

**IN THE HIGH COURT OF KARNATAKA**

*November 3, 2008*

*N. K. Patil, J.*

**GUJARAT LIQUI PHARMACAPS PRIVATE LIMITED, VADODARA,  
GUJARAT**

*v*

**THE SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE  
SERVICES, BANGALORE AND ANOTHER**

**Writ Petition No. 13691 of 2008.**

*The Court*, made the following:

**ORDER**

Petitioner in this petition is a Company incorporated under the Companies Act, 1956. Petitioner, questioning the correctness of the order impugned dated 23rd October, 2008 passed in Appeal No. HFW 105 HPC 2008 on the file of the first respondent-Appellate Authority *vide* Annexure-H, has presented the instant writ petition. Further, petitioner has sought for a direction, directing the second respondent to consider the technical bid and open the financial bid of the petitioner-company.

2. The grievance of petitioner in the instant writ petition is that, petitioner who is otherwise competent apart from being qualified to participate in the short term E tender dated 4th June, 2008 for supply of drugs and chemicals for the period of 2008-09, called by the second respondent herein, as per the tender rules, had submitted its tender and the bidders were required to submit their tenders in two covers, as it is, the technical bid containing the complete details pertaining to technical and qualification criteria and price bid, containing the quote/price for the product quoted. It is the case of petitioner that, it has complied with the aforesaid requirements. Be that as it may, petitioner is informed that, its tender has been rejected for the reason that, "*a page of the document sought as per Clause A.8(b) was not uploaded along with the other documents*". Immediately, petitioner has brought to the notice of the second respondent by way of a representation that, they have produced the original copy of the above document and the same may be modified and accepted as the non-uploading of one page pertaining to Clause A.8(b) of the tender document was due to the technical snag and not due to any other reason. The said representation submitted by petitioner was not considered and the same was rejected by second respondent, without assigning any valid or cogent reasons, by its order dated 26th September, 2008. Assailing the correctness of the said rejection of the tender of the petitioner, petitioner has filed the appeal before the first respondent-Appellate Authority. The appeal filed by petitioner had come up for consideration before the Appellate Authority on 23rd October, 2008 and the Appellate Authority, after hearing both parties and after considering the grounds urged in the memorandum of appeal and after affording substantial opportunity to petitioner through the Counsel, has dismissed the appeal and confirmed the proceedings of the Tender Accepting Authority dated 14th August, 2008 so far as the appellant (petitioner herein) is concerned. Further, the Appellate Authority, after evaluation of the relevant material available on file, in view of the baseless and reckless allegations made by the appellant (petitioner herein), and not fulfilling the terms and conditions of the tender and non-compliance of the procedure as envisaged under the Karnataka Transparency in Public Procurements Rules, 2000 has forfeited the Earnest Money Deposit amount of Rs. 1,00,000/- and imposed a fine of Rs. 10,000/- and directed to pay the same to second respondent. Being aggrieved by the impugned order passed by the Appellate Authority as referred above, *vide* Annexure-H, petitioner herein felt necessitated to present the instant writ petition.

3. I have heard learned Counsel appearing for petitioner.

4. After careful perusal of the grounds urged in the instant writ petition including the order impugned passed by first respondent-Appellate Authority, *vide* Annexure-H, what emerges is

