THE HON'BLE SRI JUSTICE A.V. SESHA SAI

W.P.No.40838 of 2016

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

> "To issue an order, direction or writ, more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in rejecting the Tenders of the petitioner at commercial stage relating to the works vide Tender ID.Nos.72299, 72301 and 72304 notified in TO/68/2016-17, TO/70/2016-17 & T016912016-17, dated 16.9.2016 respectively as illegal, arbitrary, without any authority of law and capricious and consequently direct the 2nd respondent to accept the e-tenders of the petitioner and open the price bid of the petitioner relating to the above works".

2. Heard the learned counsel for the petitioner Sri V.Sudhakar Reddy and the learned Government Pleader appearing for the Respondents.

3. The petitioner is a Class-III Contractor and in response to the e-Notification dated 16.9.2016 issued by the 2nd respondent-Superintending Engineer, Panchayat Raj Circle, Nellore, inviting bids for various works in Nellore district, the petitioner herein uploaded its bids for three works. The 2nd respondent herein vide proceedings TO/68/2016-17, TO/70/2016-17 and TO/69/2016-17 dated 16.9.2016 rejected the bids of the petitioner on the following two grounds:

(1) The bidder has not uploaded the partnership deed.

(2) Not uploaded pan and IT returns in the name of SS Constructions.

4. This Writ Petition challenges the validity and legal sustainability of the said rejection of bids on the above two grounds. According to the learned counsel for the petitioner, the impugned action of rejection of bids is highly arbitrary, illegal and violative of Articles 14 and 19(1)(g) of the Constitution of India. The learned counsel further contends that the petitioner is only a proprietary concern, but not a partnership firm, as such, question of uploading the partnership deed does not arise. It is further contended that the petitioner uploaded the Pan Card details and IT returns standing in the name of Propreitor of SS Constructions, who is the Deponent herein, as such, the second ground for refusal is also bad. The learned counsel further contended that proprietorship firm cannot be given any PAN as it has no separate legal existence like a company and proprietor firm and its owner are one and the same, therefore, it does not need a PAN as the owner of it has one.

5. Per contra, it is contended by the learned Government Pleader appearing for Respondents that there is no illegality nor there is any infirmity in the impugned action and in the absence of the same, the Writ Petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India; that the rejection is as per the instructions in G.O.Ms.No.94 dated 1.7.2003 and as per clause 3.1 thereof, the tenderer is required to furnish attested copies of the documents relating to registration of the firm, Registration as Civil Contractor, Partnership Deed, Articles of Association, VAT Registration. It is further submitted by the learned Government Pleader that the petitioner herein participated in the name of SS Constructions, but not on his name.

6. The first objection of the 2^{nd} respondent is that the petitioner did not upload the partnership deed. As per the proceedings No.SE(R&B)/

NLR/TA/DLCEN/III-C/6/2016-17 dated 23.5.2016 of the Superintending Engineer (R&B) Nellore Circle and the Contractor's identity card issued by Superintending Engineer, R & B, Nellore, the petitioner is a proprietary concern, rep. by its Propreitor who is no other than the Deponent herein, as such, the first objection cannot stand.

7. The second objection taken by the 2nd respondent in the impugned order is that the petitioner did not upload the PAN and IT returns in the name of SS constructions. As against the said objection, it is the submission of the learned counsel for the petitioner that since it is a proprietary concern, no PAN will be allotted in the name of SS Constructions in terms of provisions of Section 139 of the Income Tax Act, 1961. It is further submitted that the petitioner herein filed returns standing in the name of Deponent in the capacity of Propreitor of SS Constructions and he uploaded the copies of PAN, balance sheet and IT returns.

8. As per the provisions of the Income Tax Act, 1961, the proprietorship concern has no independent status. No PAN card can be applied/prepared or obtained for a proprietorship concern independently. The PAN card numbers standing in the name of Proprietors of the proprietorship concern, for all practical purposes would be the PAN of the proprietorship concern. The proprietorship business cannot be said to have any separate legal entity and the PAN allotted to the owner/proprietor is required to be used for all income tax purposes related to the proprietorship business and sole proprietorship is not a separate legal entity and the proprietors of the concerns can file their business tax returns on their personal accounts. They are also taxed as individuals on their net taxable income after deducting business expenses, income tax deductions etc. PAN remains always one, that too in the name of

proprietor and in the name of individual who is the proprietor of the proprietorship concern.

9. It is also to be noted that the proprietorship concern is obviously a unit of proprietor and as such, no separate PAN is required. A PAN obtained for an individual carrying on business in the name of proprietor concern can use the same as PAN. Therefore, the second objection taken by the Respondents, in the considered opinion of this Court, cannot be sustained in the eye of law. It is also to be noted that a separate PAN would be required only for the partnership and companies since there are more than one person involved in the business. Proprietorship concern and its owner are one and the same, as such, proprietorship concern does not need a PAN since the owner of the concern is one.

10. For the aforesaid reasons, the writ petition is allowed, declaring the action of the Respondents in rejecting the Tenders of the petitioner by virtue of the impugned proceedings as illegal and arbitrary and consequently the 2nd respondent is directed to accept the e-Tenders submitted by the petitioner and open the price bid of the petitioner relating to the subject works and act in accordance with law. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V. SESHA SAI, J

Date: 30.3.2017

Note:
L.R. copy be marked.
B/o
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30.3.2017