

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT**

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W.A.No.705 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.BHATT)*

Heard Mr. M.S.Prasad, learned senior counsel appearing for the appellant, learned Government Pleader for Civil Supplies for respondent No.1, Sri A.Jagan, learned counsel for respondents 2 and 3 and Sri S.Ramachander Rao, learned senior counsel appearing for respondent No.4 .

The writ petitioner is the appellant and the appeal is directed against the order dated 15.07.2015 in writ petition No.6375 of 2015.

The appellant prayed for Mandamus declaring the action of respondents in rejecting the tender filed by the appellant in Notification No.PDS2 /Movt /FG5(1) /Stage 1 Tenders/2015-16 /TS dated 28.02.2015 as illegal and unconstitutional.

The parties are referred as arrayed in the writ petition.

The facts and circumstances necessitated for filing the writ petition are not in dispute and are referred in detail by the learned Single Judge. To avoid repetition, we are not proposing to re-state the undisputed facts and circumstances in the writ petition. The issue canvassed by the petitioner centres around the petitioner's failure to annex Permit Certificate for Lorry bearing No.AP13X 3012 whether amounts to non-compliance with the tender conditions or not. The petitioner admittedly made good this deficiency of not filing the required documents pursuant to the interim order dated 12.03.2015 in WPMP No.8478 of 2015 in W.P. The point, therefore, had fallen for consideration before the learned Single Judge is whether the petitioner's failure to enclose documents according to tender conditions has attracted non-compliance with the tender conditions and the rejection of petitioner's tender is justifiable?

The learned Single Judge has considered the binding precedents on the issue and has recorded the following finding:

"In **Glodyne Technoserve Limited v. State of Madhya Pradesh** (2011)5 SCC 103) the Supreme Court rejected the argument of the tenderer that a document, which is valid and active, can be submitted even at the time of signing the memorandum of understanding, when the terms and conditions of tender require them to be produced along with the bid document a copy of the quality certificate which is valid and active on the date of submission of the bid.

In view of the above clear position of law, the submission of permit certificate later to the opening of bid on 10.03.2015 pursuant to the interim order of this Court cannot make the bid of the petitioner valid. Such a course of action of the petitioner cannot be allowed to take place in view of the clear terms and conditions of tender. However, it is a different case when the employer himself chooses to relax the non-essential conditions and allows the bid to be accepted. But, in this case, the bid of the fourth respondent, who fulfilled the terms and conditions of the notice inviting tenders, was accepted and the price bid of the petitioner was not opened at all."

We are in entire agreement with the above findings and see no reason to re-examine the issue. It is well settled that this Court cannot direct respondents 2 and 3 to receive a bid document in contravention of the terms and conditions governing the tender. Therefore, we are constrained to dismiss the appeal.

Mr.M.S.Prasad, learned senior counsel submits that by accepting the tender of respondent No.4, respondents 2 and 3 will incur additional burden of Rs.12,00,000/- as the price quoted by the petitioner is less by Rs.12,00,000/- than the price accepted now. Therefore, the learned counsel prays for a direction to the respondents to receive the tender of petitioner as well, invite both the parties for negotiations and finalise the contract.

While opposing the writ appeal, the learned senior counsel Mr.S.Ramchander Rao appearing for 4th respondent, on instructions, has made a statement that respondent No.4-Sri Venkatarama Lorry Transport represented by its proprietor is willing and prepared to reduce its price and match the price offered by the petitioner. The statement is placed on record and respondents 2 and 3 are directed to take note of the statement and act accordingly. The Writ Appeal is dismissed with the above observations.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ _____

S.V.BHATT, J _____

Date: 22.07.2015
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