



2025:DHC:797-DB



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

+ W.P.(C) 1072/2025, CM APPL. 5284-85/2025

MDC PHARMACEUTICALS PRIVATE LIMITED

.....Appellant

Through: Mr. Abhishek Sethi and Ms.
Richa Sethi, Advocates.

versus

EMPLOYEE STATE INSURANCE CORPORATION

THROUGH ITS DIRECTOR GENERALRespondents

Through: Mr. Shlok Chandra, Standing
Counsel with Mr. Sankalp
Sharma, Advocate.

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Date of Decision: 28th January, 2025**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J: (ORAL)**

1. The present petition challenges the e-mail dated 27.01.2025 issued by respondent no.2, Medical Commissioner, ESIC (hereinafter referred to as "*Respondent Corporation*"), whereby the bids submitted by the Petitioner Company were rejected on the ground of being non-responsive so far as the technical bid is concerned. The rejection was based on the Petitioner Company having failed to submit the valid requisite documents as per clause 8 of e-Tender Enquiries under consideration i.e., *documentary evidence for Zone-2*.

2. The facts, shorn of unnecessary details and germane to the issue at hand and collated from the underlying writ petition, are as follows:



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- a. That on 28.05.2024, five e-Tender Enquiry Nos.159 to 164 were floated by the Respondent Corporation with a view to populating its Rate Contract List for supply of drugs enumerated in the schedule annexed to the said e-tenders. The bids were allowed to be submitted uptill 01.07.2024 (till 10 a.m.). The said date, however, was extended till 15.07.2024 upto 10 a.m. *Vide* a Corrigendum dated 26.06.2024, the date of opening of the technical bids was changed from 02.07.2024 at 10 a.m. to 16.07.2024 at 10 a.m.
- b. Within the stipulated time period, the Petitioner Company submitted its bid towards 11 items appearing in 4 e-Tender Enquiries (159, 160, 162 & 163) and submitted bank guarantees (EMD/ BG).
- c. That as per clause 8 of all the e-tender enquiries (159, 160, 162 & 163), require the Participating Pharmaceutical Firm/bidder to furnish an undertaking in the format annexed as *Annexure-L* with all the e-Tender Enquiries; to the effect that it has at least one registered office or Depot in any state of the four zones in the country.
- d. That in compliance of the abovesaid clause of all the e-Tender Enquiries (159, 160, 162 & 163), the Petitioner Company submitted an undertaking as per *Annexure-L* which was verbatim the same in respect of all the e-tender enquiries.
- e. Along with the undertaking, a letter dated 13.07.2024 was also filed on behalf of the Petitioner Company. *Vide* the said letter, the Respondent Corporation was informed that the GST registration of the Petitioner Company's Zone 2 office/ depot



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had been cancelled due to the sudden demise of the owner of the premises, against which, the said GST registration had been obtained. It was further informed that, the process of obtaining a new GST registration in the State of Gujarat had been initiated against a fresh address.

f. Thereafter, *vide* an E-Mail dated 05.12.2024 pointed out certain grounds/reasons of ineligibility of the technical bid submitted in response to e-Tender Enquiries under consideration. The Petitioner Company was given an opportunity to make a representation against reasons of Technical Non-Eligibility upto 11.12.2024 till 4 p.m. The two reasons of Technical Non-Eligibility had been communicated *vide* the abovesaid E-Mail and the same were as under:-

- i. *The firm has not submitted the valid requisite document as per clause No. 8 of Tender Enquiry i.e. documentary evidence for Zone-2.*
- ii. *DCGI/ CDSCO Permission for Fixed Dose Combination issued to the firm/ online permission on CDSCO site for item No. 2056 not attached.*

g. Within the stipulated period, the Petitioner Company made a representation dated 11.12.2024 to Respondent Corporation against the abovesaid reasons of Technical Non-Eligibility.

h. Consequently, the Petitioner Company received an E-Mail dated 27.01.2025 from Respondent Corporation whereby the bids submitted by the Petitioner Company were rejected on the ground of Technical Non-Eligibility i.e., not having submitted the valid requisite document as per clause No. 8 of all the e-Tender Enquiries under consideration i.e. *documentary*



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evidence for Zone-2.

i. Hence, the present petition.

