

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.27325 of 2015

Between:

D.Swamy Reddy

....Petitioner

And

Jawaharlal Nehru Technological University

Hyderabad, and another

....Respondents

JUDGMENT PRONOUNCED ON : 30.09.2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : **Yes**

may be allowed to see the Judgments?

2. Whether the copies of judgment may be : **No**

Marked to Law Reporters/Journals?

3. Whether His Lordship wishes to : **No**

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.27325 of 2015

ORDER:

The petitioner is a Proprietor of M/s. Sai Security Services. The first respondent issued a tender notice on 04.06.2015 inviting tenders from eligible agencies for private security services in the first respondent campus and college of engineering, Hyderabad for the year 2015-16. It was alleged that though the petitioner was eligible and the second respondent was ineligible, the second respondent was declared as successful bidder. In those circumstances, the present writ petition was filed.

The first respondent did not file counter affidavit, but assisted this Court by producing relevant record.

The second respondent filed a detailed counter affidavit stating that it was eligible and fulfilled the conditions of tender strictly, as a result of which it was declared as successful.

The notice inviting tenders dated 04.06.2015 indicates that the estimated contract value is Rs.1,60,59,593/- and the period of contract is 12 months. The eligibility was restricted to the tenderers fulfilling the following conditions:

To qualify for award of the contract, each Tender in its name should have minimum of 5 years of experience in **State/Central/P.S.U/Corporations/Universities/Governments Departments / Government Undertakings** having experience of providing Security of minimum 98 employees in the similar category/categories in any one year preceding five years viz., 2010-11 to 2014-15. **Experience of supply of personnel towards House-keeping, Landscaping is not considered.**

The bidders must be an agency offering Supply of man power for a period not less than five years in any **State/Central/P.S.U/Corporations/Universities/Government Departments/Government Undertakings** from the date of tender notification. The turnover of the agency towards Supply of man power shall not be less than **Rs.1,60,59,593.00** in any one year of the preceding five years viz., 2010-11 to 2014-15. A certificate in original from a Chartered Accountant on the turn over for Supply of man power for the reference years should be uploaded/submitted.

The bidders shall demonstrate proof of experience of Supply of man power of

not less than **Rs.80,29,796.00** in a single agreement/single work order in any one year of the preceding five years viz., 2010-11 to 2014-15. A certificate in original from the Head of the Organization or any other competent authority for Supply of man power for the reference years should be uploaded/submitted.

The required documents to be furnished along with bid documents are mentioned in paragraph No.6 and it reads as under:

6. Document to be furnished along with the Bid Document

- i. The agency should be a licensee as an outsourcing man power supply agency with the **Commissioner of Labour Department**, Government of Telangana/ Andhra Pradesh since last five years.
- ii. Valid registration certificate of Firm or agency under relevant act since last five years.
- iii. Valid registration with ESI since last five years and latest copy of the Challans deposited.
- iv. Valid registration with EPF since last five years and latest copy of the Challans deposited.
- v. Electronic Challan cum Returns (ECR).
- vi. Registered with Labour Dept., under relevant category since last five years.
- vii. EMD drawn in favour of the Registrar, JNTUH payable at Hyderabad in form of Demand Draft from Nationalized Banks.
- viii. Latest Income Tax Saral form / Returns filed. The agency should be Income Tax payee for minimum 5 years
- ix. List of Present Clientele with contact address & telephone numbers
- x. Service tax Registration Certificate.
- xi. The bidders should produce experience certificates of providing Security of minimum 98 employees in the similar category/categories in any one year preceding five years viz. 2010-11 to 2014-15.
- xii. Annual Turnover of the Agency/Firm should not be less than **Rs.1,60,59,593.00** per annum in any one year preceding five years viz. 2010-11 to 2014-15.
- xiii. The bidders shall demonstrate proof of experience of Supply of man power of not less than **Rs.80,29,796.00** in a single agreement/single work order in any one year of the preceding five years viz. 2010-11 to 2014-15.
- xiv. The bidders shall furnish the information with regard to the existing commitments with proofs such as work orders, agreements etc.
- xv. The bidders should produce Articles of Association (in case of registered firms), Bye laws and certificates for registration (in case of registered co-operative societies), Partnership deed (in case of partnership firm).

