

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.5882 of 2018

ORDER:

Heard Sri L.Ravichander, learned Senior Counsel appearing for Sri Deepak Misra, learned counsel for the petitioner on record and the learned Government Pleader for the State of Andhra Pradesh for the respondents apart from perusing the material available before the Court.

2. In the present writ petition, challenge is to the Condition Nos.1, 1.1 (c), k, n and p and Condition No.3, 3.1 in the Tender Notification bearing No.CSE-MDM/222, dated 05.01.2018, issued by the Second Respondent, notifying tenders for supply of Red Gram Dal for Mid-Day Meals Programme in the schools in the State of Andhra Pradesh. According to the learned Senior Counsel, the impugned conditions imposed in the tender notification are opposed to the very object behind the Mid-Day Meals Programme. It is further maintained by the learned Senior Counsel that the impugned action is highly arbitrary, illegal and violative of Article 14 of the Constitution of India as the said conditions have the effect of completely eliminating the petitioner from the process of participation pursuant to the tender notification. It is the further submission of the learned senior counsel that earlier the respective schools used to procure the commodities on their own and the said process went on well. It is also the submission of the learned Senior Counsel that by way of G.O.Ms.No.11, Agri.& Coop (Coop-I) Department, dated 01.02.2016, the State Government granted exemption from payment of EMD to District Cooperative Marketing Societies.

3. On the contrary, it is contended by the learned Government Pleader that the very writ petition filed by the petitioner herein is not maintainable before this Court and the petitioner herein cannot question the Conditions of

the tender and that the impugned Conditions are incorporated in the tender notification with a laudable object of ensuring continuous and better supply of subject dal and that the said decision is taken in the larger interests of the students in the schools. In support of his submissions and contentions, learned Government Pleader Placed reliance on the judgment of the Hon'ble apex Court in the case of *DIRECTORATE OF EDUCATION AND OTHERS v. EDUCOMP DATAMATICS LTD. AND OTHERS*¹. Apart from the above, the learned Government Pleader also placed on record the letters bearing Nos.404/MDM/2015, dated 22.06.2017 and Lr.No.404/MDM/2015, dated 30.03.2017 and the relevant portions in the note file wherein the Hon'ble Chief Minister and the Finance Minister have endorsed the decisions taken.

4. In the case of *DIRECTORATE OF EDUCATION AND OTHERS (supra 1)* relied upon by the learned Government Pleader, the Hon'ble Apex Court while referring to the judgment rendered in the case of *TATA CELLULOR v. UNION OF INDIA*², at paragraph No.13, held as under:

“Directorate of Education, Government of NCT of Delhi had invited open tender with prescribed eligibility criteria in general terms and conditions under tender document for leasing of supply, installation and commissioning of computer systems, peripherals and provision of computer education services in various government/ government aided senior secondary, secondary and middle schools under the Directorate of Education, Delhi. In the year 2002-2003, 748 schools were to be covered. Since the expenditure involved per annum was to the tune of Rs.100 crores the competent authority took a decision after consulting the technical advisory committee for finalisation of the terms and conditions of the tender documents providing therein that tenders be invited from firms having a turnover of more than Rs.20 crores over the last three years. The hardware cost itself was to be Rs.40-45 crores. The government introduced the criteria of turnover of Rs.20 crores to enable the companies with real competence having financial

¹ (2004) 4 SCC 19

² (1994) 6 SCC 651

stability and capacity to participate in the tender particularly in view of the past experience. We do not agree with the view taken by the High Court that the term providing a turnover of at least Rs. 20 crores did not have a nexus with either the increase in the number of schools or the quality of education to be provided. Because of the increase in the number of schools the hardware cost itself went upto Rs. 40-50 crores. The total cost of the project was more than 100 crores. A company having a turnover of Rs. 2 crores may not have the financial viability to implement such a project. As a matter of policy government took a conscious decision to deal with one firm having financial capacity to take up such a big project instead of dealing with multiple small companies which is a relevant consideration while awarding such a big project. Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders from firms having a turnover of more than Rs. 20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice."

5. In the instant case, in the Lr.No.No.404/MDM/2015, dated 30.03.2017 the Commissioner of School Education, Amaravathi/second respondent herein categorically stated that the Cooking agencies are not able to purchase and ensure appropriate quantity of Dal and provide quality Mid-Day Meal as per expected norm in the menu due to market fluctuation in the rate of Dal and they are also demanding that Government should supply quality Red Gram Dal to schools. In the said letter Commissioner of School Education also took note of the aspect that during the review meeting with District Collectors on 18th and 19th September 2015, the District Collectors have informed that the quality of Mid Day Meal needs to be improved and the Hon'ble Chief Minister

directed that the pulses and Oil for Mid Day Meal programme are to be supplied through Civil Supplies Corporation. Obviously, taking into consideration the above aspects, the respondents herein incorporated the conditions in the tender notification which are impugned in the present writ petition. In this context, it may be appropriate to refer to the observations made by the Hon'ble Apex Court in the above referred judgment. In the above referred judgment, the Hon'ble Apex Court categorically ruled that the courts would not interfere with the terms of the tender notice unless it is shown to be either arbitrary or discriminatory or actuated by malice. The Hon'ble Apex Court also categorically held that while exercising the power of judicial review of the terms of the tender notice, the Court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms are either arbitrary or discriminatory or actuated by malice. Eventually, in the above said judgment the Hon'ble Apex Court turned down the similar arguments advanced.

6. In the instant case also, having regard to the reasons assigned by the respondents in the above referred letter dated 30.03.2017 and in the absence of any malice, this Court is not inclined to interdict the process of tenders. In this context, it may also be appropriate to mention the submission of the learned Government Pleader that the State of Andhra Pradesh through one agency is supplying eggs to 45932 schools three days in a week and the said process is going on smoothly without any hindrance and there are no complaints against the said supply of eggs.

7. For the aforesaid reasons and having regard to the principles laid down in the above referred judgment of the Hon'ble Apex Court, this Court is

not inclined to interdict the process of tender undertaken by the respondents. As it is submitted by the learned Senior Counsel that the State Government granted exemption from payment of EMD to District Cooperative Marketing Societies, if the petitioner herein is willing to participate in the present tender, it may avail the benefit under the said G.O if the same continues to be in force.

8. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date:26.02.2018
Grk



A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.5882 of 2018

Dated 26.02.2018

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