

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.12342 and 21594 of 2015

COMMON ORDER:

Both the writ petitions are filed with reference to Tender Notification issued by the 3rd respondent dated 12-04-2015, whereby the Tenders were called for from interested diet contractors to run diet canteens in various hospitals in the Khammam District for supply of diet to inpatients and duty Medical officers.

The petitioner in W.P.No.12342 of 2015, who is the existing contractor and is continuing at present, has questioned the very Notification aforesaid on the ground that the District Co-ordinator of Hospital Services, who has called for the Tenders, is not empowered to call for tenders in terms of Clause-9 of G.O.Ms.No.325, dated 01-11-2011. According to the petitioner, it is the District Diet Management Committee (DDMC), which is empowered to call for tenders.

Learned counsel for the petitioner states that the DDMC, which is formed in terms of clause-7 of the aforesaid G.O., consists the Joint Collector as Chairman, six other officials of the District as members of the Committee and the District Coordinator of Hospital Services as Convener. He submits, therefore, that the present Tender Notification issued by the District Co-ordinator is without any authority.

It is not in dispute that the petitioner himself accepts that he applied in response to the said tender Notification, but the learned counsel for the petitioner states that as the last date was stipulated, the petitioner was compelled to apply and later he has questioned the very same tender Notification. The petitioner also questions the eligibility of the 4th respondent, who is also one of the tenderers to participate in the said tender. Learned counsel for the petitioner states that the 4th respondent is disqualified and ought not to have been considered as eligible to participate in the tender.

The said 4th respondent has filed W.P.No.21594 of 2015 questioning the action of the 3rd respondent in not finalizing the tenders. Hence, that writ petition is also heard along with this writ petition.

On 01-05-2015 in W.P.No.12342 of 2015, while granting time to the learned Government Pleader, this court directed that finalization is subject to further orders in this writ petition. By virtue of the said order, it appears that respondents 1 to 3 have not finalized the tenders.

Counter affidavits have been filed in W.P.No.12342 of 2015 by the 3rd respondent, who is District Co-ordinator as well as the 4th respondent, who is contesting the writ petition.

It is seen from the counter affidavit that earlier the Convener, DDMC has issued a paper Notification on 14-03-2015 calling for tenders, as per the instructions of the Joint Collector and Chairman, DDMC, Khammam, and in response to the said notification, only Single tender was received. Therefore, as per the instructions of the Chairman, DDMC, Khammam, again fresh tender notification was issued on 12-04-2015. It is further stated that previous contract was issued by the previous District Coordinator of Hospital Services and at that time, the petitioner has got contract of diet supply and he did not object the notification procedure at that time. Therefore, it cannot be said that the DDMC has no power to call for the tenders. Counter affidavit in other wards states that the present tenders are called for by the District Co-ordinator of Hospital Services on the directions of the Chairman, DDMC and there is no invalidity in calling for the tenders. Further, the counter affidavit also states that the writ petitioner himself has filed his tender, which amounts to accepting the tender notification and hence, he cannot question the very same tender Notification.

The 4th respondent has also filed counter affidavit asserting that he is eligible to participate in the tender. However, that matter need not be decided by this court at this stage inasmuch as the tenders are yet to be finalised and it would be highly premature at this stage to consider the inter se eligibility

among tenderers.

I have heard the learned counsel for the petitioner, learned Government Pleader as well as the learned counsel for the 4th respondent, who is also the counsel appearing in support of W.P.No.21594 of 2015 filed by the 4th respondent, as stated above.

The issue raised regarding competency of the District Co-ordinator in calling for tenders, in my view, is without any substance inasmuch as the tender document itself mentions in clause (1)(f) as follows:-

“In terms of the above referred GO, the District Diet Management Committee (DDMC) under the Chairmanship of the Joint Collector is inviting the tenders hospitalwise and selects the Tenderers under competitive bidding process for ward of the contract.”

Apart from that, the counter affidavit specifically states that it is the Joint Collector as Chairman of DDMC, who has ordered for calling of tenders as a consequence of which, the convener of DDMC has called for the Tenders. Apart from that, the counter affidavit has also placed on record the proceedings of the Joint Collector and Chairman of DDMC, dated 08-04-2015, wherein he passed orders for calling fresh tenders and in pursuance of that direction, the convener has called for fresh tenders. I, therefore, do not see any ground to invalidate the tender notification.

In addition to that, the petitioner himself is acquiesced in the tender process by submitting his own tender in response to the impugned tender notification. Having participated in the tender, it is not open to the petitioner to question the very authority of officer in calling for tenders. In addition to the above, the specific averment in the counter affidavit in paragraph ‘9’ that for the previous years also, the same District Coordinator/ Convener has called for the tenders and that the petitioner was awarded the contract as a successful tenderer. That specific averment in the counter affidavit is not controverted by the petitioner, which itself shows that the petitioner has derived benefit, during previous year and as such he is not entitled to question the authority of the District Coordinator/Convener in calling for the

tenders. Sofar as the eligibility or otherwise of other competing tenderers is concerned including the 4th respondent, as stated above, that is a matter to be considered by the authority, which finalizes the tenders and at this stage, it is premature to consider the said contention.

In view of conclusions reached and since this writ petition is being disposed of by this order, there is no impediment for respondents 1 to 3 to consider all the offers given by each tenderer and finalize the same on competitive basis and it is also open for respondents 1 to 3 to negotiate with tenderers if they deem it appropriate and take an early decision in the matter in accordance with law. W.P.No.12342 of 2015 is, therefore, dismissed.

In view of the direction given to finalize the tenders as above, no further orders are called for in W.P.No.21594 of 2015 and it is accordingly dismissed. There shall be no order as to costs.

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

VILAS V.AFZULPURKAR, J

Date: 16-07-2015

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

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