
(1993) 11 DEL CK 0021
In the Delhi High Court
Case No : C.W. 4400 of 1993

Pure Pharma (P) Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-11-1993

Acts Referred:

Citation : (1993) 11 DEL CK 0021

Hon'ble Judges : G.C. Mittal, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Mukul Rohtagi and R.B. Hathikhanwala, for the Appellant; Man Mohan Sarin, Pawan Bansal and A.C. Gulati, for the Respondent

Judgement

Dalveer Bhandari, J.—RULE DB.

2. The petitioners have filed this petition against the action of respondent No. 1 in selecting respondent No. 2 for the award of contract for supply of Folic Acid and Ferrous Sulphate Tablets (Large) for Lines-2 even though their bid was totally unresponsive as respondent No. 2 did not possess any valid drug license and consequently was not furnished with their bid documents. The action of respondent No. 1 is contrary to law and the terms of the tender and is unreasonable, irrational, unfair, discriminatory and arbitrary. The petitioner has further prayed that respondent No. 1 be directed to accept the bid of the petitioner under the said invitation of bid No. W4/01/D2/S5/H0010/IC-0002 in respect of Child Survival and Safe Motherhood Project".

3. The Directorate General Supplier and Disposal, an authority in the Department of Supplies, Ministry of Commerce, Govt. of India, issued prior to March; 1993 an International invitation for bid inviting quotations, inter alia, for the supply of Folic Acid and Ferrous Sulphate Tablets (Large) containing ferrous sulphate with 100 mg elemental iron and 0.5 mg of folic acid IP in terms of Section IV of Part II of the bid documents for the "Child Survival and Safe Motherhood Project." All the bidders had to submit their bid tender documents on or before 1.30 p.m. on

7.4.1993. According to the petitioner, the most important bid document was valid drug license(s) of the manufacturer(s) duly high-lighting the goods quoted in the drug license along with the bid. Bids not accompanied with valid drug license will be treated unresponsive. The petitioner submitted that their challenge in this petition is restricted to the notification of award of the tender dated 27.8.1993 in respect of Folic Acid and Ferrous Sulphate Tablets (Large) for Linss-2 NFI for Calcutta and Guwahati consignees to respondent No. 2. The petitioner further submitted that the detailed specifications and constituents for the set tablets folic acid and ferrous sulphate (large) as outlined in Section IV of Part II of the bid documents for the said project to be supplied is stated as under.

4. Tablets Folic Acid and Ferrous Sulphate (Large) NFI containing ferrous sulphate with 100 mg elemental iron and 0.5 mg folic acid I.P. The petitioner further stated that under the terms of the National Formulary of India (NFI), folic acid and ferrous sulphate tablets (large) are to contain Folic Acid 0.5 mg and Exsiccated Ferrous Sulphate of 200 mg per tablet. It is further stated that Exsiccated Ferrous Sulphate of 200 mgs is equivalent to 67 mg. of elemental iron. As can be seen from the tender specification enumerated in Section IV of Part II of the bid document, the requirement was for ferrous sulphate with 100 mg of elemental iron. The petitioner, Therefore, submitted that the tender specification is not in accordance with and different from the specification as provided in the NFI and is for a stronger tablet that is specified in the NFI. The petitioner though held a drug license for folic acid and ferrous sulphate tablets as per the specifications contained in the NFI, applied for a fresh drug license for the said folic acid and ferrous sulphate tablets in accordance with strength and specification required for the purpose of the tender as specified herein in Sections IV and II of the bid documents and submitted the same together with their tender on 7th April, 1993.

5. The petitioner says that they are the manufacturers of the said tablet, holding a valid drug license for the same and are not acting as agents for any other manufacturer. The petitioner has stated that their drug license is exactly in accordance with the tender specification, namely, IP (Indian Pharmacopoeia) and also meet all other requirements of the respondent No. 1 only the petitioner ought to have been awarded the tender for this line.