that, the Appellate Authority, after considering the grounds urged by petitioner, the stand taken by second respondent in its reply, after framing necessary points for consideration, and after critical evaluation of the relevant material available on file, has passed the impugned order. In my considered view, there is no error or illegality as such committed by the Appellate Authority in dismissing the appeal filed by petitioner and that, the same is in consonance with the relevant rules, which is applicable. It is specifically observed in the order of the Appellate Authority that, as per Rule 28 of the aforesaid Rules, two cover system is a well-established system and the documents so prescribed are necessary for the Tender Scrutiny Committee to take up objective evaluation as per the criteria specified in the tender document and further recommend list of qualified tenderers. *The documents as per Clause A.8(b), therefore, not only a mandatory requirement to be fulfilled but also a must to facilitate Tender Scrutiny Committee to arrive at a decision.* Further regarding the claim of the petitioner that, it had submitted original copies of all the documents within three days of the opening of the Cover 'A', the Appellate Authority has specifically recorded a finding that, such Clause A.20 is only to provide information to the appropriate authorities to verify the authenticity of the documents uploaded on the e-tender process, so that any false claim or inadequacies or deficiencies can be counter checked. This establishes beyond all reasonable doubts that, petitioner has failed to upload the requisite documents which is in clear violation of the terms and conditions of the tender. Therefore, the Appellate Authority came to the conclusion that, the recommendation of the Tender Scrutiny Committee and the decision of the Tender Accepting Authority treating the petitioner as 'non-responsive' is well-within the legal provisions of the aforesaid Act and Rules and also as per the terms and conditions of the tender. Further, the Appellate Authority has observed that, the technical mistake committed by petitioner cannot be taken lightly by the Tender Accepting Authority and if such leniency is shown to tenderers, it will lead to arbitrariness and defeat the very purpose of rules and regulations. Regarding the request of the petitioner to provide one week's time as per the proceedings of the 6th Meeting Executive Committee of the Karnataka Drugs Logistic and Warehousing Society, the Appellate Authority has recorded its finding that, the said issue was settled in Appeal No. HFW 273 HPC 2007, dated 10th March, 2008 by assigning valid reasons and therefore, the second respondent has acted as expected of a legal authority. Regarding the contention of the petitioner that, the second respondent has failed to inform the petitioner, has no legal ground whatsoever for the reason that, Rule 23 of the aforesaid Rules stipulates that, "*process of tender evaluation to be confidential until the award of the contract is notified*". Further, it is observed by the Appellate Authority that, since the technical bids are opened through e-tender portal in the presence of the tenderers, the petitioner cannot pretend ignorance as there is every reason to believe that, petitioner is well-aware of what documents are uploaded or not up loaded in view of transparency in the e-tender system. Consequently, the Appellate Authority held that, the petitioner, by pretending ignorance, has attempted to justify non-uploading of essential document that has resulted in non-compliance of terms and conditions of tender.

5. Regarding the allegation of the petitioner that, the action of the second respondent is to oust the petitioner from participating from the tender and also is to facilitate some chosen suppliers, the Appellate Authority has specifically observed that, the said allegation is baseless and reckless for the reason that, the Tender Accepting Authority consists of Senior, responsible and Technical Officers including the Commissioner, Health and Family Welfare Services, Director, Health and Family Welfare Services, FA and Chief Administrative Officer, Deputy Director of Medical Education, Deputy Drugs Controller and Chief Supervisor and the second respondent. Therefore, the Appellate Authority came to the conclusion that, the petitioner, in order to make up the lapse on its part, in not uploading the essential document as per Clause A.8(b) of Section II of the Terms and Conditions of Tender, by pretending its ignorance, has made the false and reckless allegations against the second respondent and this clearly indicates that, petitioner has not come with clean hands before the said authority. Further, it was observed that, the effort of the petitioner was only to delay the process of procurement of such essential drug and such efforts would definitely adversely affect the implementation of programmes meant to promote public health. The Appellate Authority,

taking serious note of the false and reckless allegations made against the authority to cover up its lapse, has imposed fine of Rs. 10,000/- to be paid to second respondent and held that, before making allegation of *mala fide* motive, petitioner should have come up with concrete proof or any other evidence. In spite of giving sufficient opportunity, petitioner has failed miserably in proving the allegations made by it against the second respondent. The Appellate Authority, after dealing with each and every contention taken by petitioner in depth, has framed necessary issues and answered them by assigning valid and cogent reasons coupled with specific findings.

6. The Appellate Authority, after critical evaluation of the relevant material available on file and after considering the entire records threadbare, specifically taking into consideration the false, baseless and irresponsible allegations made against the officers, who are well-qualified and responsible officers working in the Health and Family Welfare Department, has rightly dismissed the appeal with fine of Rs. 10,000/-. Whenever a party makes allegations of *mala fide*, the same should be supported by concrete or conclusive proof of such allegations. Therefore, I am of the considered opinion that, the Appellate Authority has rightly dismissed the appeal, after analysing the material available on file, by assigning valid and cogent reasons. All the three issues framed and answered by the Appellate Authority are well-founded and hence, interference by this Court, in the impugned well-considered order is not justifiable nor I find any good grounds as such made out by petitioner to entertain the instant writ petition and grant the prayer sought therein.

7. In view of critical evaluation of the material available on record regarding the finding of fact, after thorough verification of the relevant material available on file, interference by this Court, in the impugned order is uncalled for. Hence, I decline to grant the prayer sought in this petition.

8. For the foregoing reasons, the writ petition filed by petitioner liable to be dismissed as misconceived. Accordingly, it is dismissed.

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