- xvi. An undertaking (self-certificate) that the agency hasn't been blacklisted by a Central / State Government institution and there has been no litigation history with any government department on account of similar services and the same should be uploaded/submitted.
 - xvii. The tenderer must have minimum one branch office at Hyderabad before or after award of the contract.
 - xviii. The tenderer must remit the EPF & ESI and other taxes to the departments concerned. The latest challans towards remittance of EPF & ESI shall be uploaded/ submitted.
- a) Security supply registration (Mandatory)
 - b) Firm registration (Mandatory)
 - c) Pan card (Mandatory)
 - d) Service Tax Registration & No
 - e) ISO Certification (Optional)
 - f) Turn over details of last 5 years certified by a CA (Mandatory)
 - g) Experience certificate of providing Security employees - Value (Mandatory)
 - h) Experience certificate of providing Security employees - Numbers (Mandatory)
 - i) ESI Registration (Mandatory)
 - j) EPF Registration (Mandatory)
 - k) Latest Challans of ESI & EPF up to the month of March-2015 along with the details of employees in a statement (Mandatory)
 - l) Electronic Challan cum Returns (ECR).
 - m) Experience certificates from Government Organizations / Corporation / Universities / PSUI (Mandatory)
- xix. For each candidate they should submit the qualification certificates at the time of deployment
 - xx. Certificate showing minimum 5 years experience in Security Services to Government Departments / Government Undertakings.
 - xxi. List of present clientele with contact addresses & telephone numbers. The above documents have to be scanned, uploaded and attached with the bid.

As per the comparative tabular statement furnished by the learned Standing Counsel for the first respondent, the petitioner did not fulfill the following conditions:

16. Proof of Single Value experience from any State / Central/P.S.U/Corporations/Universities/Government Departments / Government Undertakings of Supply of man power of value not less than specified in the TENDER NOTICE (NIT) in a single agreement/single work order in any one year of the preceding five years viz. 2010-11 to 2014-15. A certificate from the Head of the Organization or any other competent authority for Supply of man power for the reference years should be uploaded/submitted in Statement I given in the tender document.
17. Proof of experience from any State /Central/P.S.U/Corporations/Universities/Government Departments / Government Undertakings of Supply of man power of numbers (No.s) not less than specified in the TENDER NOTICE (NIT) in any one year of the preceding five years viz. 2010-11 to 2014-15. A certificate from the Head of the Organization or any other competent authority for Supply of man power for the reference years should be uploaded/submitted in Statement II given in the tender document.
18. Proof of Group Value (Annual Turn Over) experience from any State/Central/P.S.U/Corporations/Universities/Government Departments/Government Undertakings of Supply of man power of value not less than specified in the TENDER NOTICE (NIT) in any one year of the preceding five years viz. 2010-11 to 2014-15. A certificate in original from a Chartered Accountant on the turn over for the reference years should be submitted for the reference years should be uploaded/submitted in Statement III given in the tender document.

Though the learned counsel for the petitioner argued with regard to validity of the tender of the second respondent, since the second respondent's tender was accepted by the first respondent, this Court verified the eligibility of the petitioner before proceeding to examine the validity of the tender of the second respondent. This Court made it clear that if the petitioner's tender was not eligible for consideration by the first respondent, the writ petition would be dismissed without scrutinizing the validity of the tender of the second respondent. Accordingly, this Court proceeded to scrutinize the validity of the tender of the petitioner.

With regard to the compliance of condition No.16, it is submitted by the learned counsel for petitioner that during the five years period from 2010-11 to 2014-15 the petitioner should show the proof of single value experience from an organization mentioned, in a single agreement/single work order with the certificate from the Head of the organization or any other competent authority for supply of manpower. It is stated that the updated value for the year 2010-11

is Rs.9,56,018.25 ps, for 2011-12 is Rs.8,92,283.70 ps, for 2012-13 is Rs.8,28,549.15 ps and for the year 2014-15 is Rs.90,98,698.40 ps. The highest value in those years is Rs.90,98,698.40 ps. This has to be read along with condition No.6(xiii) which says that the value of that single work should be not less than Rs.80,29,796/- in any one year. Admittedly the petitioner possessed such experience from single organization.

Regarding next point of proof of experience, the petitioner mentioned only 75 persons for the year 2014-15 and the required minimum number as per the condition as mentioned in paragraph No.5(ii) of the conditions of the tender notification is 98 employees during the relevant period of five years viz., 2010-11 to 2014-15. The said certificate is for less than the prescribed number of 98. Hence, this condition was not complied with.

The other condition relates to annual turnover in any one year during the relevant years 2010-11 to 2014-15. The said certificate should relate to experience from any State/Central/ P.S.U/Corporations/Universities/Governments Departments/ Government Undertakings. A certificate of the Chartered Accountant for the said purpose was held to be sufficient. The certificate from the Chartered Accountant dated 18.06.2015 indicating the following turnover for the respective years was mentioned:

Year	Turn Over (Rs. In lakhs)
2009-10	428.23
2010-11	399.80
2011-12	597.15
2012-13	411.63
2013-14	267.26

The above certificate of the Chartered Accountant indicates that the turnover of the petitioner exceeded Rs.160 lakhs in the above years, but does not relate to any particular undertaking, and hence, it cannot be said that the condition was fulfilled.

Though the petitioner fulfilled the terms and conditions of 16 as mentioned

above, did not fulfill condition Nos.17 and 18. In view of the same, the rejection of the tender of the petitioner by the first respondent cannot be held to be bad. The Writ Petition is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.

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

(A.RAMALINGESWARA RAO, J)

30.09.2015

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