

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 10837 OF 2016

ORDER :

Pursuant to the notification dated 14.03.2016 issued by the 2nd respondent Telangana State Civil Supplies Corporation Limited, calling for tenders for transportation of food grains, pulses or any other commodities for the year 2016-17 (from 01.04.2016 to 31.03.2017), the petitioner as well as the 3rd respondent herein has floated tenders. On 29.03.2016, the technical bid of the 3rd respondent was opened and it was disqualified for non-furnishing the relevant documents and also for signing in the name of Sri Jyothi Lorry Transport. On 30.03.2016, during the course of finalization of financial bid, the Tender Committee informed the 3rd respondent that it was disqualified in technical bid and hence, its case could not be considered in financial bid. But however, the 2nd respondent succumbed to the political influences and accepted the tender of the 3rd respondent and opened his financial bid. In spite of the objection raised by the petitioner, the bid of the 3rd respondent was declared as the lowest one and work has been allotted in its favour.

On 29.03.2016 itself, the petitioner has submitted a representation to the 2nd respondent bringing to its notice the lapses committed by the 3rd respondent.

The grievance of the petitioner is that though the 3rd respondent failed to enclose the necessary documents, as required under General Terms and Conditions No. 4 and 16(i), its bid has been accepted. Hence, the Writ Petition.

Learned counsel for the petitioner submits that the statement furnished by the 3rd respondent Sri Balaji Road Lines {Annexure IV(B)} to the effect that 15 vehicles were taken on lease, was signed in the name of Managing Partner, Sri Jyothi Lorry Transport, which is impermissible. The learned counsel further submits that in column 5 of the technical bid form, where it is required to state '*whether it is a*

propriety firm, or partnership firm or limited company', the 3rd respondent stated it as 'proprietary firm', but failed to enclose the registration certificate as is required in terms of Condition No. 16(i).

The 3rd respondent has filed a counter-affidavit denying all the averments made by the petitioner in the affidavit filed in support of the Writ Petition. So far as the averment that the Annexure IV(B) contained the rubber stamp of Sri Jyothi Lorry Transport is concerned, the 3rd respondent submits that it is due to oversight but there is no *mala fide* exercise carried out therein.

Sri A. Jagan, learned Standing Counsel for the 2nd respondent has produced the original record relating to the tenders in question. According to him, the 3rd respondent was never disqualified on technical grounds and the said fact has not been borne out by the record. He categorically submits that after careful scrutiny of the documents filed by the 3rd respondent, its bid was found to be eligible and the 3rd respondent, being the lowest tenderer, contract has been awarded to it.

Sri T. Mahender Rao, learned counsel for the 3rd respondent submits that insofar as putting the stamp of Sri Jyothi Lorry Transport is concerned, it is by oversight, that too only in one page. He further submits that at no point of time, the 3rd respondent was disqualified on technical grounds. According to him, there is a distinction between '*proprietary concern*' and '*partnership firm*'.

Having considered the respective submissions, so far as the present case is concerned, whether the action of the 2nd respondent in not dis-qualifying the 3rd respondent for its alleged non-furnishing of the proprietary firm registration certificate, is tenable, is the question, which is to be considered. At the outset, it may be stated that there is nothing like a '*proprietary firm*' in law. Normally, the reference to '*firm*' is made in relation to a partnership concern.

In the technical tender form, which was the prescribed form, in

column 5(*whether proprietary firm, or partnership firm, or limited company*), the words used are '*Proprietary Firm*'. May be, since the column itself has set out '*whether proprietary firm or partnership firm*', the 3rd respondent had adopted the same terminology and stated therein as '*Proprietary Firm*'. The word '*firm*' finds place in Section 4 of the Indian Partnership Act, 1932. It is useful to note Section 4 of the Act, which reads as under:

4. Definition of “partnership”, “partner”, “firm” and “firm name”.—“Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually “partners” and collectively a “firm”, and the name under which their business is carried on is called the “firm name”.

The 3rd respondent is now using the word “firm” *qua* the word '*Proprietary concern*'. There is no requirement of any registration in respect of a '*proprietary concern*'. In the circumstances, so far as the objection taken by the petitioner regarding non-enclosure of the registration certificate is legally not tenable. Further, in the 2nd page of the technical tender form, rubber stamp of Sri Jyothi Lorry Transport Managing Partner is affixed. Whereas in the other documents, the stamp of Sri Balaji Road Lines, Proprietor stamp has been affixed. Due to oversight or mistake, the rubber stamp in relation to the other organization, wherein the petitioner is the partner or owner has been affixed. On examination of the entire documents, it is clear that the tenderer is 'Sri Balaji Road Lines'. Mere wrong affixation of the stamp does not disentitle the 3rd respondent and he could not have been disqualified on that ground.

With this, the Writ Petition stands dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

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