3. Learned counsel appearing for the Petitioner Company contends that as per clause 8 of the e-Tender Enquires the participating pharmaceutical firm was to submit a valid documentary evidence in the name of the participating firm in the form of valid manufacturing drug licences or wholesale drug licenses or GST certificate which would be considered as proof of depot as per *Annexure-L*. He submits that the Petitioner Company had GST registration certificate in its name *w.e.f.* the year 2019, and due to fortuitous circumstances, the said GST registration in the name of the petitioner at Motera, Ahmedabad, got cancelled due to sudden death of the owner of the premises on which the GST registration was obtained. He submits that this happened prior to the closing date of the bid submission i.e., 15.07.2024 (as extended from 01.07.2024 *vide* a corrigendum dated 26.06.2024). He states that this information was furnished to the Respondent Corporation *vide* the communication dated 13.07.2024 i.e., prior to the closure date of submission of the bid. By inviting attention to the letter dated 13.07.2024, learned counsel states that the address of the warehouse/depot in respect of which the GST registration is sought was clearly mentioned.

4. Learned counsel draws attention to the e-mail dated 04.07.2024 issued by the GST department of the Gujarat Commercial Tax Department, Government of Gujarat, acknowledging the application of the petitioner seeking new registration on the GST portal. He also submits that in that context, the said department also gave a Temporary Reference Number. According to the learned counsel, the letter dated



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13.07.2024 read in conjunction with the e-mail dated 04.07.2024, would clearly indicate that the Petitioner Company had furnished the requisite information to the Respondent Corporation so as to enable it to participate in the tender process.

5. He submits that even otherwise the non-submission of GST certificate before the closure date of the bid would not be fatal to the eligibility of the Petitioner Company to participate in the tender process. In that context, learned counsel invites attention to Clause 7.3.4 read with clause 7.4.1(iv) of the Manual for Procurement of Goods, 2022 issued by the Ministry of Finance, Department of Expenditure, Government of India (hereafter referred to as “*Manual for Procurement*”), to submit that the said lapse is only a minor infirmity or irregularity which cannot be considered as fatal to the eligibility of the Petitioner Company.

6. Learned counsel submits that on 05.12.2024, the Respondent Corporation issued a communication *vide* an e-mail pointing out reasons of ineligibility of the technical bid submitted by the petitioner. He states that the petitioner had submitted its representation on 11.12.2024 clarifying that the petitioner had since obtained a fresh GST registration certificate which was enclosed with the representation. He states that despite having tendered its representation dated 11.12.2024 along with the new GST registration certificate, it was only by the impugned E-Mail dated 27.01.2025, the representation has been rejected by holding Petitioner Company as non-responsive in the technical bid.

7. Learned counsel also vehemently contends that in a previous round of similar dispute, this Court had, *vide* order dated 16.02.2022 in W.P.(C) 7620/2021 captioned *M/s MDC Pharmaceuticals Limited vs.*



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Union Of India & Ors., held in favour of the petitioner. He states that in para 43 of the said judgment it was held that the Tender Evaluation Committee (hereinafter referred to as “TEC”) while considering and evaluating bids cannot act in a mechanical manner and that it is neither a post office nor a mechanical computer rather comprises highly intelligent and qualified people who are expected to sift through the information in a reasonable manner and apply their mind to the same. He states that the Court had observed that the purpose of tenders is to get maximum participation and not to stump the bidders on hyper technical grounds. On that basis, he submits that the Respondent Corporation have committed a gross error in the present petition. He states that all that was required was the Petitioner Company to have a GST registration of a depot as per *Annexure L*. He contends that the letter dated 13.07.2024 informing the Respondent Corporation about cancellation of the previous GST certificate coupled with the information regarding the address of the depot read with the GST certificate dated 28.08.2024, issued to the petitioner at the same address ought to have been considered by the Respondent Corporation as fulfilment of the eligibility condition in terms of clause 8 of the e-Tender Enquiries. He states that the Respondent Corporation is well aware of the previous contracts executed by the Petitioner Company in the state of Gujarat and hence cannot feign ignorance about the capability and performance of the Petitioner Company.

