HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 2363 OF 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings Rc.No.11/374/2017, dated 20.01.2018, issued by the first respondent, canceling the tender awarded to the petitioner as illegal, arbitrary and violation of principles of natural justice.

2) The petitioner is a Private Limited Company engaged in providing manpower services to various organizations. The first respondent issued e-notice inviting tender on 28.05.2017 for supply of manpower for the period 01.07.2017 to 31.03.2019. The petitioner is said to have submitted its online tender and stood as L1. A condition was stipulated with regard to furnishing demand draft of Rs.30.00 lakhs as security deposit, on declaration as L1. It is said that the petitioner herein requested the first respondent to release the earlier bank guarantee, so that they can furnish a fresh bank guarantee for Rs.30.00 lakhs. Since the amount of Rs.30.00 lakhs as security deposit is not deposited, the authorities have issued proceedings canceling the tender awarded to the petitioner. It is said that the petitioner also credited salaries to the employees working in the first respondent to a tune of

Rs.16,87,295/- on 30.11.2017 expecting reimbursement of the payments by the first respondent. It is stated that the second respondent withheld the payments to be made to the petitioner for the salaries paid towards the month of October, towards security deposit and directed the petitioner to transfer the balance of Rs.13.00 lakhs in order to complete the total security deposit. However, to their shock the impugned proceedings came to be issued indicating that the tender awarded to the petitioner is terminated. It is stated that the main ground on which the tender came to be cancelled was non-deposit of Rs.30.00 lakhs as security deposit, which is incorrect, when there is a bank guarantee for the said amount lying to the credit of the first respondent. Insofar as the allegation of non-submission of E.P.F. pass books is concerned, it is urged that since another proceedings dated 20.01.2018 came to be issued calling upon the petitioner to submit the records pertaining to E.P.F., the petitioner reserves his right to contest the said allegation at an appropriate stage. Having regard to the totality of the circumstances, it is pleaded that the order under challenge is improper and incorrect.

3) A counter came to be filed by the third respondent, disputing the averments made in the affidavit filed in support of the writ petition. The fact that the petitioner was a

highest bidder for the period 01.07.2017 to 31.03.2019 is not in dispute. However, insofar as the averments that the petitioner has supplied the man power without any complaint is disputed. It is stated that the petitioner is not paying the E.P.F. contribution from 01.08.2015 to 30.06.2017 and service tax. The details of which were given in the counter. Several notices came to be issued to the petitioner for payment of E.P.F., but the petitioner is said to have paid a deaf ear towards the said notices. Insofar as the bank guarantee is concerned, the petitioner is said to have furnished a bank guarantee to a tune of Rs.17.00 lakhs for the period 2015-2017 which expired on 31.05.2017. It is further averred that as per the tender conditions, the petitioner has to submit the demand drafts and not bank guarantees. In para No.6 of the counter, it is stated that the temple authorities have withheld an amount of Rs.16,87,295/- towards the salaries for the month of November, 2017 and issued notice to the petitioner for payment of E.P.F. and security deposit. Pursuant to the said notice, the petitioner transferred only an amount of Rs.13.00 lakhs, but failed to pay the E.P.F. and service tax. Having regard to the above it is urged that since the petitioner failed to comply with the statutory requirements, the action of the authorities cannot be found fault with.

4) As seen from the tender conditions vide proceedings Rc.No.11/374/2017, dated 20.01.2018, more particularly through reference fourth cited ie., office notice dated 15.07.2017, the petitioner was supposed to provide the deposit through demand draft within seven days. On 10.08.2017, the petitioner is said to have requested time but did not respond within the stipulated time. Thereafter, vide notice dated 22.08.2017, the petitioner was informed to submit the receipts regarding the bills paid in July, 2017, details of the E.P.F. amount deposited in staff accounts and challans relating to G.S.T. payments. There was no reply from the petitioner, with regard to deposit payment of Rs.30.00 lakhs as security deposit. A second notice was issued through office notice dated 09.10.2017, for payment of Rs.30.00 lakhs. Further the office notice dated 21.10.2017 came to be issued to provide E.P.F. pass books to the staff for the period from 01.08.2015 to 30.06.2017, and further informing that in default the tender shall stand cancelled. The petitioner requested 10 days time for payment of security deposit. Since the petitioner failed to provide the security deposit within the time stipulated and also failed to provide E.P.F. pass books, the impugned proceedings came to be issued.

5) Though the petitioner in his letter claimed about the security deposit lying with the first respondent, but the same got expired on 31.05.2017 and no effort was made to renew the same. Even otherwise, only an amount of Rs.13.00 lakhs was said to have been transferred. From the above, it is clear that the petitioner has not complied with the conditions of tender namely (1) not depositing the security amount of Rs.30.00 lakhs by way of demand draft and (2) the bank guarantee which he claims to be lying with the first respondent and which got expired on 31.05.2017, was not renewed. Therefore, the plea that the expired bank guarantee should be taken into consideration for the purpose of awarding tender, cannot be accepted.

6) Insofar as the non-furnishing of the details of E.P.F. and P.F.pass books to the staff is concerned, though the learned counsel for the petitioner would contend that it is between the provident fund office and the petitioner, but the same appears to be incorrect. Since the petitioner has supplied man power to the respondent, the petitioner is required to furnish the details of the E.P.F. amount paid in respect of each employee. In spite of giving number of opportunities, the petitioner herein never produced any details showing payment of E.P.F. amount. Hence, on either count, the

action of the respondents in canceling the tender cannot be found fault with.

7) Accordingly, the writ petition is dismissed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

31.10.2018
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