THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.V.M.P.No. 1742 OF 2017
AND
WRIT PETITION No. 8890 OF 2017

O R D E R:

This Writ Petition is filed questioning Condition No. 3(C)(ii) of the tender notification dated 23.02.2017 issued by the 4th respondent Superintendent, SVRRGG Hospital, Tirupati calling for tenders for supply of diet to the In-patients/Duty Doctors/Attendants of Tribal Patients, on the ground that the same is in violation of conditions enumerated in G.O.Ms. No. 325, dated 01.11.2011 issued by the 1st respondent.

The case of the petitioner is that it has been supplying diet to the respondent hospital for more than 30 years, as per the rates fixed by the government from time to time. It is its specific case that in G.O.Ms. No. 325, dated 01.11.2011, in para 5, the recommended rates have been described. Now, it is the complaint of the petitioner that the present tender notification has been issued leaving it open to the bidders to quote at the price less than 40% as prescribed in G.O.Ms. No. 325. In the tender notification, it was also specified that the percentage of discount that could be offered cannot exceed more than 10. In other words, liberty has been given to the bidders to offer price between Rs.36 and 40/-. According to the petitioner, it has been providing diet at Rs.40/- per meal, as is fixed in G.O.Ms.No. 325 and in that view of the matter, the respondent - hospital ought not to have invited tenders at all.

On 20.03.2017, this Court, while issuing notice before admission, ordered that *status quo* obtaining as on that day should be maintained for a period of two weeks and thereafter, the said order was extended from time to time.

Learned counsel for the petitioner submits that the very tender notification refers to G.O.Ms.No. 325 dated 01.11.2011 which would implicit that the respondent hospital would strictly adhere to the conditions prescribed thereon, but however, the 4th respondent has issued the tender notification in violation thereof.

Learned Government Pleader for Medical, Health and Family Welfare as well as learned counsel for the impleaded 5th respondent, in one voice, submit that the petitioner, having failed to qualify in the tender process, cannot file the Writ Petition challenging the very tender process. It is also the contention of the learned counsel for the 5th respondent that the petitioner has submitted the bid document on 10.03.2017 itself, but however, it has failed to make a mention of its participation in the tender process, in the Writ Petition which was filed on 13.03.2017. Though the bid document was to be opened on 13.03.2017, it was postponed to 18.03.2017. According to the learned counsel, the 5th respondent has offered Rs.36/- per meal with 10% discount which is maximum permissible in terms of the tender notification. The petitioner not being a responsive bidder, the order of *status quo* obtained as on 20.03.2017 is to be vacated.

Having considered the respective submissions, the facts being not in dispute, the point that falls for consideration is *'whether the conditions imposed in G.O.Ms. No. 325 dated 01.11.2011 mandate a rate of Rs.40/-for the supply of food to in-patients and attendants'.*

In the prevailing fact scenario, it would be relevant to notice the conditions in G.O.Ms. No. 325, dated 01.11.2011, particularly Clauses 5, 8, 9 and 10. In *Clause 5,* in the tabular form, the words used are *'recommended rate per patient per day'*. *Clause 8* specifically says that the present diet contract with the new rates and new diet schedule can be continued till the contract period expires or up to 31.03.2012, whichever is earlier. *Clause 9* authorises the District Diet Management Committee (DDMC) to call for tenders and select the most competent diet contractor. *Clause 10* empowers the State Level Committee to standardize the bid documents, contract documents, conditions of contract, etcetera.

The very fact that in G.O.Ms.No. 325 itself, a detailed methodology has been prescribed for selecting the contractor for supply of food items, with further usage of words *'recommended diet pet patient per day'* itself indicates that the argument of the learned counsel for the petitioner that there is no requirement of calling for tenders, cannot be accepted. It may also be not out of place to mention that G.O.Ms.No. 325 dated 01.11.2011 was issued prescribing the sanctioned outer limit charges / outer limit expenditure that is permissible in relation to providing of the diet. Such prescription of the outer limit *per se* cannot be termed as fixing of price per plate or per patient. The same is evident from the fact of prescribing the method and manner of calling for tenders and finalizing the successful bidder. In that context, *clause 13(3)* of G.O.Ms.No. 325 may also be noticed. The heading of *Clause 13* is ***'Criteria for Evaluation of Technical Bid'.*** While 13(1) deals with experience and weightage that has to be given to experience, 13(2) deals with IT returns – weightage and 13(3) deal with annual turnover – weightage. Under the head 'Financial Bid', it was specified that " the person / organization who quotes lowest rates in the financial bid will be qualified as the Diet Contractor and in case of any discrepancy, the Chairman of the District Diet Management Committee (DDMC) will take an appropriate decision." The clear specification that the person or the organization which quotes the lowest rates in the financial bid shall be qualified indicates that the notification issued by the respondent cannot be found fault with. The petitioner has not made out any case that there is any violation in the tender conditions in allowing the tenderer to quote a price by specifying the ceiling price. The requirement of specifying the ceiling price is to enable the 3rd respondent to manage its finances, within the allocation that is being made under G.O.Ms.No. 325 as it is required to receive funds from the government.

Further, it may also be noted that it is not in dispute that the petitioner had, in fact, participated in the tendering process and submitted its offer both with respect to technical bid as well as the financial bid. The petitioner's bid was treated as non-responsive on account of the fact that it has failed to qualify in the technical bid and thereby, the financial bid of the petitioner was also not opened. When a query is made by this Court that what is the rate offered by the petitioner, the answer is Rs.36/-. However, as the petitioner has failed to qualify in the technical bid, the question of opening his financial bid does not arise.

The Supreme Court has repeatedly held that a person, who has participated in the bidding process, cannot challenge the tender conditions and bidding process. In the present case on hand, the petitioner, having participated and submitted its bid on 10.03.2017, suppressed the factum of his participation in the tender process when he filed the Writ Petition on 13.03.2017 and obtained the order of *status quo* on 20.03.2017. Even on that ground, the Writ Petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. Consequently, the order of *status quo* dated 20.03.2017 is vacated.

CHALLA KODANDA RAM, J

03rd August 2017

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