8. Learned counsel emphasises that the mere delay, though after due information was provide to Respondent Corporation, in submission of the GST registration certificate at a new location would not disentitle the Petitioner Company from being considered as technically responsive.



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Moreover, he forcefully submits that clause 7.3.4 read with clause 7.4.1(iv) of the Manual For Procurement ought to be read in favour of the Petitioner Company. He vociferously also contended that the delay in disposal of his representation submitted on 11.12.2024, and rejected on 27.01.2025, is clearly *malafide* and intended to debar the Petitioner Company from participating in the tender process. He states that in public tenders, the State is expected to be fair and transparent. According to learned counsel the Respondent Corporation have violated the settled law of the land. He also submits that *ex facie* the rejection is malicious inasmuch as the rejection of representation was passed on 27.01.2025, and financial bids are being opened today, i.e., 28.01.2025. No opportunity to represent thereagainst or approach the Courts for redressal of grievances has at all been provided. According to him there is a gross violation of principles of natural justice which ought to be considered by this Court.

9. *Per contra*, Mr. Shlok Chandra, learned Additional Standing Counsel, GNCTD, stoutly opposes the submissions addressed on behalf of the Petitioner Company. He states that as on the closing date of submission of bids, the Petitioner Company did not have any valid GST certificate with it. He states that in the communication dated 13.07.2024, the Petitioner Company has clearly admitted that the GST certificate registered at Motera, Ahmedabad, got cancelled due to death of the owner of the premises. This communication itself indicates that at least as on that date the Petitioner Company did not have any certificate. He also points out that the GST certificate dated 20.08.2024 was submitted only with the representation also reiterating the fact that on the closing date of the bid submission i.e., 15.07.2024, the Petitioner Company did



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not have a valid GST certificate. He contends that merely because the Petitioner Company had applied for a new registration certificate it cannot be assumed that as on 15.07.2024, the Petitioner Company had fulfilled the essential condition contained in clause 8 of the e-Tender Enquires.

10. On the same basis learned counsel submits that the reliance on clause 7.3.4 read with clause 7.4.1(iv) of the Manual For Procurement would also not come to the rescue of the Petitioner Company since the condition was essential and not a minor infirmity or irregularity. Thus, the Petitioner Company not having fulfilled the essential eligibility condition of the e-Tender Enquires was rightly held to be non-responsive so far as the technical bid is concerned. He states that the present petition thus may be dismissed.

11. Having heard the learned counsel for the parties we are of the firm opinion that the present petition does not deserve to be entertained for the following reasons.

12. It is imperative to consider the essential eligibility condition as per the e-Tender Enquires which is reproduced hereunder:

8. UNDERTAKING FOR PERFORMANCE

The Participating Pharmaceutical Firm / bidder shall furnish an undertaking with respect to timely and efficient supply of the quoted drugs as per the tender in all the locations where ESIC and ESIS Hospital and State ESI Directorates are located. For this, Participating Pharmaceutical Firm should have at least one registered office or Depot in any state of the zone as per the description below:-

- Zone 1- Kerala, Karnataka, Tamil Nadu, Puducherry, Andhra Pradesh, Telangana
- Zone 2- Maharashtra, Goa, Madhya Pradesh, Chhattisgarh, Gujarat, Rajasthan
- Zone 3- Jammu & Kashmir, Punjab, Himachal Pradesh, Delhi & Haryana, Uttar Pradesh, Uttarakhand



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- Zone 4- Odisha, Jharkhand, West Bengal, Bihar, North East States including Sikkim.

