

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.18076, 18228 and 20758 of 2017

COMMON ORDER:

- 1) Since the issues in all the writ petitions are identical, the same are being disposed of by this common order.
- 2) With a view to improve the Health Care Services provided in Government Hospital, the State Government issued G.O.Ms.No9, dated 30.01.2017, proposing to provide Integrated Hospital Facility Management services in Hospitals in Hyderabad District. Pursuant thereto, respondent No.2-the Telangana State Medical Services and Infrastructure Development Corporation, issued tender notification vide tender No.19/ TSW/ SIDC/ 2016-17, dated 25.02.2017, inviting tenders for providing integrated hospital facility management services (in short "IHFMS) ie. Sanitation and pest control, security and patient care services. The last date for submitting the tenders was 24.03.2017 but the same was extended to 03.05.2017. Total eight tenders came to be submitted.
- 3) Before proceeding further, it is to be noted that tenders of the petitioner in W.P.No.18076 and 18227 of 2017 were rejected at pre-qualification stage while the tender of the petitioner in W.P.No.20758 of 2017 was rejected at the financial stage.
- 4) Heard both sides. Perused the affidavits, counters and reply to counters in all the writ petitions.

W.P.No.18076 of 2017:

5) Pursuant to the tender notification issued by respondent No.3, the petitioner as well as respondent No.3 filed technical and financial bids as required in Clause-3 of the tender document. Two stages of technical evaluation are provided in clauses 4 and 8 of the tender document. A reading of the document indicates that the pre-qualification eligibility, as per clause-4 of the tender documents, relates to certain areas, which I will deal with later and thereafter one has to fulfil the eligibility criteria prescribed in clause No.4 and technical bid evaluation under clause-8 of the tender document. Satisfying the requirements as contemplated, the petitioner as well as respondent No.3 and others submitted their tender documents, but the request of the petitioner was rejected at the pre-qualification stage, which is subject matter of challenge in the present writ petition.

6) Respondent No.2 filed counter disputing the averments made in the affidavit filed in support of the writ petition. It is stated that as per clause 4.2.2, the agency should have executed patient care services in hospitals with a total bed strength of atleast 3000 beds in any one financial year during the last three financial years ie. 2013-2014 to 2015-2016. But as per the documents uploaded, the petitioner has experience of only 1750 beds in the year 2015-2016, which is not satisfying the tender condition. It is also stated that as per clause 4.2.1, the bidder must have specific experience in providing manpower for

sanitation services of atleast 1500, in any one year during the last three financial years, but as per the documents uploaded, the petitioner has experience of 1443 manpower in the year 2015-2016, which is also not satisfying the tender conditions. Since the petitioner is not having the required experience in the field of bed care strength and manpower, the bid of the petitioner was rejected at the pre-qualification stage.

7) A counter came to be filed by respondent No.3 disputing the averments made in the affidavit filed in support of the writ petition. It is stated that respondent No.3 company is in the business of providing industrial security and also providing men on outsourcing basis for housekeeping and sanitation services to various governmental agencies and private entities. It is stated that respondent No.3 is one of the largest facility management companies in the states of Andhra Pradesh and Telangana and has been providing the services like patient care, sanitation, security and pest control in various government hospitals and institutions for the past seven years. It is also stated in the counter that even as per the data submitted by the petitioner, it does not satisfy the primary requisites to be qualified at the pre-qualification stage. Since the petitioner was not eligible to participate in the bid itself, it has no *locus standi* to challenge the due procedure followed by respondent No.2 in awarding the bid to respondent No.3.

8) In reply to the counter, it is stated that though the petitioner satisfies all the requirements and though the petitioner has more number of manpower in security services for the year 2015-2016 and also its turn over being double to that of respondent No.3, the authorities rejected the same only to favour respondent No.3. He also took me through the table which was uploaded by the petitioner showing the patient bed care experience and also the average manpower which the petitioner has. According to learned Senior Counsel, the authorities totally erred and misread the word “still running” in the last column of the table in the patient care bed statement submitted by the petitioner. It is his case that though the bed strength of the petitioner is more than 3,000 as required, the authorities overlooked the same. He further submits that respondent No.3 showed the bed strength as 1750 but the document uploaded in support of their plea covers only the area and not the number of beds. He further submits that though respondent No.2 directed all of them to appear on 11.05.2017, on which date technical bid was opened, but without hearing the petitioner; without giving any opportunity to explain their stand and also to show as to how they arrived at such figure, the authorities disqualified the petitioner. He further submits that respondent No.3 herein is not eligible to participate in the bid process in view of the disqualification specified in clause 5.2.1 as respondent No.3 was blacklisted to participate in any of the tender of TTD for a period of three years.

