(2003) 12 DEL CK 0038

In the Delhi High Court

Case No : CW 5305 of 2003 and CM 9332 of 2003

Sterling Lab. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Citation : (2004) 1 CTLJ 154

Hon'ble Judges : B.C. Patel, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Shiv Khorana and Arjun Bobde, for the Appellant; Ashok Kumar Gupta and Farrukh Rasheed, for the Respondent

Final Decision : Allowed

Judgement

1. The respondent No. 1, namely, Ministry of defense framed the guidelines dated 13th March, 2000 specifying inter alias tender procedure for purchase of drugs. Clause 1.2 thereof stipulates eligibility criteria of firms and reads as under :

"(1.2) Eligibility Criteria of Firms :

Drugs will be purchased only from the firms, who satisfy one of the following criteria :

(a) DGQA Registration.

(b) Holding WHO GMP Certificate issued by slate/central authority with annual turnover, of more than Rs. 20 crores.

(c) Original inventor of the molecule/drug or patent holder.

Tender enquiry should be issued to only those firms who satisfy any of the above mentioned criteria. Unsolicited offer will not be opened."

2. Clause (b) of the aforesaid eligibility criteria inter alias specifies that annual

turnover of the firm, to be eligible to submit the bid, should be more than Rs. 20 crores. In the tender form which is issued and is required to be filled by the tenderers, a note No. 1 also deals with eligibility and is in the following terms :

"(1) Eligibility :

(a) Valid DGQA registration for the item concerned. Or

(b) Holding WHO GMP Certificate issued by State/Central authorities with annual turnover of more than Rs. 20 crores (to authenticate more than 20 crores annual turnover, last three years statement of accounts duly audited by C.A. and a certificate from the C.A. is required with request letter for tender as well as with tender set also).

Or

(c) Original inventor of the molecule drug or patent holder."

3. The question which needs to be determined is as to whether turnover of more than Rs. 20 crores which is required for eligibility has to be for one year or whether such an annual turnover should be for three years ?

4. In the guidelines dated 13th March, 2000 the expression used is "annual turnover of more than 20 crores". In the note also same expression is used. However, in the bracketed portion, what is stated is that the firm would be required to pay full three years'' statements of accounts duly audited by the Chartered Accountants to authenticate more than Rs. 20 crores annual turnover. Whereas contention of the petitioner is that the annual turnover of more than Rs. 20 crores means the turnover of one year, that is preceding year, the respondents state that this annual turnover of Rs. 20 crores has to be for last three years and that is why tenderer is asked to give the statements of last three years. From the reading of the eligibility criteria, it is clear that what is prescribed is annual turnover which means turnover for one year and it is nowhere stated that this turnover has to be for last three years. Even in the note same eligibility condition as prescribed in guidelines dated 13th March, 2000 is specified. Even in the bracketed portion, what is stated is that the tenderer has to authenticate more than Rs. 20 crores of annual turnover which means annual turnover for one year and statements of accounts for last three years are called for to ensure that the turnover of Rs. 20 crores in the last year claimed by a particular tenderer is a genuine figure and not exaggerated for the purpose of becoming eligible for the tender. It is for that reason three years statements of accounts are required to be submitted in order to see as to whether there is a progressive increase in the turnover and not a spurt in the figure of turnover in the last year only.

5. This view becomes abundantly clear when we examine the aforesaid condition in juxtaposition with the modified eligibility criteria stipulated on 17th June, 2003 which reads as under :

"(1) Eligibility criteria of firms to be furnished with tender set and with request letter :

(a) Valid DGQA registration for the item concerned. Or

(b) Holding WHO GMP Certificate issued by State/Central authorities with annual turnover of more than Rs. 20 crores consecutively for the last three years (To authenticate more than 20 crores annual turnover, last three years statement of accounts duly audited by C.A. and a Certificate from the C.A. is required with request letter for tender as well as with tender set also).

Or

(c) Patent holder/original inventor of the molecule."

6. The Department has now very clearly specified that annual turnover of more than Rs. 20 crores has to be consecutively for the last three years. The words "consecutively for the last three years" were missing in the earlier criteria which tender in question was issued and pursuant to which the petitioner participated.

7. Learned counsel for the petitioner also submitted that even the respondents have understood the clause in the manner namely annual turnover of more than Rs. 20 crores has to be for one year, in the past as on the basis of same condition the tenders of those who had shown such a turnover for last one year (not for three years) were accepted and orders placed.

8. Learned counsel for the respondents contended that the acceptance of such tenders on earlier occasion was by mistake and once it was. detected, the said Tenders awarded to those parties were foreclosed. His further submission was that if an error has been committed in the past, this should not be repeated. However, this contention of the respondents is belied from the documents produced by the petitioner which show that repeated orders are placed on those parties who had turnover of Rs. 20 crores and some orders were placed even in May, 2003 and onward.

9. The Tender of the petitioner in the present case was rejected some time in April, 2003. If it was rejected on the ground that the petitioner was not eligible, how orders were placed on similarly situated persons even in May, 2003 which would clearly show that the ground of alleged mistake is only a bogey created by the respondents.

10. It is not in dispute that the petitioner was otherwise L-1. It is also not in dispute that the successful tenderers are empanelled for a period of one year and respondents 3 and 4 were empanelled in July, 2003 and their Contract is up to June, 2004.

11. In peculiar facts of this case, we do not want to quash the Contract of one of the respondents, namely either respondent No. 3 or respondent No. 4. However, since we are of the opinion that the petitioner is also eligible and the Contract is up to June, 2004 respondents may consider the case of the petitioner for placing

orders on the petitioner as well.

12. This writ petition is allowed to the aforesaid extent. CM also stands disposed of. There shall, however, be no order as to costs.

