

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 12349 of 2007

ORDER:

-

Heard learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the first respondent in empanelling the third respondent as Local Chemist for supply of medicines to Government of India in pursuance of the tender notice No. CGHS/HYD/LC/2007-2009, dated 16.04.2007 (issued in Eenadu Telugu News Daily) as illegal, arbitrary and by setting aside the same direct the first respondent to reconsider the Tender filed by the petitioner empanelling as Local Chemist for supply of medicines to Government of India.

The averments in the affidavit filed in support of the writ petition would show that the first respondent published a tender notice bearing No. CGHS/HYD/LC/2007-2009 dated 16.04.2007 in Eenadu Telugu Daily Newspaper, calling for tenders for the purpose of empanelling Local Chemists of Hyderabad for supply of medicines to the Government of India. In response to the said tender notice, the petitioner firm obtained tender form on payment of Rs.1,000/-. It is stated that the eligibility to participate for empanelling as Chemist for supply of medicines to Government of India is as under:

1. The applicant should have valid licence issued by the Drugs Controlling Authority of the State issued in prescribed forms for different categories of Chemists and allopathic drugs.
2. The applicant should obtain a No Conviction Certificate from the State Drug Controller certifying that there is no pending case against the chemist, under the provisions of Act 7 of Drugs and Cosmetics and the rules thereunder.
3. The bidder (chemist) should have the total turnover of 20 lakhs for A class city and Rs.10.00 lakhs for B & C class cities, for the last three years. The Profit and Loss Account, audited

balance sheet should be submitted in support of their claim.

4. A declaration that it quoted for one group/area.
5. An affidavit declaring that establishment is situated within 5 km motarable route of the Dispensaries/Hospital.
6. The applicant should produce the sales tax registration and clearance certificate for the last three years from the relevant STO (Sales Tax Officer).
7. Copy of the Pan Card of establishment.

The petitioner having satisfied all the requirements referred to above submitted tender form along with two sets of tender application to the first respondent on 01.05.2007. The petitioner also paid an amount of Rs.25,000/- towards earnest money by way of DD No.501500 dated 30.04.2007 drawn on Bank of Baroda, Boinpally, Hyderabad. The petitioner also participated in the pre-bid meeting. While things stood thus, the first respondent rejected the tender application of the petitioner on the ground that the petitioner has not signed tender document. On 30.05.2007, the petitioner made a representation to the first respondent to issue a letter in the above context with reasons, which was acknowledged on the same day. The petitioner got issued a lawyer notice dated 10.05.2007 to the first respondent demanding him not to proceed with the tender finalization, but there was no response from the first respondent. Challenging the said action the present writ petition came to be filed.

By an order dated 14.06.2007 this Court while admitting the writ petition ordered that the empanelment of the third respondent and the work if any entrusted to him in the meanwhile shall be subject to further orders.

A counter came to be filed by respondent Nos.1 and 2 disputing the averments made in the affidavit. It is stated in the counter that the petitioner has not submitted the tender form and has also not complied with all the requirements. The two affidavits submitted by the petitioner, as part of technical bid, do not bear attestation of an advocate and neither it was notarized nor was it attested by a gazetted officer. Hence, it is stated that the petitioner has not satisfied all the requirements. In reply to para No.9 of the affidavit, it is stated in the counter that the petitioner not only signed the tender

form but he has not submitted the tender form itself. Tender form duly signed and serially numbered is a part of the technical bid which cannot be separated. If the technical bid papers are in order, inspection would be undertaken. After the inspection, the short listed chemists commercial bids are opened. The procedure was followed and hence there was no illegality and arbitrary.

As seen from the record, the tenders were finalized in the year 2007 and the third respondent was appointed as Chemist in the year 2007 itself and since then he has been supplying the medicines to the Government of India.

Learned counsel for the petitioner submits that he is not aware as to whether the third respondent is still supplying medicines to the Government of India.

Having regard to the averments in the counter and since no reply is filed to the counter filed by the respondents, this Court is of the view that there are no merits in the writ petition to interfere with the order passed by the first respondent, at this stage.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.09.2015

gkv