief facts of the case are, inter alia, that the petitioner participated in the NIT as above and was successful.

By a letter dated 20th September, 2021, the petitioner asked for a reduction in the price quoted for supply of the medicines in question. This is after receipt of letters dated 5th August, 2021 and 17th August, 2021 calling upon the petitioner to put in the necessary performance Bank Guarantee and execute a supply agreement with the respondents.

Since the respondents were not obliged to reduce any price of any of the medicines, the said show-cause was issued on 4th October, 2021. The petitioner was also given a personal hearing. The impugned order came to be passed a couple of days thereafter.

Counsel for the petitioner would argue that the impugned order is bad for absence of reasons and that the order of blacklisting does not specify the geographical limit and extent for which the petitioner has been blacklisted. It is submitted that the petitioner is already executing contracts with the State of Uttar Pradesh.

Having heard the learned Counsels for the parties, this Court is of the view that there is absolutely no procedural infirmity in the impugned order. The petitioner was given sufficient notice of violation of the terms of the NIT and was called upon to execute agreement and furnish performance Bank guarantee. The petitioner admittedly failed to do so.

The defence taken that the inability on the part of the petitioner to so execute the agreement and furnish performance of Bank Guarantee was due to the COVID situation, cannot be accepted. The tender itself was floated during the COVID period and the petitioner knowing fully well of the nature of the tender, had participated in the same.

It would not be out of place to mention that supply of pharmaceuticals becomes all the more necessary and emergent during a pandemic. The petitioner has therefore participated in the said Tender process notwithstanding the COVID situation. It cannot turn around and cite COVID as a defense.

Further the defence taken by the petitioner for not being able to supply for COVID is unsustainable as view of the requests dated 28th July, 2021 and 20th September, 2021 for reduction in prices. A business loss appears to be the real reason for non-furnishing of performance of Bank Guarantee and non-execution of agreement with the respondents.

In those circumstances, there is absolutely no infirmity in the order passed against the petitioner by the respondents.

In view of the above discussions, the instant writ petition must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)