6. The petitioner submitted a copy of the drug license dated 26th February, 1993 which is in consonance with the terms of the tender documents and the same is produced as under :

OFFICE OF THE CONTROLLER FOOD & DRUGES ADMINISTRATION No. V/28/P-4/92/5201 BHOPAL dated 26.2.1993. To M/S. PURE PHARMA PVT. LTD. 41-44 INDUSTRIAL ESTATE (Pologround), Indore (MP) Sub : Inclusion of items in the Manufacturing license No. 30/64. Permission is hereby accorded for inclusion of the following items in your drug Mfg. license No. 30/64 in Form 28 valid up to 31.12.93. 1. TABS. FOLIC ACID & FERROUS SULPHATE (LARGE) FOR GOVT. SUPPLY EACH TAB. CONTAINS : Dried Ferrous Sulphate I.P.

equivalent to 100 mg. of Elemental Iron. Folic Acid I.P. 0.5 mg. Please keep this letter with your original license for inspection by the authorities concerned. Sd/- LICENSING AUTHORITY FOOD & DRUGS ADMINISTRATION MADHYA PRADESH NO. V/28/P-4/92 BHOPAL dt. COPY TO : 1. The Senior Drugs Inspector, C/o Dy Director Food & Drugs Administration Indore for information.

The Divisional Officer Ayurved ----- for information.

Sd/- LICENSING AUTHORITY FOOD & DRUGS ADMINISTRATION MADHYA PRADESH

Whereas respondent No. 3 did not possess a drug license as required, according to the bid documents until 1.30 p.m. on 3rd April, 1993. The drug license filed by respondent No. 2 as set out is as under :

M/S SUDARSHAN PHARMACEUTICALS PVT. LTD. INDORE. license NO. 28/33/86 VALID up to 31.12.92 1. Vitamin A Solution IP Each ml. contains Vitamin A 100000 IU 2. Folic Acid and Ferrous Sulphate NFI III Page 264 Tabs. (sugar coated tablets). 3. Folic acid & Ferrous Sulphate Tab. NFI III Page 264 (sugar coated tablets). HUBINTY S.P. TABS. EACH TABLET CONTAINS Vitamin A acetate IP 2500 IU Vitamin D3 USP 200 IU Vitamin B1 IP 1 mg Vitamin B2 IP 3 mg Vitamin C IP 50 mg Nicotinamide IP 20 mg The short submission of the learned counsel, appearing for the petitioner has been that respondent No. 2 did not possess drug license as required by respondent No. 1. Respondent No. 2 also realised this lapse and later on obtained a drug license on 29.4.1993 as required by respondent No. 1. The same is set out as under :

OFFICE OF THE CONTROLLER FOOD & DRUGES ADMINISTRATION NO. V/ / S-11/93/1501 BHOPAL dt. 29.4.1993 To M/S SUDARSHAN PHARMACEUTICALS (P) LTD. 17-B, 10-A, SECTOR-F Sanwar Road, Industrial Area INDORE. Sub : Inclusion of items in the Drugs Manufacturing Lic. No. 28/33/85 in Form 21. Permission is hereby accorded for inclusion of the following items in your drug Mfg license No. 28/33/85 in Form 21 valid up to 31.12.97.

1. TABS. FOLIC ACID & FERROUS SULPHATE (LARGE) (FOR GOVT. SUPPLY)

FOLIFER TABLETS EACH TAB. CONTAINS :

Dried Ferrous Sulphate I.P. 335 mg equivalent to 100 mg. of Elemental Iron. Folic Acid I.P. 0.5 mg. Please keep this letter with your original license for inspection by the authorities concerned. Sd/- LICENSING AUTHORITY FOOD & DRUGS ADMINISTRATION M.P. BHOPAL COPY TO 1. The Senior Drugs Inspector, Indore for information LICENSING AUTHORITY FOOD & DRUGS ADMINISTRATION M.P. BHOPAL

7. Mr. Mukul Rohtagi, counsel appearing for the petitioner, submitted that the petitioner's bid was substantially responsive and according to respondent No. 1 the bid of respondent No. 2 was the lowest and, Therefore, the same was

accepted.

8. The other submission of the learned counsel for the petitioner was that respondent No. 2 has been awarded the contract in respect of line-2 at the rate of Rs. 30.95 which is the same at which the petitioner had tendered after making adjustment for excise duty and sales tax which is under clause 26.2 and Part I of the tender documents are to be excluded. He has further submitted that when the said price on which the supplies were to be made are the same, equal opportunity should have been given by respondent No. 1 to both in terms of the award and in any event respondent No. 1 should enter into negotiations with both parties.

