HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.22763 of 2015

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader for Medical and Health and Sri V.Mallik, learned counsel appearing for the 4th respondent.

The petitioner questions awarding contract to the 4th respondent by respondents 1 to 3 relating to the supply of diet to the District Hospital, Khammam. The award of supply of diet to the inpatients and duty medical officers is regulated by G.O.Ms.No.325, Health, Medical and Family Welfare (M1) Department, dated 01-11-2011. In pursuance of the same, the 3rd respondent has called for tenders to the District Hospital, Khammam on 12-04-2015. The District Hospital, Khammam, is stated to be 250 bed hospital whereas the Area Hospital, Bhadrachalam, is 100 bed hospital. Since the present contract relates to District Head Quarters Hospital, Khammam, the same is in issue on the ground that as per the tender notice issued by the 3rd respondent, the petitioner, the 4th respondent and other tenderers had submitted their bids. The 3rd respondent has awarded the contract to the 4th respondent under proceedings, dated 19-07-2015. The same is questioned by the petitioner in this writ petition on the ground that the 4th respondent is not a diet Contractor and he does not have requisite experience in terms of the requirement of experience under G.O.Ms.No.325, referred to above. He also challenges the selection of the 4th respondent on the ground that the 4th respondent has not filed VAT returns for five years, which are necessary in respect of District Hospitals, as stipulated in the aforesaid G.O. Notwithstanding the fact that the 4th respondent does not have experience or complied with the requirements under the VAT Act, the selection of the 4th respondent as a successful tenderer is questioned on the ground that the same is clearly arbitrary and contrary to the aforesaid G.O.

Learned counsel for the petitioner specifically states that the 4th respondent is not a contractor and even according to him, the 4th respondent has merely worked as a Manager of a Hotel for eight years and prior to that, he worked as a dietician in the Government Hospital. However, according to the learned counsel, the same does not qualify for being considered as having requisite experience under the aforesaid G.O. To the extent of non-compliance with the requirement of giving VAT Certificate under the payment of VAT, learned counsel submits that the 4th respondent has admittedly not given any such certificate and exemption is not applicable in his favour, as the District Hospital is more than 50 bedded hospital and as such, exemption clause does not apply to the District Hospital.

Respondents 1 to 3 have filed counter affidavit stating that the 4th respondent is found to have worked as Dietician in 350 bedded hospital and worked for about 15 years in the Medical and Health Institution and monitored the diet issued to the inpatients and Duty Doctors. It is also stated that the 4th respondent has worked as a Manager at Mamatha Hotel, Khammam, which serves 500 meals approximately every day. On the basis of the aforesaid experience of the 4th respondent, it is considered as sufficient qualifying experience. To the extent of VAT, it is stated that the Principal Secretary to the Government issued Memo, dated 23-05-2006, clarifying that the VAT is not applicable with regard to diet charges and based on that, it is stated that there is no requirement of VAT found applicable in the present case. Basing on the aforesaid, it is stated that the lowest bid of the 4th respondent was accepted and he was awarded the contract and he is already working. So far as IT returns are concerned, there is no controversy that the requisite IT returns were filed by the 4th respondent.

The 4th respondent has filed a separate counter stating that the conduct of the petitioner is approbating and reprobating inasmuch as he was awarded contract on 29-07-2015 for Area Hospital, Bhadrachalam, wherein the petitioner himself had claimed exemption from VAT. Similarly, it is also stated that even earlier also, the requirement of VAT was not existing for the petitioner and as such, the 4th respondent also stands on the same footing and in his case also, the requirement of VAT was already not insisted upon. It is also stated that the 4th respondent has taken charge on 21-07-2015 and working as such. Thereby, no interference by this court is called for. The 4th respondent has produced the documents including the documents obtained under the Right to Information Act, so far as the petitioner is concerned, who was the previous contractor for the very same Hospital. The said document is filed to substantiate that even for the petitioner, while awarding contract for the previous year, VAT was not insisted upon.

