

HON 'BLE SRI JUSTCE S.V.BHATT

W.P.No.34801 OF 2016

ORDER:

Heard Mr.Vishnuvardhana Reddy for petitioner and Mr.Nageshwara Rao for respondent No.2.

The petitioner prays for Mandamus declaring the action of 2nd respondent in not opening the financial bid of petitioner for construction/development of theme park and gardens at LMD reservoir in Tender Notification No.13/1/SE/TSTDC/2016-17 dated 04-09-2016 along with the bids of respondent Nos. 3 and 4, as illegal and contrary to eligibility criteria fixed in G.O.Ms.No.66 (Irrigation and CAD (Reforms) Department) dated 20.4.2015. The petitioner further prays for a direction to open petitioner's bid as well.

2nd respondent issued Tender No.13/1/SE/TSTDC/2016-17 for receiving bids for construction/development of theme park and gardens at LMD reservoir in Karimnagar District. The estimated value of 2nd respondent is Rs.9,82,48,155/-. The tender schedule is as follows:

“Bid document downloading from 04.09.2016 to 19.09.2016. Last date for receipt of bids 09.09.2016. Pre-qualification on the technical bid opening date 19.09.2016.”

The bid of petitioner was not qualified consequently the price bid of petitioner company was not opened. The petitioner challenges the evaluation of technical bid in the instant writ

petition. The counsel appearing for the parties have confined their submissions to the eligibility criteria vis-à-vis petitioner's compliance. Hence, these circumstances and submissions are referred to

Mr. Vishnuvardhana Reddy for petitioner contends that the 2nd respondent in the tender document stipulated that the bidders must classify the eligibility criteria as per G.O.Ms.No.66 dated 20.04.2015. The additional eligibility criteria of works of plastering, flooring with vitrified or grenade or pavers, HYSD steel and mild steel etc. as illegal and unsustainable. Therefore, according to him, the eligibility ought to have been confined to the criteria stipulated in G.O.Ms.No.66 dated 20.04.2015 and nothing else, for the petitioner satisfies the criteria in G.O.Ms.No.66, and rejection of petitioner's technical bid is illegal, arbitrary and unconstitutional.

The 2nd respondent filed counter affidavit and the stand of 2nd respondent is briefly summarized by Mr.Nageshwara Rao as follows:

According to him, the e-procurement tender is a comprehensive document. The 2nd respondent having regard to the nature of construction/development undertaken at LMD reservoir in Karimnagar District, page 1 of e-procurement has given sub-headings of tender document and one of the items relates to eligibility criteria. The subject tender is floated by adopting the eligibility criteria of G.O.Ms.No.66 and the additional eligibility as required for the subject project. According to 2nd respondent, firstly the petitioner cannot plead ignorance of the eligibility criteria on

which the petitioner was disqualified because the petitioner has also submitted a few details on additional eligibility criteria, which was found to be not compliant and on merits the tender was not treated as qualified. The 2nd respondent having included the special eligibility for consideration in the technical bid cannot confine its consideration only to G.O.Ms.No.66. In reply to petitioner's contention that a few statutory bodies like HMWSSB etc. have exempted the tenderer from special eligibility criteria pursuant to orders passed by this Court and a uniform decision was taken to grant exemption to all the tenders from special eligibility stipulated in the bid documents of those corporations, it is stated that the petitioner having not raised such objection at the earliest cannot now compare with other statutory bodies. In the instant case, the petitioner participated in the tender by accepting all the conditions including the special eligibility condition and at this juncture the petitioner is *estopped* from complaining that consideration of tender document in the light of special eligibility and G.O.Ms.No.66 dated 20.04.2015 is unsustainable. He prays for dismissal of the writ petition.

To avoid repetition and to save time and space, the submissions are not further expanded. From the record filed before the Court, the following conclusions can be drawn.

2nd respondent issued subject tender by specifically drawing the attention of the tenderers to eligibility criteria. With the click on the eligibility criteria, the special criteria of execution of flooring,

plastering etc. of required quantities/values is given. The petitioner on the date of uploading the tender document is aware of the additional eligibility criteria as well. It is not disputed by petitioner that the petitioner provided a few details available with it in this behalf. On 22.09.2016, as the petitioner did not satisfy the eligibility criteria, the tender document is technically disqualified. The submissions of petitioner that the consideration ought to have been confined to G.O.Ms.No.66, it appears to this Court, is not tenable. The petitioner firstly if wanted the 2nd respondent to confine the consideration to G.O.Ms.No.66, ought to have pursued appropriate remedies in this behalf at the earliest point of time. Once the offer to tender is made, the complaint against eligibility criteria ought not to be encouraged. If at all the petitioner wanted exemption from additional eligibility, the petitioner ought to have worked out remedies at appropriate time. The comparison with other corporations may not bind the 2nd respondent, for the 2nd respondent is bound to act as per the tender document. No other point is urged by the petitioner. The sole point argued is negatived. The writ petition fails and is, accordingly, dismissed. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date: 31.10.2016
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