9) The same is strongly disputed by Sri C.V.Mohan Reddy, learned senior counsel appearing for respondent No.3, contending that the documents filed by the petitioner would show that it is not eligible to participate in the bid as such the authorities were right in rejecting the bid of the petitioner.

10) In order to appreciate the rival arguments, it would be useful to refer to certain clauses of tender document.

11) “Clause-1.1.1 deals with components of IHFMS, which are as under:

- Component 1 : Sanitation & Pest Control Services,
- Component 2 : Security services,
- Component 3 : Patient Care services.

12) Clause 4.2 speaks of minimum experience of three years in each of the relevant field of IHFMS. It reads as under:

“4.2: EXPERIENCE IN IHFMS: Minimum experience of 3 years in each of relevant field of IHFMS.

Note: Experience calculated from start of operation of relevant IHFMS till the date of notification of tender. The date of start of operation should be documented by the form VAT/ ST/ EPF/ ES contribution etc.”

13) Since much stress and comment is made on clause-4.2, it requires clarification at the inception. Reading of clause-4.2 together with clause-1.1.1 clearly discloses that one should have a minimum experience of three years in each of the components ie. sanitation and pest control services, security services and patient

care services. The experience calculated shall start from the operation of relevant IHFMS till the date of notification of the tender.

14) The next clause which needs to be considered is 4.2.1, which states that the bidder must have executed contracts covering at least 30,00,000 square feet towards sanitation services in India (in any one year) during the last three years ie. 2013-14 to 2015-16. The bidder also must have specific experience in providing manpower for sanitation services atleast 1500 in any one year during last three years. That means the bidder should have experience of three years in the said field and he should have executed contracts covering atleast 30,00,000 square feet in any one of the years and also provide manpower sanitation services of atleast 1500 in any one of the year during last three years. Similarly with regard to patient care service, the bidder should have a total bed strength of atleast 3,000 in any one of the financial years during the last three years.

15) From the three clauses referred to above, coupled with clause-1.1.1, it is clear that experience of three years in all the fields is necessary and in any one of the years, he should fulfil the requirement as contemplated under clause-4.2.1, 4.2.2 and 4.2.3.

16) Clause-8.2.1 deals with pre-qualification bid evaluation, which reads as under:

“The pre-qualification bid documentation shall be evaluated in two sub-steps. Firstly, the

documentation furnished by the bidder shall be examined *prima facie* to see if the technical skill base and financial capacity and other bidder attributes claimed therein are consistent with the needs of this project. In the second steps, TIA may ask bidders for additional information, visit to bidders site and/or arrange discussions with their professional, technical faculties to verify claims made in pre-qualification bid documentation.”

17) Those bids, which are qualified in pre-qualification bid will be considered for technical evaluation. One of the main requirements to qualify the pre-qualification bid is that *prima facie* the documents furnished by the bidder shall be examined to see if the technical skill basis, financial capacity and other bidder attributes claimed therein are consistent with the needs of the project. In the second step, the TIA may ask bidders for additional information, visit to bidders site and arrange discussions with their professional, technical faculties to verify the claims made in the documents.

18) From the above clause, it is clear that, in order to qualify for technical evaluation one must first qualify the pre-qualification stage, wherein the bidder has to *prima facie* satisfy that he has all the needs of the project.

19) As stated earlier, much stress is laid on the documents which were uploaded along with the tender document. It is also to be noted here that the pleadings which are now advanced before the Court do not form part of the affidavit filed along with

the writ petition. An objection is raised by learned senior counsel appearing for respondent No.3, stating that the petitioner cannot be allowed to raise grounds which do not form part of the affidavit.

