

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.15413 of 2011

ORDER:

This writ petition is filed for a mandamus, declaring the action of the 1st respondent in awarding the contract to the 3rd respondent in pursuance to the tender, dated 31.01.2011 in file No.F.No.9-1/(6)/ST-NICRA, as illegal and arbitrary and set aside the same and to direct the 1st respondent to award the contract in favour of the petitioner.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

3. The petitioner company is a registered company and is engaged in the business of Telematics i.e., providing solutions for Automatic Weather Stations and ancillary to the said subject and it has executed large scale projects in Tamilnadu and Karnataka. The 1st respondent-the Central Research Institute for Dryland Agriculture (CRIDA) is a statutory body under the Ministry of Agriculture, Government of India. Pursuant to the tender notification, dated 31.01.2001, issued by the 1st respondent in file No.F.No.9-1/(6)ST-NICRA, for supply, installation and commissioning of Automatic Weather Stations in all numbering 100 stations through the country, the petitioner submitted its bid on 17.03.2011 and deposited the earnest money of Rs.20 lakhs. The 1st respondent convened a meeting of technical personnel and bidders on 17.03.2011 seeking certain clarifications and the petitioner was successful in the technical bid and financial bid was conducted on 18.03.2011. The petitioner came to know that it was listed as lowest bidder. However, the 1st respondent announced that the bids would be finalized on or before 31.03.2011. The

petitioner, in view of the arrangements made with the other consortium members for supply of the material and in view of the date for financial closure of the financial year is approaching, requested the 1st respondent to issue work order at the earliest, vide letters dated 25.03.2011 and 06.04.2011. As there was no response from the 1st respondent on its representations, the petitioner filed W.P.No.11506/2011 before this court, seeking a direction to the 1st respondent to finalize the tender, dated 31.01.2011. Having received notices in the said writ petition, the 1st respondent, vide letter dated 10.05.2011, informed the petitioner stating that its tender has been rejected and the contract was awarded to the 3rd respondent, on the ground that the petitioner's organization has not completed the mandated five years in existence from the date of the bid and its turn over is too small. Questioning the rejection of award in favour of the petitioner, the present writ petition is filed, contending that the petitioner has sufficient turnover and have a joint venture, consortium or association in tendering the bid, and it has formed a consortium with Rainwise Inc and Gill Instruments Limited and hence the rejection of award of work in its favour is illegal and it is to be set aside.

4. The 1st respondent filed counter denying the contentions of the writ petitioner. The financial bids were opened on 18.03.2011. The scrutinizing committee observed that the petitioner did not fulfil the terms and conditions of the tender and it did not have the marketing experience in the installation of Automatic Weather Station Equipments and Sales turnover. Mere qualifying in technical bid, would not create any vested or legal right to the petitioner. The earnest money deposit of Rs.20 lakhs was returned to the petitioner on 29.04.2011. The petitioner has not filed the tender as a consortium, though it pleaded that it formed a consortium

with Rainwise Inc. and Gill Instruments Limited. As per proceedings of the pre-bid meetings, it stipulates that the bidder must have a five time turn over to the bid value, which comes to Rs.18.965 crores. The financial documents furnished by the petitioner did not meet this requirement. Though the petitioner contends that it is the sole supplier for 224 AWS to Tamilnadu Agricultural University, but the documents furnished by the petitioner shows that the petitioner is a sub-contractor worked under M/s.Sutron Systems Private Limited in the said work. The documents produced by the 3rd respondent shows that it has installed more than 1000 AWS across the country and it has required experience in the concerned field and hence the contract was awarded in favour of the 3rd respondent. the 1st respondent prays to dismiss the writ petition.

5. While admitting the writ petition on 09.06.2011, this court directed that the contract awarded to respondent No.3 shall be subject to the result of the writ petition.

6. During course of hearing, the 3rd respondent filed a memo, dated 24.08.2017, stating that it has executed the contract and completed the 3 years contract and given AMC ending with August, 2017. It is further submitted that the relief sought for in the writ petition has become infructuous, since the contract which was entrusted to respondent No.3 was executed by 2014.

7. In spite of the above, the learned Counsel appearing for the petitioner submitted on merits stating that the rejection of the tender of the petitioner is arbitrary and is intended to help the third respondent. Learned Counsel appearing for the first respondent submits that the petitioner did not satisfy all the requirements of the contract and hence his tender was rejected.

8. The impugned order dated 10.05.2011 shows that the tender of the petitioner was rejected on the ground that he has not completed the mandatory five years existence and the turnover is also too small to be eligible to bid for 100 AWS and its successful maintenance.

