

Court No. - 46

Case :- WRIT - C No. - 34343 of 2023

Petitioner :- M/S Maa Ambey Enterprises

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rajnish Kumar Srivastava, Siddharth Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

It appears that Nagar Palika Parishad, Auraiya has uploaded an order for procurement of manpower by way of outsourcing at GeM portal. Apart from the petitioner alongwith other applicants also applied. The process by which all offers are considered is online and based on a uniform software application developed by the portal. Bid of all persons in accordance with procedure has been evaluated and ultimately fifth respondent has been placed at L-1 position with a total price quoted Rs.1,03,82,883.65.

Counsel for the petitioner submits that the authorities have wrongly overlooked petitioner's claim and the service tax allowed to the fifth respondent is over and above the rate disclosed and made applicable for other persons.

An objection is taken to the writ petition by the respondents on the ground that petitioner has not disclosed the rate quoted by it nor as it been established that the rate offered by the petitioner was below the rate quoted by L-1, who has been selected for award of contract. Submission is that in such circumstances, the writ petition lacks merit.

GeM portal is a platform created by the Central Government with an intent to facilitate award of a contract in a transparent and fair manner. The process requires all applicants to be registered on the GeM portal and the evaluation of contract is based on a standard uniform criteria. It is upon following of the procedure stipulated therein that the applicant with best price quoted is selected as L-1. The rate quoted by L-1 finds mention in the proceedings of Gem portal. It has, however, not been shown by the petitioner that his rate was below the rate quoted by the fifth respondent (L-1).

Reference is also made to a notification issued by the Central Government, which specifies the minimum service charges payable in the procurement of manpower outsourcing services. The limit is fixed as 3.85%. The rate offered by fifth respondent is stated to be above 3.85%. We do not find any error in it, inasmuch as the rate by notification of 6.1.2023 prescribes the minimum rate fixed for the purpose. It is otherwise not shown that the office memorandum dated 6.1.2023 has been adopted by the Nagar Palika Parishad, Auraiya, or is made applicable upon other entities of the State.

Once the award of contract is given to fifth respondent, the onus upon petitioner would be to demonstrate that such award of contract is arbitrary or contravenes the uniform criteria fixed for other applicants. Petitioner since has failed to demonstrate any infirmity in the process, which led to selection of fifth respondent as L-1, we decline to interfere in the present writ petition.

Writ petition, accordingly, is dismissed.

Order Date :- 17.11.2023

Anil