

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

WRIT PETITION No.18271 of 2015

Between:

M/s. Sri Manikanta Social Service Society, Karimnagar

Rep. by its President Ch. Raju,

and another

....Petitioners

and

The Regional Manager

APSRTC

Nalgonda Region, Nalgonda District

....Respondent

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.18271 of 2015

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ORDER:

The first petitioner is a Society and the second petitioner is the proprietor of a contractual entity. The second petitioner is also the President of the first petitioner Society. The respondent invited sealed tenders for supply of manpower on outsourcing basis in the respondent organization in various Depots of Nalgonda Region, Nalgonda District, for various categories of posts i.e., Sweepers, Cleaners, Mechanics, Assistants etc. As per the tender notification, the sealed tenders should be dropped in the tender box on or before 12.06.2015 before 2.00 p.m. in the office of the respondent. The petitioners submitted sealed tender applications before the prescribed time. The first petitioner states that it got much experience for supply of manpower on outsourcing basis and as on the date of filing of the writ petition, it was supplying manpower to various Depots of APSRTC and Bus Stations. The tenders were opened on 12.06.2015 but the respondent did not consider the tenders of petitioners. The petitioners submitted representations on 12.06.2015 and 15.06.2015 asking the respondent to indicate the reasons for rejection of the tenders and when no intimation was given, the present writ petition was filed seeking a direction to consider the tenders of the petitioners along with other tenderers.

The writ petition was filed on 21.06.2015 and the learned Standing Counsel took notice on behalf of the respondent on 23.06.2015. On 25.06.2015, it was represented by the learned Standing Counsel that steps were being taken for cancellation of the tender notice dated 21.05.2015 and the same is in process. After recording the said statement, the case underwent two adjournments and when it was listed on 17.07.2015, it was submitted by the learned counsel for

the petitioner that the respondent, instead of canceling the tender, is awarding the work to some third parties. In those circumstances, while issuing notice before admission, the award of work and all further proceedings pursuant to the tender notification dated 21.05.2015 were stayed and after production of the record the matter was finally heard on 18.09.2015.

Counter affidavit is filed by the respondent admitting the issuance of tender notification dated 21.05.2015 and it was stated that besides the requisite qualifications, the tenderer, who is holding PF and ESI code numbers and labour licence issued by the concerned authorities shall be given preference. 247 bidders have participated in the tender and the tender of the first petitioner was rejected on the ground that PF and ESI address did not tally with address on the tender form and no labour license existed. The second petitioner's tender was also rejected on the same ground. It is stated that the petitioners have not submitted the tender applications along with PF, ESI and labour licence as per the conditions in the tender notification. The eligible tenderers have participated in lucky dip on 12.06.2015. Four other tenders were also rejected on similar grounds.

Reply affidavit is filed by the petitioners stating that the labour licence dated 11.05.2010 and 02.07.2014, issued by the Licensing Officer and Deputy Commissioner of Labour, Karimnagar, which were valid upto 28.02.2016 and 21.03.2016 respectively were enclosed along with the tender application. Though other tenderers have filed documents without complying with the tender conditions, their tenders were accepted. P.Ajay Kumar, Mohd. Aqeel Ahmed, Sri Venkateswara Veeranjaneya Manpower and Security Services, are some of the tenderers, whose tenders were considered by the respondent.

On the basis of the above pleadings, the learned counsel for the Petitioners submitted that the action of the respondent in rejecting the tenders of the petitioner is arbitrary and liable to be declared as such. The learned Standing Counsel for the respondent, on the other hand submitted that the tenders of the petitioners were rejected on valid grounds only and the action of the respondent cannot be found fault with.

It is clear that the tender notification dated 21.05.2015 was issued by the respondent in respect of 17 items of work indicating minimum number of

persons to be engaged in respect of each unit for a period of two years. The relevant conditions of the tender notification read as follows:

- The Tenderer should submit separate tender form for each tender along with DD/Cheque for requisite EMD.
- Other things being equal, the tenderer who is holding PF and ESI Code Nos. and Labour Licence issued by the concerned authorities shall be given preference.
- Other things being equal, if more than one Tenderer quotes the same lowest amount of Monthly Remuneration and found suitable by the Tender Committee, the contract shall be allotted on the basis of LOTTERY.
- The Contractor/Agency has to quote individual applications for each contract.