9. Along with the tender documents, the petitioner has enclosed certain documents. According to the petitioner, the tender was not by the petitioner alone but was by a consortium with RAINWISE INC, U.S.A., and GILL INSTRUMENTS LTD., U.K. The petitioner did not submit the tender as a consortium but only enclosed certain documents furnished by them. Those documents do not show that the petitioner has submitted tender in consortium with those companies. The letters that were enclosed by the petitioner along with the tender documents are furnished by the first respondent in the counter. The letter issued by Gill Instruments Ltd., United Kingdom, goes to show that they are the reputed manufacturers of Ultrasonic Wind Sensor's having Office at United Kingdom and also having local sale support Office in Delhi through the distributor network and they do hereby authorize the petitioner to quote their products against the above mentioned tender. Even with regard to the requirement of marketing experience of having installed more than 100 AWS equipments, no satisfactory documents were produced. The petitioner has produced a Certificate of Tamil Nadu Agricultural University wherein it is mentioned that M/s.Sutron Hydro Met Systems Pvt.Ltd., have installed 224 AWS at selected sites of various districts. This do not show that it is the petitioner who has installed more than 100 AWS but on the other hand, it is in respect of M/s.Sutron Hydro Met Systems Pvt.Ltd. Similarly, another letter issued by Karnataka State Natural Disaster Monitorim Company which is in respect of Telemetric Weather Stations but not Automatic

Weather Stations. The other certificate that is appended by the petitioner is the one issued by AGRICULTURAL Insurance Company of India Limited which is to the effect that they have engaged National Collateral Managements Services Limited (NCMSL) to provide weather data by installing technically advanced AWS and the said NCMSL is providing hourly data on all basic weather parameters. This also cannot be taken as proof of the petitioner having any marketing experience.

10. The other ground on which the tender is rejected is that the petitioner has not completed the mandatory five years existence. The documents that are produced by the petitioner only show that the petitioner had been in existence for three years but not five years as is required.

11. With regard to the turnover also, the petitioner could not satisfy that their turnover is at least five times the bid value. The total turnover that has been furnished by the petitioner is in the range of Rs.10.48 lakhs, Rs.54.467 lakhs, and Rs.75 lakhs during the years 2007 to 2010.

12. Learned Counsel appearing for the petitioner vehemently submits that since the petitioners have cleared the technical bid and qualified, the tender could not have been rejected on the above stated grounds. Merely because a tender has been held to be qualified on technical bid, that do not give a vested right in the petitioner to be a successful bidder. The petitioner could not qualify in the commercial aspects as per the terms and conditions of the tender document and as such could not have been awarded the contract.

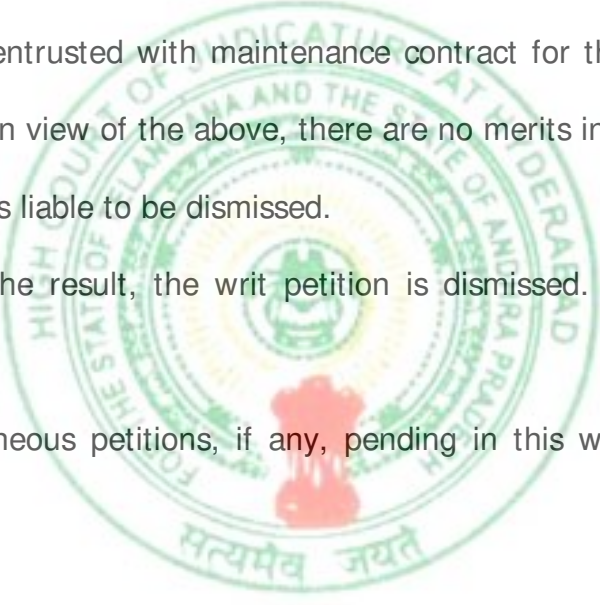
13. The petitioner could not substantiate its contention that they submitted the tender in consortium with RAINWISE INC, U.S.A., and GILL INSTRUMENTS LTD., U.K.. Therefore, if the turnover of those two

companies is shown, it cannot be said that the petitioner qualifies the commercial requirements of having a turnover which should be five times the bid value. As already stated, though the petitioner was required to submit the balance-sheet for three years in proof of the fact that their annual turnover is five times the bid, the information that was furnished by the petitioner was far below the same as has been stated supra.

14. As observed above, after rejecting the bid of the petitioner, the first respondent accepted the tender of the third respondent which was the lowest and also returned the EMD of Rs.20 lakhs furnished by the petitioner on 29.04.2011. The third respondent has completed the work and was also entrusted with maintenance contract for three years which also expired. In view of the above, there are no merits in the writ petition and the same is liable to be dismissed.

15. In the result, the writ petition is dismissed. No order as to costs.

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


M.S.K.Jaiswal, J

Date: 24th October, 2017
Dsr/smr