

HON'BLE SRI JUSTICE CHALLA KODANDA RAM
WRIT PETITION No.6564 OF 2016

ORDER:-

The Writ Petition is filed challenging the tender notice dated 18.02.2016 on the ground the notice does not specify various factors which are required to be specified in the notice in terms of Rule 6 of Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Immovable Properties and other Right (Other than Agricultural) Leases and Licenses Rules, 2003 (for short "the Rules").

Learned counsel for the petitioner Sri J. Prabhakar submits that on earlier occasion this Court had taken note that it is mandatory to comply with the conditions that are required to be fulfilled in terms of Rule 6. In spite of the same the tender notice once again has been issued without specifying various details which are set out in the affidavit.

On the other hand learned counsel appearing for the 3rd respondent Sri Ch. Satish Kumar and learned Government Pleader appearing for the 1st and 2nd respondents opposed the writ petition. Further, by placing reliance on the tender notification, which has been circulated by way of a pamphlet, would submit that what has been filed by the petitioner is only a short summary of the publication which has been made in newspaper calling for expression of interest, whereas the pamphlet dated 17.02.2016 which has been made available to all the intending bidders and which has been put in circulation specifying as many as 13 conditions. As a matter of fact all the 13 conditions are notified taking into consideration of the orders passed by this Court in W.P.No.39340 of 2015.

The learned counsel for the 3rd respondent also would raise an objection that petitioner is in arrears of lease rentals and earlier he had

made an attempt before this court to challenge the notice issued on 30.04.2015, but thereafter he withdrew the writ petition. However, the petitioner has been causing various hindrances from time to time to the betterment of the institution.

Having considered the rival submissions the question that is required to be considered is whether in terms of the orders of this Court in W.P.No.39340 of 2015 the necessary parameters have been specified in the auction notice or not? As per the Rule 6, which reads as under:

“6. The auction notice shall, among others specify:-

- (i) The period lease or license;
- (ii) The earnest money that should be deposited before participating in the auction;
- (iii) The terms and conditions governing the lease or license.
- (iv) The particular suit Security to be furnished by the successful bidder and the time within which such security should be furnished;
- (v) Liability of the lessee or licensee on account of cancellation of auction or re-auction, if he;
 - (a) Fails to furnish the security and to execute the lease deed or deed of license within the time fixed;
 - (b) Commits default in the payment of rent or;
 - (c) Acts contrary to the terms and conditions of the lease, license or against the interests of the property, institution or endowment;
- (vi) That it shall not be open to the lessee or licensee to transfer the lease or license or to sub-lease or license the properties or the rights,
- (vii) That the lessee or licensee shall execute the lease deed or deed of license in the forms specified by the Executive Authority.
- (viii) That the lease or license shall be subject to the approval of the competent authority.”

The English translation of the public auction notice the 13 conditions which have been set out below are –

- 1) During the three years lease period i.e., from 05.03.2016 to 04.03.2019 the successful bidders shall supply the tent house material for the rates fixed by the Temple authority under the lease

conditions.

2) The bidders shall deposit earnest money of Rs.30,000/- either in cash or by way of demand draft drawn in favour of Execution Officer, Sri Kasiviswanatha Swamy temple, Regimental Bazar, Secunderabad.

3) The tent house owners in twin cities, who produces the tent house registration certificate and tent house certificate i.e., a letterhead contains the name of tent house, are only eligible to participate in the auction.

4) Those who have deposited the earnest money and produce the receipt, are only eligible to enter the premises of the open auction place.

5) The name of the successful bidder will be sent to the Commissioner, Endowments Department for approval only on payment of the entire bid amount and shall obtain a receipt from the Execution Officer of the Temple, on the same day itself, otherwise the Executive Officer has power to cancel the auction without any correspondence and will not refund the caution deposit.

6) The terms and conditions of the auction will be in accordance with the permissions accorded by the Commissioner, Endowments Department, Telangana, Hyderabad.

7) Except the earnest money deposit paid by the successful bidder the rest of the bidders' earnest money deposit amount will be returned to the individuals after the auction is over.

8) The bidders shall obtain the leaflet containing the terms and conditions of the auction and those who agree for the said terms and conditions shall only participate in the auction.

9) The Temple authority has every right to cancel the auction if proper bid is not knocked out.

10) The lease period is for one year.

11) The successful bidder shall supply the tent house material to the temple at free of cost on important festivals like Sravana Pournami, Santoshi Ammavari Birthday, Shivaratri and Sri Rama Navami.

12) The persons who belong to the tent house will only be permitted into the Temple and they shall wear uniform compulsorily.

13) The tent house management is only responsible for loss of any tent house material and the temple is not responsible for the same.

The bidders who intent to participate in the auction shall abide the above conditions and participate in the auction.

A perusal of the above would indicate that the conditions 1 to 4, 7 and 8 have been complied with. The only contention of the petitioner is that conditions 5 and 6 have not been notified. A close scrutiny of conditions 5 to 7 leave no manner of doubt that they are the requirements which are required to be considered at the stage of execution of the lease deed or thereafter. In a way, the same cannot be a pre-requirement for issuance of tender notification wherein the requirement is with respect to the nature of the job that is required to be executed and other financial details. One of the condition which the learned counsel for the petitioner objects is condition No.11, wherein the tenderer is required to provide services at free of costs. Though the condition is vague it is only for the persons who are intending to participate in the tender may enquire into and seek the details from the 3rd respondent before participating in the tender. Merely because the details have not been set out in the notice it cannot be said that there is a vagueness as it is always open for the intending participant to go and make an enquiry and seek details. Further, so far as the various other aspects which are required to be stated are the conditions which would form part of the lease agreement and the model lease agreement is open for inspection and it is only such of those intending bidders who agree to the said lease agreement conditions can participate in the auction. That being the position, it cannot be said that there is vagueness in the auction notice, as it is always open for an entrepreneur to choose to participate or not to choose to participate in auction of this nature, as essentially the individual participating in the auction is for his own benefit as an entrepreneur. In that view of the matter, I do not see any reason to interfere with the auction notice dated 18.02.2016 and accordingly the writ petition is dismissed. However, the observations made in this writ petition shall not be construed in any manner disentitling the petitioner from participating in the auction if he so desires.

Miscellaneous petitions pending consideration, if any, shall also stand closed in consequence. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Date:29.02.2016
Ssv