(Distributors/Dealers will not be considered)

Participating Pharmaceutical Firms would submit in the tender as per Annexure L the list of the office or Depot addresses, email ID & Telephone number located in the States along with the name of the person Incharge. Valid documentary evidence in the name of the Participating firm i.e. Valid Manufacturing Drug Licences or Wholesale Drug Licenses or GST Certificate only will be considered as proof of depot in Annexure L and have to be submitted along with the bid. Aforesaid offices/ officials will also be responsible for managing the supply in the stipulated time at the ESI location of the concerned Zones under its jurisdiction and other matters, if any.

[Emphasis Supplied]

The plain reading of clause 8 of the e-Tender Enquires brings to fore the fact that the participating firm ought to have a GST certificate in its own name before being considered as eligible at the time of submission of the bid document. In the present case, we find that the previous GST certificate itself, admittedly, was not in the name of the Petitioner Company but in the name of the owner of the premises on which the GST registration was obtained. Thus, the first essential condition of the participating firm having a GST certificate in its own name itself, was unfulfilled.

13. Apart from the aforesaid, though the Petitioner Company appears to have applied for a new GST registration certificate, purportedly acknowledged on 04.07.2024, by the Gujarat Commercial Tax Department, it was only issued a Temporary Reference Number and not a Temporary or a Provisional Registration Certificate in its name as the learned counsel for the Petitioner Company would have us believe. It is apparent that the Temporary Reference Number is only in the context of



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the application submitted for GST registration and not the registration certificate itself. In that view of the matter the reference to application for new registration for GST certificate is irrelevant. Thus, we find that, *prima facie*, on the aforesaid two grounds the Petitioner Company appears to have not fulfilled the essential condition under clause 8 of the e-Tender Enquires, as on the closing date of bid submission.

14. In so far as the reliance on Clause 7.3.4 read with Clause 7.3.1(iv) of the Manual For Procurement is concerned we are of the considered opinion that the lack of a valid GST registration certificate in its own name is not a “*minor infirmity*” or “*irregularity*” to come within the ambit of either clause 7.3.4 or “*minor deviations*” to come within the purview of clause 7.4.1(iv). As observed above by us, Clause 8 of the e-Tender Enquiries considers GST certificate in the name of the participating firm as an essential and mandatory condition and thus could not be deemed to be a minor infirmity. Thus we are not persuaded by the learned counsel’s submissions predicated on the aforesaid clauses of the Manual For Procurement.

15. We have also examined the judgment of the Coordinate Bench of this Court in ***W.P.(C) 7620/2021*** (*supra*) and find that the said judgment was in respect of documents/records in relation to the deposit of ESI dues by an employer further holding that the petitioner therein had not only provided the employer’s name and code numbers but also the ESI challans by which dues were deposited. All that was required to do in that case by the respondent therein, was to check, at its own end whether the petitioner’s claim was correct. It was in that context that this Court had interfered and upheld the contention of the petitioner therein. However there is a vast difference in the facts obtaining in the present



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case. Undoubtedly, the Petitioner Company neither had a valid GST registration certificate as on the date of the closing date of the submission of the bid nor was the GST certificate in its own name as essentially required by clause 8 of the e-Tender Enquiries.

16. We have also perused the registration certificate dated 20.08.2024 issued in the name of the Petitioner Company which clearly indicates that the same is *w.e.f.* 20.08.2024 and thus establishing, *prima facie*, that as on the closing date of submission of the bids, the Petitioner Company did not have in its possession a valid GST registration certificate.

17. So far as the submission of the learned counsel for the Petitioner Company regarding violation of the principles of natural justice is concerned, since the Petitioner Company did not fulfil the essential eligibility condition as on the closing date of the bid submission held above, we do not find it apposite to traverse the said submission in the facts of the case.

18. Having regard to the aforesaid analysis, we do not find any merits in the petition and the same is accordingly dismissed, with no order as to costs. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JANUARY 28, 2025/yrj/rl