After hearing the learned counsel for the parties, it is evident that the requirement of experience in terms of G.O.Ms.No.325 provides under Clause 13 as follows:-

> "CRITERIA FOR EVALUATION OF TECHNICAL BID:-
>
> The Technical parameters in respect of bidding process shall be as follow:-
>
> (1) Experience – Weightage 50%
>
> (a) The Contractors, who is having experience of minimum three years to supply diet in the Government Hospitals of 500 or more beds, to supply diet in the Teaching Hospitals, 200 beds for District Hospitals/100 beds for Area Hospitals/50 beds for Community Health Centers.
>
> (b) The Contractors, who is having experience in the field of catering in Institutions other than Hospitals like Hostels, College Canteens, Hotels, Bulk caterers, Railway Canteens and Hospitality Institutions etc.
>
> (c) If Diet Contractor is not able to produce IT & VAT, the District Diet Management Committee (DDMC) has the discretionary power to accept the application in case of Hospitals of below 50 beds.
>
> (2) IT Returns – Weightage 25%
>
> (a) IT & VAT returns for 5 years to be filed, for Teaching/District Hospitals.
>
> (b) IT & VAT returns for 3 years to be filed for Area Hospitals/CHCs."

It would be noticed in Clause (b) above, that the experience in the field of catering in institutions other than Hospitals like Hostels, College Canteens, Hotels, Bulk caterers, Railway Canteens and Hospitality Institutions etc., can also be considered as sufficient experience. What is essential to be seen is that one must have experience in the field of catering. In view of that, the 4th respondent, who states that he was a dietician for a period of 15 years in 350 bedded hospital, undoubtedly qualifies him to have experience in the field of catering. Apart from that, the 4^{th} respondent is stated to have worked at Mamatha Hotel, Khammam, for eight years serving 500 meals approximately everyday as a Manager, therefore, that also qualifies him as having experience in the field of catering. Thus, the tenderer may or may not be contractor but may as well have experience in the field of catering in various other fields other than hospitals, which also is sufficient for the purpose of fulfilling experience criteria under G.O.Ms.No.325. The 4^{th} respondent, in my view, was rightly found having the requisite experience.

So far as the requirement of IT returns is concerned, the same was admittedly complied with by the 4^{th} respondent and so far as non compliance of VAT is concerned, the Memo issued by the Principal Secretary on 23-05-2006, no doubt, states that "there is no provision or instruction to deduct the tax on the direct supplies of goods under APVAT Act, 2005 w.e.f. 01-4-2005, the deductions, if any made on diet charges shall be refunded". Thus, no VAT is applicable to diet charges as per the said Memo.

Apart from that, APVAT Act, 2005 (for short 'the Act') is applicable only to the dealers in terms of Section 4(1) of the Act, which requires every dealer shall be liable to pay tax on every sale of goods in the State at the rates specified in the Schedules. The word 'Dealer' is defined under Section 2(10) of the Act. From a look at the definition of 'Dealer', it would be clear that a Manager of a Hotel or diet supervisor working in a Hospital or such other institution would only be an employee of such institution and would not fall within the definition of 'Dealer' under the AP VAT Act. Thus, the requirement for compliance with the VAT in terms of G.O.Ms.No.325 is applicable to such of the contractors or tenderers, who have themselves claimed experience as a diet contractors, but those who are only supervisors or managing the work of providing diet or catering cannot be equated to contractors so as to treat them as dealers under the Act. In the present case, the 4^{th} respondent does not claim to be the contractor but only claims to have worked as a dietician in a Government Hospital and later on as a Manager in a Hotel. The same having been accepted it cannot be said that the 4^{th} respondent is a dealer and thereby, the requirement of VAT is liable to be fulfilled by him. Though counter of respondents 1 to 3 does not justify their actions on the aforesaid ground and merely justify their action of not insisting on VAT on the basis of the Memo of the Principal Secretary, referred to above, in my view, the requirement of VAT is not applicable to the 4th respondent. Hence, on that ground, the tender of the 4th respondent is not liable to be cancelled, as contended by the petitioner and rightly accepted by respondents 1 to 3. Therefore, in my view, the work awarded to the 4th respondent does not suffer from any infirmity.

Accordingly, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS

V.AFZULPURKAR, J

Date: 10-08-2015

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.22763 of 2015

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18-08-2015

Prv