

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.47060 OF 2015

ORDER:

This writ petition is filed seeking Writ of Mandamus to declare the inaction of respondents 2 and 3 for considering the tender document of the petitioner under tender Notice No.NREDCAP/SE/SPV/PUMPS/2015, dated 20.08.2015 as arbitrary and illegal and direct the respondents to permit the petitioner for supply, installation and commissioning of the solar pumpsets as per the requisition, at the price of L-1 bidder by considering the tender document of the petitioner under Tender Notice in allocating 10% local quota of the said tender.

The main prayer is as stated above, as an interim prayer, the petitioner sought to suspend the tender notice dated 29.10.2015 issued by the 3rd respondent. The said proceedings dated 29.10.2015 are in response to petitioner's E-mail dated 24.10.2015 and letter dated nil addressed to the Secretary, Energy 1 and 2, I & I Department, Government of Andhra Pradesh and it read as under:

"With reference to the above, the following are clarified:

- 1) As per the Tender conditions, the pumpsets installed on or before 31.08.2015 will only be considered for experience.*
- 2) As per the tender document, the experience certificate issued by the Government Department/Organisation only will be considered and the same was also clarified in the pre-bid meeting held on 03.09.2015.*

As you are not having the experience of installation of 10 nos. of pumpsets before 31.08.2015, your firm is placed in the 'Not Qualified' list."

This Court at the stage of admission, on the representation made by the petitioner that its tender came to be rejected solely on the ground that "as per the tender conditions petitioner should have installed 10 nos. pumpsets, but not installed on or before 31.08.2015", passed the interim order on 16.12.2015 in W.P.M.P.No.52623 of 2015 as follow:

"Petitioner's tender for supply and installation of solar PV water pumping systems in Andhra Pradesh State was rejected by the impugned proceeding dated 29.10.2015 on the ground that as per the tender conditions, petitioner should have installed pumpsets on or before 31.08.2015, but the tender conditions in the tender document filed did not disclose any such condition.

Prima facie, the impugned order of rejection cannot be sustained.

Therefore, there shall be interim stay of award of contract pursuant to tender notice No.NREDCAP/SE/SPV/PUMPS/2015, dated 20.08.2015 of the 3rd respondent"

Vacate stay petition is filed by respondents 1 and 2. Learned counsel for respondents points out that Clause 4.1.i and 4.1.2.i and submits that there is a

specific clause of intending tenderers, who satisfied of having installed 10 solar systems in the last three years up to 31.08.2015 under any Government Programme in the country. The details also must be furnished in the proforma given in the technical bid section on tender documents. The proforma reads as under:

“FORMAT – II

FORMAT FOR DETAILS OF EXPERIENCE

Please fill in formation about Solar PV Systems installed in last three years.

<i>Details</i>	<i>Year</i> <i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i> <i>Upto</i> <i>31.08.2015</i>	<i>Total</i>
<i>Number of Solar PV Water Pumping Systems installed to any Govt organization in the country in the last 3 years</i>				
<i>Type of Solar PV Water Pumping Systems (HP, AC/DC, Surface/Submersible)</i>				
<i>Total contract amount (Rs.)</i>				
<i>Others</i>				

Above details without copies of work orders, completion certifications and satisfactory performance reports from the users will not be considered. If required, NREDCAP may inspect these installed systems or obtain the required information from the concerned. The certificates issued by the Government Department/Organisations will only be considered.”

Learned counsel for the petitioner by drawing attention to Ex.P.8, experience certificate given by the District Manager, NREDCAP, Krishna, dated 01.10.2015 submits that the 3rd respondent corporation itself had acknowledged about eligibility. Learned counsel also further placed reliance on the certificates dated 01.10.2015 and 26.05.2015.

The sum and substance of the arguments of the learned counsel is that though the petitioner had experience and satisfied the requisite qualification of installing 10 solar system, marked on account of the fact that the certificate has not been submitted in the required format, the petitioners tender has been rejected.

A perusal of the interim order granted would leave no manner of doubt that the same was granted on the premise about there being no condition in the tender document of a bidder satisfying installation of 10 solar systems before notified date i.e. 31.08.2015. Now it is not being disputed that in fact, there is a condition in the tender documents and that a certificate is required to be produced by intending bidder; and that too in a specific format which has been extracted above. The

undisputed fact of the present case is that the petitioner had not submitted the certificate as required in terms of the tender document thereby the bid submitted by the petitioner cannot be termed as a responsive bid. In that view of the matter, the interim order granted by this Court is required to be vacated as the 3rd respondent was restrained from proceeding further with the procurement process.

As a matter of fact, learned counsel for the 3rd respondent had submitted that they selected successful bidders and placing of orders had already been completed. In response to tender process, there were three responsive bids and pursuant to which, three local responsible bidders on whom orders were placed. In the facts of the case, there being no further issue involved the writ petition came to be closed. In the facts of the present case, as the petitioner had not satisfied the bid conditions, the writ petition does not deserve for consideration and no merit in the writ petition.

Accordingly, the same is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in the writ petition, shall also be closed.

CHALLA KODANDA RAM, J.

Date:04.04.2016.
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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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