

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.39209 OF 2014

ORDER:

The petitioner prays for Mandamus declaring the action of respondents in withholding EMD amount of Rs.40,000/- deposited by petitioner through D.D.No.043785 dated 02.07.2014 pursuant to tender notice dated 19.06.2014, as illegal, arbitrary and contrary to the agreed tender conditions.

The admitted circumstances of the case are that the 4th respondent issued tender notice Rc.No.213/P1/DH.Nlg/2014 dated 19.06.2014. The tender notice is issued for offers to supply 178 medicines. The petitioner is one of the tenderes. The petitioner submitted his offer along with E.M.D. dated 02.07.2014 for the products for which tender notice dated 19.06.2014 is issued by the 4th respondent. From the material available on record, it is evident that the committee headed by the Joint Collector, Nalgonda has accepted the offer of petitioner for 131 medicines on the ground that the rates offered by the petitioner are lowest for these 131 items.

The case of the petitioner is that the offer given by him is comprehensive, complete and inseparable. The 4th respondent can either accept the offer in its entirety or if the offer given by the petitioner is found to be non-competitive for any reason, can reject the entire offer of petitioner but not split up the offer. The 4th respondent contrary to the terms and conditions of tender notice cannot accept the offer of the petitioner for supply of a few items and give a few other items to another tenderer. There is no such clause in the tender conditions. From the material filed by the respondents, it is clear before

finalisation, the petitioner was put on notice about the distribution of products between the petitioner and another tenderer. The petitioner having noticed the change in supply conditions, through communication dated 26.09.2014 has withdrawn his offer for supply of 178 items. The 4th respondent having received the communication dated 26.09.2014 has issued the proceedings dated 29.10.2014. From the chronological considerations of dates and events, it is abundantly clear that contrary to the supply conditions the offer of petitioner was split up into two portions without petitioner's consent and the petitioner was called upon to accept the offer for 131 products.

In the opinion of this Court for any reason if it appears to the 4th respondent that the offers of respective tenderers are not competitive and distribution of products is required, the 4th respondent can change the offer with the consent of tenderers. Admittedly the petitioner is not agreeable for distribution of supplies between tenderers. In the case on hand by withdrawing from the tender, the petitioner has placed his dissent for such course of division. Once the offer is withdrawn acceptance through order dated 29.10.2014 does not arise. It is matter of record that the 4th respondent issued fresh tender through tender notice dated 07.01.2015 for procuring 131 products. Thus an effort to purchase medicines/products from eligible dealers is underway. The only issue is whether the petitioner is entitled for refund of EMD or not? In the considered view of this Court the issuance of proceeding dated 29.10.2014 is arbitrary and illegal and the further failure to supply of 131 products by petitioner cannot be considered as illegal and forfeiture of EMD is illegal. The petitioner is entitled for refund of EMD of Rs.40,000/-. The writ petition is ordered by directing 4th respondent to return EMD within 10 days from today.

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

S.V.BHATT, J

Date:27.01.2015

Note:

Communicate the order forthwith.

B/o.

Stp