A perusal of the above conditions shows that the tenderer should submit separate tender form for each tender along with EMD amount and other things being equal, the tenderer, who is holding PF and ESI code numbers and labour licence issued by the concerned authorities shall be given preference. The contractor has to quote individual applications for each contract.

There is no denial of the fact that the petitioners complied with the conditions of the tender as to its filing, but the same were not considered on the ground that the tenderer's address mentioned in the application did not tally with the PF and ESI certificates and firm registration. The PF and ESI certificates are meant only for giving preference to the tenderers, but it is not a main condition for the validity of tender.

The petitioners filed additional documents in W.P.M.P.No.38170/2015 after obtaining the same under the Right to Information Act in respect of item No.4 of the tender notification. They have also obtained the documents relating to other tenderers mentioned above in order to show how the respondent showed discrimination. The copy of the tender application filed by the first petitioner shows that it was filed on 12.06.2015 in respect of Yadagirigutta Depot in tender form No.3. In the said tender document, the registration certificate dated 09.04.2012 of the firm was enclosed along with EPFO coverage document dated 03.01.2014 having code No.NZKRN/0067713/000 and labour licence No.E-1669 dated 02.07.2014. The tender form also contains the experience certificate issued by the Depot Manager, APSRTC, Godavarikhani, dated 25.04.2014. In respect of the second petitioner also, similar type of documents

were filed. A perusal of the said documents shows that the address mentioned in the registration certificate, though, did not tally with the address mentioned in the tender form, the EPF registration licence can be identified with the name of the tenderer. It is common knowledge that a firm or an individual may change his address consequent to shifting of the office/residence and what is material is whether the certificates bear the name of the firm or individual or not. On the other hand, the respondent took into consideration the address mentioned in the tender form ignoring the name of the tenderer and compared the address with the address available in the document. However, the ESI registration and labour licence registration are meant only for giving preference as stated above and not the main conditions of the tender as stated above. The tenders of the petitioners ought not to have been rejected on the ground that the addresses mentioned in the enclosed documents did not tally with the addresses mentioned in the tender forms. The tenders of the petitioners are thus improperly rejected.

At the time of hearing it was stated that out of 17 numbers, tenders in respect of 8 numbers were finalized in a lucky dip. Since the said tenders were finalized without including the tenders of the petitioners, the finalization of the tenders has to be set aside and the petitioners' tenders also should be included along with the other tenderers for consideration for award of the contract. The record shows that the approved ten (not 8 as stated) tenders, out of 17 tenders were sent to the respondent for recommendation to the Executive Director for approving the Tender Committee proceedings for allotment of work. Though the members of the Tender Committee have not put their signature, the Executive Director signed it on 04.07.2015, and a provisional allotment letters were issued on 13.07.2015 and 15.07.2015 in respect of Yadagirigutta and Suryapeta depots respectively indicating that it was a provisional allotment subject to result of the present writ petition. As stated above, the learned Standing Counsel made a statement before this Court on 25.06.2015 that the respondent is in the process of cancellation of tender notice dated 21.05.2015 and the case was adjourned for instructions to 08.07.2015, 15.07.2015 and ultimately on 17.07.2015 when it was informed by the learned counsel for the petitioner that the respondents are awarding the work, this Court while issuing notice before admission, granted stay of award of the work. Though the letters of allotment were issued, the work

does not appear to have been allotted. The record also reveals that in respect of Depots of Nalgonda, Narketpally, Miryalaguda, Kodad also, similar letters were issued on 15.07.2015.

In the above circumstances, this writ petition is allowed, directing the respondent to include the tenders of the petitioners also and process the tenders along with other eligible tenderers for consideration of the award of works. 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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