9. We do not deem it necessary to examine the alternative submission of the petitioner has made this statement because Mr. Rohtagi submitted that the petitioner also undertakes to supply the said tablets on the same price, terms and conditions on which respondent No. 2.

10. Mr. Sarin, learned counsel for the respondent submitted that the bid of respondent No. 2 for tablet of folic acid and ferrous sulphate (large) NFI for line items No. 1 and 2 furnished their drug license along with their bid for folic acid and ferrous sulphate tablets NFI III which was found to be in order as per the advise given by Ministry of Health and Family Welfare and the bid of the respondent No. 2 was the lowest responsive bid for line items No. 1 and 2 and, Therefore, the same was awarded to respondent No. 2

11. Mr. Gulati, learned counsel appearing for respondent No. 2, submitted that it is incorrect that respondent No. 2 did not hold a valid drug license to manufacture folic acid and ferrous sulphate tablets (large). He has further submitted that the petitioner has wrongly, interpreted the usual strength of a drug given in NIF/I.P. or any other pharmacopoeia.

12. The petitioner complied with all the terms, conditions and requirements for supplying the said drug. In other words, the petitioner's bid was completed in all aspects.

13. We have heard the counsel for the parties at length and examined the documents carefully. Learned counsel for the respondent could not satisfy us that they the respondent No. 2 had a valid drug license as required by respondent No. 1 even till the last day of submission of the bid document i.e., on 1.30 p.m. on 7th April, 1993. Learned counsel for the petitioner pointed out the letter dated 13th October, 1993 sent from the office of Directorate General of Health Service to the petitioner in C.W.P. 4184 of 1993 EUPHARMA LABORATORIES v. UOI. The same is reproduced as under :

NO. X. 190 14/30/93-D DIRECTORATE GENERAL OF HEALTH SERVICES (DRUGS SECTION) NEW DELHI - the 13th OCTOBER, 1993. FROM The Drugs Controller (India) Dte. Gen. of Health Services Govt. of India, Nirman Bhawan NEW DELHI. To M/S. EUPHARMA Laboratories Ltd. Sanker Marg. Vile Parle

(East) BOMBAY. Sub : Clarification regarding Drug Permission for IFA tablets - each containing 100 mg elemental iron.

Sir,

With reference to your letter No. EUP/IFA/93-94-DLH dated 8th October, 1993, it is stated that the combination other than.

(a) Dried Ferrous Sulphate IP 67 mg elemental iron + Folic acid .1 mg.

(b) Dried Ferrous Sulphate IP 200 mg equivalent to 60 mg elemental iron + Folic Acid .5 mg.

WILL NOT be considered as drugs included in National Formulary of India. In view of the above, separate license/permission from the Licensing Authority need to be obtained for all the IFA Tablets other than the above, i.e., (a) & (b), including one mentioned in the subject.

Yours faithfully Sd/- (K. C. SHARMA) ASSTT. DRUGS CONTROLLER INDIA
14. Attention has been drawn to this letter because only those bids could be considered for the award of the tender which possessed the drug license as required in the tender documents of respondent No. 1.

15. Learned counsel for the petitioner also submitted that they are the manufacturers of the said tablets as required by respondent No. 1 and were holding a valid license for the same. It is further submitted that the said tablets are required in India, (i.e., the purchase country) and as such the petitioner's bid is classified under Group-A. The petitioner company has the financial capability necessary to perform the contract. The petitioner has furnished the name of their bankers, their income tax clearance certificate and their bid security to prove their financial capability. The petitioner has the technical and production capabilities necessary to perform the contract and have furnished particulars and details of the same along with their bid. That the petitioner company also has the necessary experience and record to satisfactorily perform the contract. They have been supplying their medical and pharmaceutical preparations to various authorities of the Central and State Governments without any complaint and have supplied folic acid and ferrous sulphate tablets to DGS & D New Delhi in the past. As such, it is submitted that the petitioner has a proved ability to perform such contracts.