20) Be that as it may for the present, as seen from the reply affidavit filed by the petitioner herein, insofar as bed care strength is concerned, the tabular statement which is uploaded show names of seven hospitals, where the bed care is provided. It is clear from the said tabular column that the petitioner started his patient care bed from June, 2015 in first hospital, from December, 2015 in the second hospital, from August, 2015 in the third hospital, from November, 2015 in fourth and fifth hospital, from February, 2016 in sixth hospital and from October, 2015 in seventh hospital and the said services are being continued. From the above, it is clear that the patient bed care services are being provided from June, 2015 onwards. The said table is silent as to the experience of the petitioner during the year 2013-2014 and 2014-2015. It is an admitted fact that financial year is taken into consideration for calculating the bed care strength and not the calendar year. Even if the calendar year is taken into consideration ie. From 1st January to 31st December, the petitioner will not fulfil the requirement of serving 3,000 beds, as required. Even otherwise, the requirement of having experience of three years in serving patient bed care strength is lacking as the tabular statement uploaded by the petitioner does not

indicate that the petitioner has fulfilled the requirement of having experience of three years from 2013-2014 to 2015-2016. Even assuming that he satisfies the requirement of 3,000 bed care strength in the year 2015-2016, but he fails to satisfy the requirement of having three years experience, as required under clause-4.2.

21) Coming to the sanitation services in terms of manpower as per clause-4.2.1, the petitioner should have an experience in providing manpower of 1500 sanitation service in any one financial year during the last 3 financial years. As per the data submitted by the petitioner himself, the petitioner lacks the same since he provided 1372 manpower each for the years 2013-2014 and 2014-2015 and 1443 manpower for the year 2015-2016. Though the petitioner claims to have experience of five years, but from the documents which are uploaded along with the tender document, it is clear that the petitioner has been providing such services only from the year 2013-14. Hence, this Court is of the view that the authorities were right in disqualifying the petitioner at the pre-qualification stage.

22) Accordingly, W.P.No.18076 of 2017 is dismissed.

W.P.No.18228 of 2017:

23) Sri P.Venugopal, learned senior counsel appearing for the petitioner mainly submits that the un-official respondent herein is not dependable in view of the instances which are referred to in

para No.12 of the affidavit, as such, their tender is liable to be rejected. Relying upon the statistics, which are said to have been submitted along with the tender document, he submits that the respondents committed an error in rejecting their request at pre-qualification stage itself. It is his case that when the document *prima facie* indicates that they have fulfilled the terms of the tender conditions namely 4.2.1 and 4.2.2, the authorities have committed an illegality in rejecting their request.

24) Sri C.V.Mohan Reddy, learned Senior Counsel appearing for respondent No.3, while reiterating the argument that the affidavit and pleadings are silent to the arguments which are now advanced submits that no reliance can be placed on the charts which are passed on across the Bar as there is no material to show that they formed part of the tender document or that they were downloaded from the official website. In any event he submits that even if the statistics given in the said documents are taken into consideration, the petitioner herein is not liable for any relief and that the authorities were right in rejecting their case at the pre-qualification stage. In order to appreciate the same, he compared the statements with the statements submitted across the Bar. He also took me through the clauses 4.2.1 and 4.2.2 to show that the successful bidder must have minimum experience of three years in each of relevant field of IHFMS and that the bidder must have executed contracts covering at least 30,00,000 square feet towards sanitation services in India (in any one year) during

the last three years (2013-14 to 2015-16) with facilities ranging from IT parks etc. The bidder should have specific experience in providing man power for sanitation services atleast 1500 in any one year during last three years. He further submits that the writ petition is filed by one of the member of the consortium without having any authorization of other member of consortium, which is sufficient to throw out the writ petition. It is further urged that even if the figures of the consortium are taken together, for the year 2013-2014, the experience of the writ petitioner along with its partner with regard to “patient care bed strength” is shown as ‘Nil’. According to him, this alone is sufficient to reject their case at the pre-qualification stage, since the same is in complete violation of the terms of the contract as they do not fulfil the requirement of clause 4.2.1 of the tender documents. Viewed from any angle, he would submit that the writ petition is liable to be dismissed.

25) It is to be noted here that the tender document was submitted by the consortium of two members ie. Krishna Constructions and Sai Security Services, but strangely the writ petition was filed by Sai Security services. The averments in the affidavit do not anywhere indicate that the writ petition was filed on behalf of the consortium or that the petitioner is representing the consortium. Learned counsel appearing for respondent No.3 would submit that the writ petition is liable to be rejected on this ground.

26) It is also to be noted here that the pleadings which are now advanced before the Court do not form part of the affidavit filed in support of the writ petition. An objection was raised by learned senior counsel appearing for respondent No.3, stating that the petitioner cannot be allowed to raise grounds which do not form part of the affidavit.

27) Instead of going into the technicalities this Court proceeded to consider the case of the petitioner on merits to see as to whether the authorities were right in disqualifying the petitioner at the pre-qualification stage.

