30.04.2026
SL No.3
Court No.12
(GC/CP)

FMA 767 of 2018
CAN 1 of 2017 (Old CAN No. CAN 7846 of 2017)

The OSD & EO Special Secretary,
Department of Health & Family Welfare,
Govt. of West Bengal
Vs.
Shree Pacetronix Ltd. & Ors.

Mr. Kishore Datta, Ld. Advocate General,
Mr. Suddhasatva Banerjee,
Mr. Chayan Gupta,
Mr. Sandip Das Gupta,
Mr. Debayan Sen,
Mr. Niket Ojha

…for the Appellant.

Mr. Rohit Das,
Mr. Sreyash Basu Dasgupta,
Ms. Divya Tekriwal,
Ms. Preena Salgia

…..for the Respondents.

1. The appeal arises out of a judgment and order dated April 7, 2017 passed in WP No.14445(W) of 2016. The learned Judge held that although the writ petitioner was not a small scale industry registered in West Bengal, it had continuously supplied pacemakers and Indo Cardinal electrodes to the Government of West Bengal from 2004 till 2016. Thus, the annual turnover of the said unit was well within the knowledge of the tendering authority before prescribing the eligibility criteria in respect of an e-tender for procurement of some surgical/hospital items for the year 2016-2018 by

the Deputy Director of Health Services (E&S), WB, Central Medical Stores, Kolkata. The Notice Inviting e-Tender dated February 29, 2016 was issued with various terms and condition. The principal challenge in the writ petition was the annual turnover requirements, which are quoted below:-

“5. ANNUAL TURNOVER REQUIREMENTS:

I. Principal Manufacturer: Average annual Turn Over is more than Rs.50(fifty) crore totaling more than 150 (One hundred fifty) crore for the last three years, i.e. for the year 2012-13, 2013-14 & 2014-15/Direct Importer Average annual Turn Over is more than Rs.20(twenty) crore totaling more than 60(Sixty) core for the last three years, i.e for the year 2012-13, 2013-14 & 2014-15/ are only eligible to participate in the Tender and S.S.I./s registered in West Bengal whose average annual Turn Over is more than Rs.1(One) crore totaling 3 (Three) crore for the last three years i.e for the year 2012-13, 2013-14 & 2014-15, are eligible to participate in the Tender.

II. For Ward Miscellaneous items and Miscellaneous items: Manufacturers/ authorized distributor whose average annual Turn Over is more than Rs.10(Ten) crore totaling 30(Thirty) crore for the last three years, i.e. for *the year 2012-13, 2013-14 & 2014-15."*

2. The submissions of the writ petitioner before His Lordship were as follows:-

   a) Upon being aware of the fact that the writ petitioner was not a small scale industry registered in West Bengal, the relaxation in the annual turnover of SSI units registered within the State of West Bengal had been prescribed, only to oust competition from SSI units outside West Bengal.

   b) The principal manufacturers who were allowed to participate at the all India level were required to have an annual turnover of more than Rs.150 crores. Admittedly, a unit which had annual turnover of more than Rs.150 crores could not be a small scale industry.

   c) The small scale industries all over India, apart from State of West Bengal were thus, indirectly ousted from the competition. Only manufacturers and importers having excessive turnover, were also allowed to participate, without any territorial restriction.

   d) The sole aim of the tendering authority was to deny the writ petitioner an opportunity to participate, although the writ petitioner had been supplying pacemakers to the State of West Bengal for more than 12 years, without any complain.

e) It was well-known that, the writ petitioner was the only manufacturer of cardiac pacemaker and indo-cardinal electrodes in India and the bidders who succeeded in the technical round were not manufacturers, but importers.

f) Hence, the clause 5(I) of the NIT, with regard to the eligibility of principal manufacturers and importers were an eye-wash.

g) Although, the Finance Rules of the State of West Bengal required at least three successful bidders in the technical round, for the tendering process to continue, but in violation of the said rules the tender process continued, when only two bidders qualified in the technical round.

3. Upon hearing the parties, His Lordship came to the following conclusions:-

a) The stipulated tender terms were discriminatory, as relaxation in respect of eligibility was given to only small scale industries in West Bengal.

b) The stipulation that a manufacturer had to maintain a hefty turn-over was also discriminatory.

c) Government officials were interested to grant the contract to a particular bidder.

d) The state of affairs were particularly created to keep the writ petitioner out of the zone of participation, although the writ petitioner was the supplier all along.

e) As the successful tenderer had already performed the work for more than six months, no relief could be granted under the writ jurisdiction, but the writ petitioner had a right to claim damages on the basis of the said judgment, for lost opportunity in getting the contract from the government.

4. Aggrieved, the tendering authority preferred this appeal. The learned Advocate General appeared for the appellant, i.e., the OSD & EO Special Secretary, Department of Health and Family Welfare, Government of West Bengal. It was submitted by him that the order impugned does not disclose the reasons as to why, His Lordship had come to the specific conclusion that the tender conditions were discriminatory and was framed solely with the intention to oust the writ petitioner from the bidding

process. The successful tenderer was not a SSI unit registered in West Bangel. The finding that some of the government officials were interested to grant the work to the respondent no. 5 in the writ petition, were unsubstantiated and vague. Those persons ought to have been made parties to the proceeding in the event His Lordship was to rule on their actions being mala fide.

