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W.P.No.4503 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.4503 of 2023
and
W.M.P.Nos.4521 & 4523 of 2023

K.Bowjagani

... Petitioner

Vs.

1.The Director of Medical and Rural Health services,
Represented by its Director,
Chennai – 600 006.

2.The Principal,
Medical College Hospital,
Government Hospital,
Villupuram Taluk and District.

3.The Managing Director,
Villupuram District Coop,
Milk Producers Union Ltd.,
Villupuram.

4.The Assistant Executive Engineer,
Public Works Department,
Building Sub Division,
Medical Services, Villupuram.

5.J.Jayabalamurugan

6.J.Jayakumar

... Respondents



Prayer:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Na.Ka.No.4274/Thi (MA) Va/2022 dated 25.01.2023 and the Consequential Order of the 2nd respondent in Na.Ka.No.4274/Thi(MA) Va/2022 dated 07.02.2023 and to quash the same and further direct the 2nd respondent to allot Aavin Milk Parlour to the petitioner at the premises of the Government Medical College Hospital at Mundiampakkam Village, Villupuram as per the tender document presented on 27.12.2022.

For Petitioner	: Mr.M.Rajasekhar
For R1, R2 & R4	: Mr.S.Ravikumar Special Government Pleader
For R3	: Mr.I.John Arockiadas Standing Counsel
For R5 & R6	: No appearance

ORDER

The challenge in this Writ Petition is to the order passed by the second respondent dated 25.01.2023 and the consequential order dated 07.02.2023 and further to direct the second respondent to allot Aavin Milk Parlour to the petitioner at the premises of the Government Medical College Hospital



situate at Mundiampakkam Village, Villupuram as per the tender document presented on 27.12.2022.

2. Mr.M.Rajasekhar, learned counsel appearing for the petitioner would submit that the second respondent issued an advertisement calling for an open tender on 16.12.2022 and before the tender was called for, the second respondent issued a newspaper advertisement in 'Dinamalar' and 'Dailythanthi' on 13.12.2022, in which, one of the conditions to participate in the tender process is as follows:-

“2. The Tenderer having dealership of Aavin must
essential to participate the Tender.”

2.1 The learned counsel by referring to the above condition submitted that if anybody intend to participate in the open tender called for placing Aavin Milk Parlour at Government Villupuram Medical College & Hospital, Villupuram dated 16.12.2022, they must be a dealer in Aavin. It is further submitted that, in the present case, the third respondent had issued four dealership application forms for four persons, out of the four persons, only



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the petitioner and the 6th respondent had participated in the tender and 6th respondent is declared as the lowest bidder and his bid was confirmed and accordingly, an order dated 25.01.2023 was passed according the tender to the sixth respondent, Jayakumar to run the Aavin Milk Parlour at the Government Villupuram Medical College & Hospital. Challenging the said order dated 25.01.2023 as well as the consequential order, by virtue of which, the petitioner's tender has been cancelled, the present Writ Petition is filed.

2.2. The bone of contention of the learned counsel for the petitioner is that the 6th respondent is not at all a dealer of Aavin on the date when the open tender was called for (i.e.) on 16.12.2022, however, the 6th respondent in collusion with the 2nd and 3rd respondents have created a record, as if, due dealership of the 5th respondent got transferred to the name of the 6th respondent on 27.12.2022, which is the last date for the submission of application form to participate in the open tender and accordingly, accorded tender in favour of the sixth respondent. Therefore, the learned counsel contended that as on the date of the issuance of advertisement, when open tender was called for, the 6th respondent was not at all a dealer in Aavin, and hence, he is disqualified from participating in the tender process, however,



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ignoring the said condition, the 2nd and 3rd respondents allowed the 6th respondent to participate in the tender process and declared him as successful bidder and consequently, issued the impugned tender order in favor of the 6th respondent. Therefore, the learned counsel contended that by playing fraud the official respondent, viz., the 2nd and 3rd respondents along with fifth and sixth respondents, maneuvered to accord tender in favour of the sixth respondent and therefore, the impugned order conferring tender in favour of the sixth respondent as well as the consequential notice, canceling the petitioner's tender are not sustainable.

3. Mr.S.Ravikumar, learned Special Government Pleader for respondents 1, 2 and 4 while reiterating the averments made in the counter affidavit filed by the second respondent would submit that as on 27.12.2022, the due dealership which was issued in favour of the 5th respondent was transferred to the name of the 6th respondent and on the same day, the 6th respondent submitted the tender application, which was the last date for the submission of the tender application and since sixth respondent quoted the lowest bidder, his bid was confirmed in the impugned order issued and hence, the same is sustainable.



