(1999) 09 DEL CK 0057

In the Delhi High Court

Case No : C.W.P.No. 2955 of 1997 and C.M. No. 10412/98

Panacea Pvt. Ltd. and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Citation : (1999) 6 AD 208 : (1999) 82 DLT 260

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. V.N. Shroff and Mr. Gautam Acharya, for the Appellant; Mr. Jayant Bhushan and Mr. K.K. Sharma, for the Respondent

Judgement

C.M. Nayar, J.—The present petition is directed against the respondents for issuance of a writ of mandamus commanding them to implement the policy for small scale units fully in terms of the Circular issued by the Government of India dated 18th September, 1990 which is filled as Annexure-C1 to the writ petition. The said circular may be reproduced as follows:-

"SECRETARY GOVERNMENT OF INDIA Dr. N.K.Sengupta, Ministry of Commerce Department of Supply Nirman Bhawan, New Delhi. D.O.No.1(....)/90 AJEC 18th September, 1990 You are aware that Government of India provides certain benefits to the small scale sector units with a view to assist them in marketing their products. The small scale units registered with the National Small Industries Corporation under single point registration scheme are provided the following facilities:-

1. Issue of tender sets free of cost.

2. Exemption from payment of earnest money.

3. Waiver of security deposit up to the monetary limit for which the unit is registered.

4. Price preference up to 15 per cent over the quotation of large scale units on

merits.

2. But SSI units are representing that the aforesaid benefits are not extended by some Central/State Government Departments and Central/State Public Enterprises although they are registered with NSIC under single point registration scheme, after detailed physical inspection and assessment of capacity. They are asking the SSI units to register themselves with them separately. Our Ministry would like to clarify once again that the primary objecive of the single point registration scheme evolved by the Government of India in 1976 is to relieve the SSI units from the need to register themselves with various organisations separately. In this connection, one copy of each of the circular No.P. III.8(18)80 of 20th October 1981 and No. SSI(P)....dt. 31.5.84 passed to the Chief Secretaries of all the States UT''s by this Department are enclosed for your ready reference and guidance. This circular clearly states to recognise registration of SSI units with NSIC under single point registration scheme.

3. You are, Therefore, requested to issue necessary directives to all the Government Departments/Public Enterprises and other public bodies under the administrative control of your Ministry/Departments to ensure that the benefits mentioned above are made available to the SSI units registered with NSIC under single point registration scheme without insisting on separate registration with them. A copy of the instructions issued by you may be sent to this Ministry and chairman of NSIC for information.

With regards,

Yours sincerely"

2. The petitioners are engaged in manufacturing of pharmaceutical products, i.e. medicines as permitted under the Drug Licences held by them and are registered as a small scale unit with the Govt. of Orissa under Registration Certificate No.151600047 dated 29th January, 1991. The main contention of learned counsel for the petitioners is that the petitioners should be given 15% price preference over the large scale units for the medicines supplied on the basis of the tender issued by respondent no.3. The terms and conditions for running the contract are referred to in the tender notice filed as Annexure-I to the writ petition. Respondent No. 3, Employees State Insurance Corporation is responsible for procuring medicines for its Hospitals and Centres and are entitled to formulate its own terms and conditions for this kind of contract. Counter affidavit has been filed by respondent no.3 wherein the pleas of the petitioners are repudiated. Paragraphs 4, 11, 12 and 13 of the counter affidavit read as follows:-

"4. The petitioner herein has filed a Writ Petition for direction to this Hon''ble Court to direct the respondent No.3 herein to accept the tender papers of the petitioner/applicant, exempting the petitioner to deposit the earnest money of Rs.1 lakh and give 15% price preference to the petitioner over the quotation of large scale on merit.

11. The petitioner is in the habit of dragging the department into unnecessary litigation. The petitioner in the past having accepted the terms and conditions of the tender supplied medicines of not of standard quality and on action being taken in this regard questions the validity and legality of the terms and conditions of the tender. A copy of the letter dated 3.10.98 sent by the petitioner through its counsel is being enclosed herewith. The contents of the said letter are self-explanatory inasmuch as the petitioner instead of abiding by the terms and conditions of the rate contract calls upon the department to accept supply of sub-standard medicines falling which threatens legal action.

12. It may not be out of place to mention that the petitioner is guilty of non-supply of medicines in the past for which proper action is being taken.

13. The petitioner is in the habit of quoting lower rates for getting the award of the rate contract and then fails to supply the medicines without any reasonable cause or excuse thereby causing great hardship to the department and lakhs of patients all over the country undergoing treatment in more than 1500 ESI hospitals and dispensaries."

3. A short affidavit has also been filed by Mr.M.S.Mina, Director (EP&M) in the office of the Development Commissioner, Small Scale Industries, Department of S.S.I., Agro and Rural Industries, Ministry of Industry, Government of India, wherein it is stated in reply to paragraph 16 as follows:-

"8. In reply to para 16 it is stated that the policy instructions/guidelines issued by the Government from time to time in respect of grant of certain facilities to SSI units e.g. price preference up to 15% etc., are only recommendatory and not mandatory in nature."

4. Furthermore it is also stated in reply to grounds in the following manner:-

"However, it must be reiterated at this stage that the policy instructions/ guidelines issued by the Government from time to time in respect of grant of certain facilities to SSI units e.g. price preference up to 15% etc., are only recommendatory and not mandatory in nature."

5. The petitioners have sought to enforce the alleged policy decision as contained in the communication dated 18th September, 1990 which merely specifies certain facilities to be provided including price preference of up to 15% over the quotation of large scale units. This circular, however, does not lay down a categorical commitment that the policy has to be followed by the Government of India as well as by other organisations such as respondent no.3, Employees State Insurance Corporation, as is being contended by learned counsel for the petitioners in the present case. The circular merely holds out a recommendation for granting price preference of up to 15% but cannot impose upon other bodies to treat the petitioners differently from any other party including large scale manufacturers. The circular is merely recommendatory in nature and cannot be enforced in a Court of law. The present petition is, Therefore, devoid of merit and

is dismissed in limine.

