

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.12834 OF 2017

ORDER:

The writ petition is filed questioning the acceptance of offer of respondent No.5 with respect to construction of Municipal Office Building under startup and other municipal grants at Kollapur, Nagarkurnool District.

It is the case of the petitioner that, pursuant to the tender notification dated 28.01.2017, petitioner as well as respondent No.5 had submitted their online bids @ 'e' procurement market place i.e. www.eprocurement.gov.in; and, before opening the tender, respondent N.5 addressed a letter dated 22.03.2017 to respondent No.4 withdrawing his offer on personal grounds and requested respondent No.2 not to open price bid. Despite which, offers, submitted by petitioner as well as respondent No.5, were opened and respondent No.5 was awarded contract.

Learned counsel for the petitioner submits that respondent No.5 had failed to comply with the essential condition of uploading the attested documents as mandated in the tender notice, and the same is a verifiable fact; and the petitioner has material with him which can be verified by keying into the system.

Sri N.Praveen Kumar, learned Standing Counsel for respondent No.2, opposes the Writ Petition contending that, respondent No.5 had submitted all the documents, attested

by him as required, in terms of tender notification, and enclosed documents viz., (i) Certificate of registration granted in favour of respondent No.5 as Class-III (Civil) contractor issued by Government of Telangana, Irrigation & (CAD) (P.W) Department dated 26.08.2015; (ii) Solvency Certificate, issued by the State Bank of India dated 26.08.2016, vouchsafing the petitioner as solvent to the extent of Rs.1.00 crore; (iii) Work done certificate issued by V.Laxmi Kanth and Associates, Chartered Accountant dated 24.09.2016; and (iv) Declaration of respondent No.5 on a stamp paper of Rs.100/-.

Sri Sridhar Reddy, learned counsel for respondent No.5, submits that the requirement is not scanning the attested copies but documents which are scanned are required to be attested.

In the facts and circumstances of the present case, the first ground, of the learned Counsel for the petitioner, that submitting withdrawal letter, cannot be accepted as it is always open for a particular tenderer to withdraw before the tender is finalised. In the present case, there is no dispute that the withdrawal letter was given on 22.03.2017, offer was withdrawn on the very next day i.e. 23.03.2017 which was accepted by the respondent authorities. It is also not in dispute that respondent No.5 emerged as a successful bidder quoting lower amount than the petitioner.

In those circumstances, the only issue that would remain for consideration is the meaning and interpretation that is required to be given to condition Nos.1.5, 1.9(a) and 1.6.1 of the tender conditions, which read as under:

1.5. The Tenderer should upload scanned copies of registration and produce attested copies of evidence of their registration in required class (As specified in NIT) before the date of opening of price bid. Contractor should produce the original of all documents for verification if asked for by the Competent Authority.

1.9. The successful tenderer is expected to complete the work within the time period specified in the NIT.

(a) Attested copies of documents relating to the Registration of the firm, Registration as Civil Contractor, Partnership deed, Articles of Association, Commercial Tax/Registration, Latest Income Tax Clearance certificate, Commercial Tax clearance certificate/Latest Income Tax Assessment copy etc.

16. Submission of Tenders:

16.1 The Tenderers who are desirous of participating in 'e' procurement shall submit their Technical bids, price bids etc., in the Standard formats prescribed in the Tender documents, displayed at 'e'market place. The tenderers should upload the scanned copies in support of their Technical bids. The bidders shall sign on all the statements, documents, certificates, uploaded by him, owning responsibility for their correctness/authenticity.

After uploading the Technical/price bid, the attested copies of the uploaded statement, certificates, documents, (except the price bid/offer) are to be submitted by the bidder to the concerned tender inviting authority, so as to reach before the date of opening of the price bid. Failure to furnish any of the uploaded documents, certificates, before the price bid opening date will entail rejection of the bid and forfeiture of EMD. Similarly, if any of the certificates, documents etc.,

furnished by the tenderer is found to be false/fabricated/bogus, the bidder will be blacklisted and the EMD forfeited.

A careful reading of the above conditions would disclose that the contractor is required to make his offer online by scanning necessary documents, which are specified in condition No. 1.9. Condition No.1.5 mandates a tenderer to upload scanned copies of registration and produce attested copies of evidence of their registration in required class before the date of opening of price bid. Apart from that, the tenderer should produce originals of all documents for verification if asked for by the competent authority. A careful reading of the conditions does not mandate scanning of attested copies of registration. Likewise, 16.1 also mandates, the underlined portion in the above extracted conditions, the requirement of uploading required documents and, thereafter, submitting the uploaded documents by attestation.

The rationale behind the requirement, of submission of attested documents, is only to ensure declaration on the part of the tenderer that the said documents are genuine, and the tenderer takes the responsibility of the genuineness of the same. In the present case, though the learned counsel for the petitioner disputes that respondent No.5 had not at all submitted attested documents and the same were supplied at a later point of time, there being no material to

come to such conclusion, the said allegations are liable to be rejected for want of authenticated material before this Court. In the light of reasonable interpretation that can be made on the conditions, there is no merit in the Writ Petition and it is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, in this writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:25.04.2017.
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