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4. Mr.I.John Arockiadas, learned Standing Counsel while reiterating the averments made in the counter affidavit filed by the third respondent would submit that since the petitioner is already running Aavin shop in the same campus of the second respondent-Hospital for last two years and as the petitioner was found selling unauthorized products other than Aavin products, hence, her dealership was cancelled by the third respondent by order dated 13.05.2022, against which, though the petitioner filed W.P.No.13538 of 2022, and obtained a stay order, pursuant to which, the petitioner is running the shop, however, the third respondent, who was not aware of the stay order, already allotted the above shop to the fifth respondent, who, in turn, has given the dealership to the sixth respondent, the bid of the sixth respondent has been accepted by the second respondent. Therefore, the learned Standing Counsel prayed for dismissal of the Writ Petition.

5. Heard Mr.M.Rajasekhar, learned counsel appearing for the petitioner, Mr.S.Ravikumar, learned Special Government Pleader for respondents 1, 2 and 4; Mr.R.Sivaraman, Junior Assistant, Government Medical College and Hospital, Villupuram for 2nd respondent (who is present



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in Court) and Mr.I.John Arockiadas, learned Standing Counsel for the third respondent and perused the materials on record, including the counter affidavit filed by the second respondent, who is the responsible person for calling the open tender, receiving the tender forms and after finalization, issued the impugned orders and the counter affidavit filed by the third respondent. Insofar as respondents 5 and 6 are concerned, though they have been served with notice and their names were also printed in the causelist, they have not entered appearance either in person or through any other counsel.

6. Upon perusal of the materials placed on record, it appears that the second respondent had called for an open tender on 16.12.2022, and the notification with respect to the said tender was released in the newspapers viz., 'Dinamalar' and 'Dailythanthi' on 13.12.2022, wherein, it is clearly stated that the person, who intends to participate in the tender must be a dealer in Aavin, and last date for submission of tender as 27.12.2022. It has to be noted here that, nowhere, in such tender notification, it stated that the person, who is intending to participate in the tender can become a dealer, subsequent to the issuance of such notification.



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6.1 In the present case, the 6th respondent became a dealer only on 27.12.2022, i.e., subsequent to the date when the open tender was called for on 16.12.2022, which is the last date for submission of the tender application and not on the date when the advertisement was issued in the newspapers viz., 'Dinamalar' and 'Dailythanthi', i.e. on 13.12.2022. Admittedly, the sixth respondent was not a dealer in Aavin as per the terms and conditions contained in the open tender called for on 13.12.2022. Therefore, it is crystal clear that as on the date, when the notification was issued on 13.12.2022, the 6th respondent is ineligible to participate in the tender process. However, it appears that only with the intention to assist the 6th respondent, the name change and the transfer of Aavin dealership from the 5th respondent to the 6th respondent was allowed on 27.12.2022, which is the last date for submission of the tender, so as to facilitate the 6th respondent to enable him to participate in the tender.

6.2 Therefore, this Court finds that the name change dated 27.12.2022, was brought out only with a sole motive to facilitate the 6th respondent to participate in the tender process. Thereafter, the 6th respondent



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was allowed to participate and subsequently, the tender was also confirmed in favour of him.

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6.3 Further, it is seen that only two persons had participated in the tender process, one is the petitioner and the second one is the 6th respondent and the reason for not giving tender to the petitioner is that since the petitioner was no longer a dealer in Aavin, as her dealership was cancelled by the third respondent on account of her having sold the products, which are other than Aavin products (as could be seen from the counter affidavit filed by the third respondent) and therefore, she is not eligible, is fallacious. Had she had been found to be disqualified, firstly, she wouldn't have been allowed to participate in the tender. Admittedly, the petitioner has been allowed to participate in the tender, and therefore, it is not open to the second respondent to contend that owing to cancellation of her dealership, she cannot be declared as successful.

6.4. In the light of the above, this Court is of the view that, it is the 6th respondent, who is ineligible to participate in the tender and not the petitioner and as per the terms and conditions of the tender notification, the



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petitioner is an eligible person to participate in the tender, and accordingly, she had participated and therefore, she has to be issued with an order for running the Aavin Milk Parlour in the second respondent-Hospital.

7. Thus, for the aforesaid reasons, the Writ Petition is allowed, order passed by the second respondent dated 25.01.2023, whereby, the sixth respondent has been given the tender and the consequential order dated 07.02.2023, whereupon, the petitioner's tender has been rejected are set aside with a further direction to the second respondent to allot Aavin Milk Parlour to the petitioner, at the premises of the Government Medical College Hospital situate at Mundiampakkam Village, Villupuram as per the tender document presented on 27.12.2022. No costs. Consequently, connected miscellaneous petitions are closed.

02.11.2023

Note: Issue order copy on 06.11.2023

veda/sd

Index : Yes / No

Speaking order/Non-Speaking order

Neutral Citation : Yes / No



W.P.No.4503 of 2017

To
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- 1.The Director of Medical and Rural Health services,
Represented by its Director,
Chennai – 600 006.
- 2.The Principal,
Medical College Hospital,
Government Hospital,
Villupuram Taluk and District.
- 3.The Managing Director,
Villupuram District Coop,
Milk Producers Union Ltd.,
Villupuram
- 4.The Assistant Executive Engineer,
Public Works Department,
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KRISHNAN RAMASAMY, J.

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