
(2011) 05 PAT CK 0093
In the Patna High Court
Case No : CWJC No. 8744 of 2010

M/s Akash Medico

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 4 PLJR 109

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner challenging order dated 26.4.2010 (Annexure-5) issued from the office of Additional Director, Central Government Health Scheme by which Additional Director, Central Government Health Scheme, Patna (respondent no. 3) terminated the tenure of M/s Akash Medico (petitioner) as local chemist for Zone-II of the C.G.H.S., Patna from 26.4.2010 and empanelled M/s Shikha Medico, Patna (respondent no. 6) as local chemist for C.G.H.S., Wellness Centre-2, Kankarbagh and also for direction to open the price list of the petitioner and empanelment in favour of the petitioner.

2. Learned counsel for the petitioner has claimed that the petitioner is a firm duly registered under the Registration Act having valid license to sell, stock or offer for sale or distribution of drugs in retail other than the specified in Schedules-C, C/J and X. It is also claimed that the Government of India under the Directorate General of Health Services within the Ministry of Health and Family Welfare has a scheme called Central Government Health Scheme for providing comprehensive medical care facilities to the Central Government Employees/Pensioners and certain other categories of persons and it invited sealed tenders from the eligible chemists for supply of medicines/drugs to the C.G.H.S. dispensaries/hospitals in the cities.

3. Learned counsel for the petitioner further submitted that in the year 2008 when similar tenders were invited, the petitioner applied and his tender was accepted and he was empanelled on 7.7.2008 for one year and since then he supplied medicines/drugs to the C.G.H.S. dispensaries/hospitals and in the meantime extension was granted to him. Learned counsel for the petitioner also stated that on 3.12.2009 tender notice was published in "Hindustan Times" at the instance of Additional Director, Central Government Health Scheme, Patna for empanelment of local purchase chemist for Zone-II for the year 2010-11 and only the petitioner submitted his tender and after opening his tender in which he fulfilled all the requirements, the authorities cancelled the said tender as it was single tender. Against the said rejection, petitioner filed application on 5.1.2010 (Annexure-1) before the Additional Director, Central Government Health Scheme, Patna but without deciding the said matter, the said Additional Director issued a fresh notice inviting tender in the "Times of India" dated 18.2.2010 (Annexure-2) and again the petitioner submitted a sealed bid within the stipulated date alongwith three others and the said bids were opened on 3.3.2010 and out of four applicants petitioner succeeded in the tender bid, whereas respondent no. 6 did not fulfill the criteria of Rs. 60 lacs turnover for the last three financial years. Learned counsel for the petitioner further asserted that respondent no. 6 filed a complaint against selection of petitioner, whereafter the financial bid of the petitioner was not opened. However, against the said act, the petitioner filed a complaint on 29.3.2010 whereafter the Additional Director (respondent no. 3) terminated the tender of the petitioner and empanelled respondent no. 6 by his impugned order dated 26.4.2010 (Annexure-5).

4. Learned counsel for the petitioner argued that as per Clause 2.3 of the Instructions to Bidders (Annexure-3 series at page 110) regarding their eligibility, it was specifically provided that the annual turnover of the bidder should be as per Annexure-1 during the last three financial years for the respective cities. It was also stated that Annexure-1 to the said Instructions to Bidders provided that for empanelment of chemist, Patna the amount of annual turnover of the prospective bidder should be at least Rs. 60 lacs. It was further stated that for the said purpose copies of balance sheets for the last three financial years to establish the turnover of the bidder was to be submitted alongwith technical bid as per Clause 501(B)(i) of Instruction to Bidders. Hence, he stated that respondent no. 6 not fulfilling the said criteria should not have been legally empanelled for the said purpose.

5. On the other hand, learned counsel for the authorities respondent nos. 1 to 5 stated that the empanelment of respondent no. 6 was justified as per Clause-8 of the tender document, whereas the financial bid of the petitioner was rightly not opened as such bid can be opened only after the technical bid is found in order, but in the instant case the technical bid of the petitioner was not in order. It was also stated that Clause-8 of the tender document clearly provided that if the technical bid on the basis of the documents mentioned therein appeared to be fulfilling the eligibility conditions, the bidders' premises will be inspected by a

team of officers for (a) physical verification of site and distance, (b) verification of original documents, (c) availability of proper cold-chain which would be refrigerator and power back-up system, (d) seeing presence of retail outlet, and (e) assessing availability of stock of medicines both physical and financial etc. before opening commercial bid and in case the team was not satisfied with the veracity of the claims of the petitioner, the commercial bid will not be opened.

6. Learned counsel for respondent nos. 1 to 5 further stated that the report of Inspection Committee constituted as per Clause-8 of the tender document was against the appointment of the petitioner, hence its price bid was not opened. He further submitted that the objection filed by the petitioner was not pending with the respondents as the empanelment of respondent no. 6 for the period from 26.4.2010 to 25.4.2011 is over and hence there is neither any illegality in the impugned order of the authorities nor there is any occasion left to interfere with the said order.

7. Learned counsel for respondent no. 6 argued that alternative and efficacious remedy available to the petitioner is by way of filing a civil suit, as the matter regarding bid/tenders involves facts for which evidence is required. He further submitted that petitioner had agreed to the clauses in question provided in the tender document and applied for his empanelment, hence the petitioner cannot legally challenge the said clauses. He further stated that petitioner's technical bid not being in order, there was no occasion for opening the financial bid. Learned counsel for respondent no. 6 also argued that it succeeded on the basis of the documents provided, which were duly verified by the Inspection Committee including the balance-sheet of respondent no. 6 firm showing turnover of more than Rs. 60 lacs per annum for the last three financial years and the same was duly verified with the original by the Inspection Committee, hence respondent no. 6 was rightly empanelled.

8. From the arguments of learned counsel for the parties as well as from the materials on record, it is quite apparent that the claim of the petitioner is absolutely frivolous and he only wanted to continue with his empanelment of 2008 which was only for one year and no document has been produced by the petitioner to show that any extension was ever granted by the authorities concerned even in 2009. Furthermore, in the tender of 2010 the technical bid of the petitioner has been proved to be unsatisfactory and hence the Inspection Committee rightly rejected the same and did not open his financial bid, whereas on the other hand the technical bid of respondent no. 6 was found legal and proper and thus the Inspection Committee rightly accepted it.

9. In the said circumstances, this court does not find any reason to interfere in the impugned order. Accordingly, this writ petition is dismissed.