16. Along with the bid, the petitioner has submitted relevant documents as were required to establish their eligibility and qualification as well as the goods eligibility and its conformity with the bidding documents. They had also as required, provided bid security by way of guarantee of their bankers, State Bank of India, Industrial Estate Branch Indore which is valid up to 9th September, 1993. That the bid was in accordance with specifications in respect of the goods and there was no deviation or variation in respect of the schedule or requirements, including delivery schedule, the technical specifications, the packaging specifications and/or in any other respect. That all proformas and

annexures including equipment and quality control performance were submitted. The bid was complete in all respects with regard to its period of validity and also with regard to its format and signing and was submitted within the deadline prescribed for submission of bids.

17. The petitioner has supported the aforesaid claim by filing various documents, on record. On the date of submission of the tender documents, the petitioners' bid was responsive in all respects.

18. We deem it proper to refer to C.W.P. No. 3294/93, 2183/93 and 2617/93, which were decided by the judgment of this court on 29th October, 1993, main judgment being in *Goa Antibiotics & Pharmaceuticals v. Union of India*. Those writ petitions pertain to supply of drugs in similar World Bank project of Child Survival and Safe Motherhood Project. Mr. Sarin, learned counsel for UOI, vehemently argued that the terms and conditions of the bid document have been very carefully and meticulously prepared by the Govt. The World Bank has insisted strict adherence of bid documents. The bid documents have to be carefully examined and only those bids which are found responsive in all respects are to be accepted.

19. Following the principles which we have laid down in earlier petitions *Goa Antibiotics and others v. Union of India*, in our opinion the bid documents prepared at the instance of the World Bank have to be strictly followed. We are also of the opinion that strict adherence to bid documents would be in larger public interest. The norms adopted by the respondent No. 1 for the project of "Child Survival and Safe Motherhood Project : must be adhered to by the respondent No. 1 (Union of India) for the said project. The respondent No. 1 cannot be permitted to deviate from adherence of the norms, particularly when on their submission this court also reached the conclusion that they were justified in demanding strict adherence of their norms.

20. We would also like to refer to the leading Supreme Court case in *Harinder Singh Arora Vs. Union of India (UOI) and Others*, , wherein the Supreme Court has laid down that Government may enter into a contract with any person but, in so doing the State or its instrumentalities cannot act arbitrarily. In absence of any specific policy of the Government it is open to the State to adopt any policy. But if the authority or the State chooses to invite tenders then it must abide by the conditions laid down in the tender notice. The learned counsel also cited judgment *Prestress India Corporation Vs. U.P. State Electricity Board and Others*, . In this judgment, the court has observed that once a tender is found by High Court to have been excluded from consideration arbitrarily, unreasonably unfairly and against public interest, in that event, the court has gone to the extent of granting partial relief by directing the Government or its instrumentality to place order on the aggrieved tenderer for the remaining supply. The court has observed as under :

"The opposite party No. 1, U.P. State Electricity Board, is Therefore, directed to

accepted the tender of the appellant and to place orders for the remaining supply of 25,000 PCC Poles for which the tender was submitted by the appellant. It will not be out of place to mention in this connection that in a similar case in *Harminder Singh Arora v. Union of India*, this court after coming to a finding that one of the tenders was illegally rejected directed the authorities concerned to accept the tender of the appellant."

21. Learned counsel for the petitioner has submitted that the petitioner would effect supply on the same price as given to respondent No. 2 vide award dated 27.8.1993. The petitioner voluntarily undertook to supply tablets worth Rs. 5 lakhs free of cost to respondent No. 1. We accordingly direct the petitioner to supply the said tablets to respondent No. 1 for distribution to the poor and the needy within six weeks from today.

22. On a consideration of the facts and circumstances, in the interest of justice, similar directions .dm last page have become imperative and accordingly we direct respondent No. 1 to accept the bid of the petitioner under the said invitation to bid No. W4/01/D2/S5/H0010/IC-0002 in respect of "Child Survival and Safe Motherhood Project" for supply of folic acid and ferrous sulphate tablets (large) in respect of Line 2 and to enter into an appropriate agreement with the petitioner in this regard within a week and complete all necessary formalities within this period. We direct the petitioner to strictly maintain time schedule for supply of the said tablets as indicated in the bid documents. The petitioner is awarded this tender on the same terms and conditions, as it was awarded to respondent No. 2, which was found to be the lowest bid.

23. In the peculiar facts and circumstances of this case we allow the writ petition and direct the parties to bear their own costs.