

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.35259 of 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

“...declaring the action of respondent No.1 and 2 in calling for open competitive bidding (OCB) vide Tender No.04/TSMSIDC/EQU/procurement/2016-17 dt.22.8.2016 imposing unreasonable conditions in Clause B.1.B4 to suit convenience of some parties and denying the petitioner from participating in tender as illegal, arbitrary, highhanded, and violative of Article 14 of Constitution of India and consequently to call for records and set aside clause B1, B4 Tender No.04/TSMSIDC/EQU/Procurement/2016-17, dt.22.8.2016 and clause No.5, 3 and 5, 4 of G.O.Ms.No.625 dt.11.8.2016.”

2. Heard and perused the material available on record.
3. Facts of the case in brief are that the petitioner company is a service provider in dialysis treatment. Considering the situations, the State Government has included the dialysis treatment in Arogyasri Scheme in the year 2009. At that point of time, tenders were called from various service providers for providing the facilities in Public Private Partnership (PPP) in various Government hospitals by the State of Andhra Pradesh. In the said tenders, various service providers participated and they were awarded tenders for a period of seven years. Subsequently, in the year 2015 through G.O.Rt.No.803, dated 18.12.2015, the petitioner company was awarded work for providing service in the District of Khammam for a period of five years. Similarly, the State of Telangana has also taken a decision that apart from the District hospitals, the dialysis programme has to be implemented in Area

hospitals also through PPP model. All the service providers are required to perform all these functions in accordance with the guidelines of the scheme. If the eligibility criteria fixed in the said G.O. is taken into account, only manufacturers are entitled to participate in tenders and the service providers are not entitled to participate individually. The implementation part as specified in the tender is to be carried out by the service provider itself. Thus, the manufacturers are required to collaborate with the service providers for providing services. By virtue of unreasonable conditions, the 1st and 2nd respondents are denying the opportunity to petitioner and similarly situated service providers. This would give undue benefit to the manufacturers, who are only three in number in the entire Country. Having no other alternative, the petitioner herein submitted a representation, dated 02.09.2016 to the 2nd respondent, but till today no action has been taken to revise the tender and to conduct the tender process in fair and transparent manner.

4. Respondent No.1 filed counter denying the allegations made in the affidavit filed in support of the writ petition.

5. Respondent No.2 filed counter stating that as per the tender condition, only the manufacturer and the service providers, those who are having tie-up with the manufactures are eligible to participate in the tender.

6. This Court while issuing notice before admission on 19.10.2016 held that any decision on the basis of the tender called

by the respondents 1 and 2 shall be subject to the result in this writ petition.

7. In view of the stand taken by the 2nd respondent herein, this Court is of the view that the stand taken by the 2nd respondent that the service providers are also entitled to participate in the tender if they are having tie-up with manufacturers with equipments concerned, the apprehension of the petitioner may not survive.

8. Recording the submission of 2nd respondent that the service providers, who are having tie-up with other manufacturers, are also eligible to participate in the tender, the present writ petition is disposed of with the following direction:

The petitioner company, who is a service provider, is entitled to participate in the tender, if it is having tie-up with the manufacturers concerned; and that the respondents are directed to allow the petitioner, if other conditions required in the tender are complied with by the petitioner.

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

NOVEMBER 04, 2016
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RAJA ELANGO, J

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Date:04.11.2016

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