28) It is to be noted here that even as per the document uploaded along with the bid and even if the figures of the consortium are taken into consideration, for the year 2013-2014, the experience of the petitioner along with its partner with regard to patient care bed strength was shown as "NIL". Since the petitioner failed to fulfil the requirement of patient bed care strength by taking into consideration the services rendered by the consortium, the said circumstance alone is sufficient to reject the request of the petitioner. Hence, this Court is of the view that the authorities were right in disqualifying the petitioner at the pre-qualification stage.

29) Learned Senior Counsel for the petitioner would submit that the TTD black listed the respondent No.3 for a period of three years from participating of its tenders. He further submits that a show-cause notice was issued by the Service Tax Department

alleging dues of service tax. In view of the above, it is urged that the authorities erred in awarding tender in favour of respondent No.3.

30) Learned Senior Counsel appearing for respondent No.3 states that the action of the TTD in blacklisting the petitioner was challenged before this Court by way of filing W.P.No.562 of 2016 and by an order dated 27.01.2017, this Court while allowing the writ petition set aside the letter issued by TTD.

31) Insofar as show-cause notice issued by Service Tax Department, learned Senior Counsel appearing for respondent No.3 would submit that aggrieved by the said show-cause notice, the respondent No.3 approached the Principal Commissioner of Service Tax, Hyderabad, who, by an order dated 06.02.2017, dropped the proceedings initiated against respondent No.3. All the relevant documents are placed on record as additional material papers.

32) Accordingly, W.P.No.18076 of 2017 is dismissed.

W.P.No.20758 of 2017:

33) The learned counsel for the petitioner would submit that it is highly impossible for respondent No.3 to maintain bed strength successfully at less than Rs.5,016/- per bed by taking into consideration the Minimum Wages declared by the Telangana Government in the year 2017. It is her case that even as per the conditions referred to in clause-7.5.1, no separate claims for ES

and EPF etc. shall be entertained by the organisation. Hence, respondent No.3 could not maintain the bed strength at the rate disclosed by him. Relying upon the judgment of the Apex Court in *Bakshi Security and Personnel Services Private Ltd., v. Devkishan Computed Pvt. Ltd.*¹, it is urged that the tender of respondent No.3 should be rejected.

34) To the argument advanced by the learned counsel for the petitioner that respondent No.3 could not have managed to maintain a bed by quoting less than Rs.5,016/- per bed per month, Sri C.V.Mohan Reddy, learned Senior Counsel appearing for respondent No.3 would submit that it is not for the petitioner to contend as to whether respondent No.3 is unable to enforce the terms of the contract with the rate given since it is for the authorities to decide as to whether respondent No.3 can maintain the same at the price given. He took me through the tender condition, wherein in clause 8.3.3 it has been specifically stated that the bid amount for each bed should be less than Rs.5,016/-. That being the position, question of quoting a price higher than the same would not arise. In other words it is his case that when the Government prescribes a particular rate for maintaining a bed, the petitioner herein cannot question the same as arbitrary and improper. Apart from that he further submits that since the rate quoted by the petitioner is more than the rate fixed by the Government, the tender of the petitioner was rightly rejected at the financial stage.

¹ (2016) 8 SCC 446

35) As per clause 1.1.14, the tender document operates within the scope of G.O.No.89, dated 30.01.2017, which approves an amount of Rs.5,016/- per bed. The next clause which need to be considered is 8.3.3, which states that subject to technical bid qualification and satisfying other conditions stipulated in the tender schedule, L1 (lowest bid price for the IHFMS services) will be considered as successful bidder, provided the quoted price is less than Rs.5,106/- per bed/ 1000 sft. Area. A perusal of the material on record would show that the petitioner has quoted Rs.8,080/- per bed per month, where as respondent No.3 quoted Rs.4579.50 per bed per month. The grievance of the petitioner is that respondent No.3 cannot maintain a bed with the amount quoted by him. But it is for the authorities to decide the same. This Court cannot sit in appeal over the condition prescribed in the tender document and declare them as illegal or improper, when the said condition is unreasonable. Infact it is said that writ petitioner in W.P.No.18076 of 2017 is ready to fulfil the said condition. Since the third respondent is lowest bidder amongst the bidders, who were unsuccessful upto financial bid stage, the action of the first respondent in awarding the tender in favour of the third respondent cannot be said to be illegal.

36) For the aforesaid reasons, I see no reasons in the writ petition and the same is accordingly dismissed.

37) Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

08.08.2017
gkv