5. It was submitted that the entire process was by way of an open tender. The bidders from all over India could participate and the bids were not restricted to the State of West Bengal. At the national level, manufacturers and importers with specific turn over were allowed to participate, but preference was given to small scale industries registered with the State of West Bengal only. Relaxation in the eligibility criteria as regards the turnover of SSI units registered in West Bengal was made, to promote small scale industries within the State of West Bengal in terms of Section 11 of the Micro, Small and Medium Enterprises Development Act, 2006, (hereinafter referred to as 'the Act of 2006'), and also in terms of Finance Rules dated November 19, 2004, issued by the Government of West Bengal, Finance Department, Audit Branch.

6. Reference was made to Rule 47(14) and 47A(i) of the said Rules. The Rules provided that all registered SSI units of the State were to be given 15% price preference vis-a-vis large and medium scale industrial units and other SSI units located outside the State. The Rules were amended vide notification dated April 4, 2014, i.e., after the promulgation of the Act of 2006, which permitted limited tender enquiry (LTI) and single tender enquiry in case of urgency, with the concurrence of the finance department.

7. Thus, the contention of the writ petitioner before the learned Single Judge that the finance rules were violated as three bidders had not qualified in the technical round, could not be sustained, and His Lordship failed to take into consideration the approval that was taken from the Finance Department for procurement of 139 special items on urgent basis, from the 1 bidder.

8. It is next submitted by the learned Advocate General that, the eligibility criteria (turnover) could not be faulted, as the rationale behind such prescription/relaxation for SSI units in West Bengal was to promote such units within the State and for realization of the aims and objects of the said Act. The said prescription had a public element

inasmuch as, protection, of SSI units. The policy of the State of West Bengal to give preference to SSI units within the State is contained in the Rules. Such policy was in consonance with the beneficial legislation which found its expression in the Act of 2006.

9. Reliance was placed on various decisions of other High Courts in support of the contention that, a special criteria could be formulated or prescribed for SSI units, and the same was not contrary to public policy.

10. Mr. Das, learned advocate for the writ petitioner, submits that it is an admitted position that the petitioner is the sole manufacturer of the equipment and had been supplying to the State of West Bengal between 2004 to 2016. If the argument of the learned Advocate General is treated to be correct, in that event, SSI units irrespective of their state of registration should have been allowed similar benefit. Actually, the State of West Bengal was creating a geographical barrier by providing relaxation only for its own SSI units on the parameter of turn-over. This was contrary to the Act of 2006. Other manufacturers and importers who were allowed to participate, could never be SSI units as the turn-over prescribed was very excessive. The

eligibility criteriawas craftily drafted, only to deprive other SSI units of the country. As per Mr. Das, the Act of 2006, did not make any discrimination on the ground of state of registration and the procurement policy of 2012 issued by the Ministry of Micro, Small and Medium Enterprise prescribed that, 25% preference with regard to procurement of equipments, goods or materials in any tender process, should be given to MSME units, without prescribing any criteria on turnover.

11. Reliance has been placed on the decision of Lifecare Innovations Pvt. Ltd. & Anr. Vs. Union of India & Ors., reported in 2025 SCC Online SC 436, in support of the contention that the Supreme Court had recognized the right of MSME units to be included in the competitive tender process, without there being any eligibility criteria as regards turn over.

12. Considered the rival contentions of the parties. We find that His Lordship held that the turnover clause was discriminatory, but His Lordship had not considered the relevant law governing fixation of eligibility criteria by the State vis-à-vis the right of an MSME unit to be granted preference under the Act of 2006. The observation that the eligibility criteria was discriminatory towards the writ

petitioner, hence the writ petitioner was entitled to damages, was not supported by any reason. The finding that the Finance Rules were not followed was arrived at without considering the affidavit-in-opposition filed by the appellant. It was specifically mentioned that, permission was taken from the Finance Department, to deviate from the rules, due to urgency. More importantly, when the judgment of the court recorded that some of the officers of the State had intentionally prescribed such stringent and tailor-made criteria, only to favour the respondent no. 5 in the writ petition, such finding on malice in law and fact, was not supported by any documentary evidence or reason.

13. Under such circumstances, the order impugned cannot be sustained. The same is set aside.

14. The writ petition has to be heard afresh, on all the issues raised by the learned advocates for the respective parties. As considerable time has elapsed since the disposal of the writ petition, we are of the view that both the parties should be allowed to file additional affidavits.

15. All points are kept open, to be decided in the writ petition, including the issue as to whether the law mandated that in every tender process of the State, special provisions/relaxation should be made for

procurement from MSME's registered anywhere in India, without prescribing any eligibility criteria on minimum turnover.

16. It has been informed to us that a suit has been accordingly filed and the same is in the verge of conclusion.

17. A supplementary affidavit to the writ petition will be filed within two weeks from date. The supplementary affidavit-in-opposition shall be filed within two weeks thereafter.

18. Accordingly, the appeal and the connected application are disposed of.

19. Parties are at liberty to mention the matter before the appropriate bench, after the expiry of the aforementioned period.

20. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)