

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.22327 of 2015

BETWEEN

T. Rajendra.

... PETITIONER

AND

Nizam Institute of Medical Sciences, Rep. by its Executive REgsitrar,
Punjagutta, Hyderabad and another.

...RESPONDENTS

Counsel for the Petitioner: MR. V.V. PRABHAKAR RAO

Counsel for the Respondents: MR. G. ANANDAM

The Court made the following:

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ORDER:

I have heard Mr. V.V. Prabhakara Rao, learned counsel for the

petitioner and learned standing counsel for the respondents.

2. Petitioner questions the order disqualifying him for the technical bid in terms of the tender notification of the respondents dated 20.06.2015 for awarding of labour contract and for providing man power. The rejection order dated 16.07.2015, which is questioned herein, mentions four grounds on which the petitioner was disqualified, as under:

Sl. No.	NAME OF THE BIDDER	DEFICITS AS PER TENDER SCHEDULE	REMARKS
1	M/s. T. Rajendra Labour Contractor, Hyderabad	- Labour License valid up to 30/01/2009 - List present assignment not enclosed - EPF, ESI, ST – Challan not enclosed - ST registration on 24.6.2015	Not Qualified

3. Petitioner states in the affidavit that he has 17 years experience as labour contractor and he has experience of 14 years in the respondent organization. However, till 2009 he was having requisite labour license but subsequently after 2009, he is not doing any labour contract anywhere in India and therefore, the labour license was not renewed after 2009. Petitioner also states that he could not furnish the list of present assignment for the same reason. So far as experience is concerned, petitioner states that the requirement for experience on the date of tender is not insisted upon in the tender and as such,

past experience of the petitioner can be considered and having experience cannot be denied. So far as EPF, ESI and ST challan are concerned, it is stated that since the petitioner has not worked as labour contractor from 2009 onwards, he could not submit the said details. However, the petitioner has service tax registration dated 24.06.2015 and the service tax was earlier not applicable to labour contractor, hence, the respondents cannot insist upon production of service tax particulars for the previous years.

On the aforesaid grounds, the disqualification of the petitioner is questioned and it is stated that the conditions in the tender schedule are not mandatory

and are tailor made to suit the existing contractors.

4. Learned standing counsel supports the impugned action on the basis of eligibility criteria/technical bid mentioned in para 2 of the tender document, which requires the tenderer to fulfil the requirement as enumerated under sub-clauses 1 to 13 thereof. So far as petitioner is concerned, it is stated that since the petitioner is not working from 2009 onwards, he is enable to comply with the mandatory requirement enumerated in the eligibility criteria. Hence, the disqualification of the petitioner by the scrutiny committee was justified. Learned standing counsel also points out that there are four other tenderers, who were disqualified on various other grounds and that the financial bid was scheduled to be opened today at 11 AM.

5. I had heard the matter in the forenoon as well as in the afternoon, as a clarification was necessary with regard to the requirements of labour license.

6. Even if the petitioner was not working as labour contractor since 2009, learned counsel for the petitioner has placed before this Court the provisions of Section 13 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act'), which provides that every application for licence shall be made in the prescribed form and shall contain particulars regarding location of the establishment, the nature of the process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed. The said requirement read with Form XI of the temporary license granted under Section 12(2) also require the number of workmen employed as contract labour in the establishment and other details to be mentioned and Form XII further requires the proposed licensee to specify the nature of labour contract, location of contract work, period of contract, maximum number of workmen employed by contractor etc. In the light of the aforesaid provisions, the requirement of license under the Act can be insisted only where the labour contractor has an existing wok in his hand and only,

thereafter, he would be entitled to furnish all the requirements under Section 12(2) of the Act.

7. To that extent, the explanation of the petitioner that he cannot be disqualified on the ground that he does not have labour license appears justified and the records of the case show that the petitioner had labour license valid upon 30.01.2009 but since he was not carrying out any labour contract work, the license was not renewed thereafter. Petitioner also states that if the work is awarded to him, he would apply and obtain the necessary license. Hence, to that extent the grievance of the petitioner that in the eligibility criteria, as a pre-condition, that a contractor should be possessor of license cannot be rigorously applied to the case of the petitioner appears sustainable.

8. Even if the disqualification of the petitioner on the ground aforesaid is not sustainable, I find that the other eligibility criteria for fulfilling the technical bid appears to be not satisfied by the petitioner. For instance, the list of present assignment cannot be given by the petitioner, as he has not done any work, admittedly, since 2009. Further, the total turnover of the agency should not be less than

Rs. 2 crores in any two consecutive financial years also cannot be fulfilled by the petitioner and with regard to other compliance of EPF, ESI, ST also cannot be complied with, as the petitioner has not worked as labour contractor since 2009 and cannot, therefore, submit any challan in support of the said condition.

9. Though the learned counsel for the petitioner submits that the petitioner would comply with all the requirements, the same cannot be considered inasmuch as the eligibility criteria for fulfilling the qualification for technical bid cannot be treated as directory, as they are mandatory. It is well settled that the essential terms in a contract regarding the requirement to select such contractor, who has sufficient turnover and is compliant with all the licenses

and registrations under various laws is a requirement by the authority calling for tender.

All the said pre-conditions, therefore, cannot be treated as merely directory and as such, the disqualification of the petitioner is in conformity with the eligibility criteria of the technical bid as per the tender document. In that view of the matter, I am unable to subscribe to the contentions of the learned counsel for the petitioner.

The writ petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 20, 2015
DSK