

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.8604 & 31113 of 2016

Date: 12.03.2018

WP NO.8604 of 2016:

Between:

Venkata Ramana Social Service Society, a Society
Registered bearing No.394/2005, Office at 7-28,
High School Road, Narketpally village & Mandal,
Nalgonda district, rep.by its President, S.Venkata
Ramana and another.

.....Petitioners

and

The State of Telangana, rep.by its Principal
Secretary, Transport Department,
Secretariat Buildings, Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.8604 & 31113 of 2016

COMMON ORDER:

Heard learned counsel for petitioners and learned senior counsel Sri Vidya Sagar for respondent Corporation, Smt. Madhavi representing 4th respondent.

2. Respondent-Corporation issued tender notification dated 23.02.2016 inviting tenders for maintenance of Sweeping, cleaning and pouring of water to the plants from the registered and service-oriented organizations in various Bus Depots and Bus Stations in Nalgonda district. There are three categories of Bus Stations in the notification. First table deals with Main, A & B class Bus Stations and Second table deals with 'B' Class Bus Station toilets and Third Table deals with 'C' class Bus Stations. In these writ petitions issue concerns Main and 'A' class bus stations. Tender notification prescribed 13 conditions. To consider issues in these cases, relevant conditions are 4, 5 and 6. According to condition no.4, a person or organization on whose name PF and ESI registration is granted, should alone apply. Such person/organization should enclose to the tender forms the certificates issued by PF and ESI organizations. The registered non-profitable voluntary organizations, having experience in cleanness alone can participate in the tenders for Main, 'A' and 'B' class Bus Stations; they should enclose experience certificate, if any. According to clause-6, the society should be registered under Andhra Pradesh (Telangana Area) Public Registration Act, 1816 or Voluntary Society Registration Act, 2001. The tender forms enclosed to the

tender notification contain more detailed terms and conditions for participating in the tenders. Under the qualifying parameters, it is indicated five marks would be allowed for each year of experience with maximum of 35 marks; depending on the work undertaken in various organizations, such as, airports, railways, hospitals, etc., ten marks would be awarded for each of the organization with maximum marks of 30. As per paragraph-5 to evaluate experience under the heading qualifying parameters, i.e., for major and 'A' class Bus stations, certificates of work for last three years issued by the TSRTC/APSRTC or organizations, such as, railways, airports, IT companies, shall be insisted. As per clause-6 (c) under the heading 'finalization of tenders by the tender committee' if more than one tenderer quotes lowest minimum remuneration and found suitable by the tender committee, contract would be allotted based on draw of lots.

3. Petitioners and unofficial respondents in WP No.8604 of 2016 participated in the tender process. On 10.03.2016 tender committee declared the respondents 3 to 6 as successful bidders. At that stage, petitioners filed WP No.8604 of 2016 praying to declare the action of 2nd respondent in deviating from the essential conditions laid down in the tender notification as well as tender schedule, declare the action of 2nd respondent in resorting to draw of lots of tenderers who did not fulfill the essential conditions, call for the tender applications of unofficial respondents 3 to 6 and to declare them as invalid tender applications and to consequently direct the 2nd respondent not to finalize the tenders.

4. This Court by order dated 04.05.2016, directed 2nd respondent to reexamine the entire material filed by respondents 3 to 6, particularly, taking into consideration allegations and complaints raised by petitioners in the writ petition and in reply affidavit. The Court further directed that on reexamination, if 2nd respondent comes to conclusion that one or the other respondents were given undue weightage, he should correct the same and take appropriate decision in the matter.

5. It appears, through review was conducted and, on such review, Corporation found respondents 4 & 6 in WP No.8604 of 2016 suitable, conducted lottery from among the suitable tenderers and works were entrusted to respondents 4 and 6 and petitioners also in respective bus stations notified in table-1 of the tender notification. Challenging awarding of contracts to respondents 4 and 6 in WP No.8604 of 2016, petitioners filed WP No.31113 of 2016. This Court by order dated 15.09.2016 directed status quo as on that date. Praying to vacate interim orders vacate petitions are filed. When the vacate petitions were taken up for consideration, counsel have agreed for final disposal of the writ petitions. Parties are referred to as arrayed in WP No.8604 of 2016. After respective submissions were heard, by order dated 31.01.2018, court directed production of record evaluating tenders. At that stage IA No 1 of 2018 is filed on behalf of respondent-corporation stating that corporation decided to cancel entire tender notification due to long lapse of time. It is averred in paragraph 2 of the affidavit filed in support of this application that period of contract is two years and such period is over. The entire tender process was completed, contractors were short listed and

contracts were awarded. All along the respondent-corporation hotly contested claim of petitioners on eligibility criteria, justified its action to process the tenders of respondents 4 & 6, matter was extensively argued, and case is at the stage of final disposal. Thus, Court is not inclined to grant leave to respondent-corporation.

6. Parties are referred to as arrayed in W.P.No.7604 of 2016.

7. Though extensive submissions are made on the validity of EPF & ESI certificates possessed by respondents 4 & 6, on draw of lots and on consideration of tenders of respondents 4 & 6 even though their EMDs were returned, by consent counsel requested this court only to consider the issue of experience.

8. According to the learned counsel for petitioners, one of essential conditions of tender is tenderer must have experience in the last three years for major and 'A' class Bus Stations, whereas respondents 4 & 6 do not have this experience. It is further contended that bogus experience certificates submitted by respondents 4 and 6 were also taken into consideration. However, even after adding said certificates, minimum requirement of immediate 3 years' experience was not possessed by them. Therefore, they were not eligible to participate in the tender process and therefore subjecting them to tender process, even after review as per directions of this Court in WP No.8604 of 2016, is erroneous, amounts to arbitrary exercise of power and authority and amounts to conferring undue favor on those respondents.

9. In response to the contention on ineligibility of respondents 4 and 6, learned senior counsel pointed out that according to the tender notification, experience is not mandatory to acquire

eligibility to participate. What is required by the tender notification is if they possess experience, same should be enclosed to tender document. Further, as per clause 3 (v) of tender schedule under the heading 'qualifying parameters', the experience mentioned therein is for evaluating tenders and not for assessing eligibility at initial stage of participation. In other words, according to learned senior counsel, experience is required for evaluation, but not required to assess eligibility at the initial stage.

10. Learned senior counsel extensively referred to Circular No.6/2010 dated 15.01.2010, copy of which is circulated during submissions and circular no.5/2012 dated 1-2-2012. According to the learned senior counsel, in circular No.6/2010, guidelines were notified prescribing qualifications of eligibility, method of selection, awarding of contracts and conditions to be imposed on contractors in undertaking job entrusted to them. On further review, Circular No.5/2012 was issued. According to clause-2 of this Circular, what is required is experience for last three years. This requirement is considered at the stage of evaluating the tenders submitted by the tenderers and is not a pre-requisite for consideration of tender forms at the initial stage. This is also clear from clause-9 of the said circular. According to this clause, for each year of experience, 5 marks are awarded with maximum of 35 marks. Thus, this clause also makes it clear that experience is considered only while evaluating tenders and awarding marks. Thus, merely because respondents 4 & 6 did not have three years' experience do not make them ineligible for processing their tenders.

11. In response to this contention of learned counsel for petitioners, by referring to proceedings of tender committee enclosed to counter-affidavit of 2nd respondent in WP No.8604 of 2016, learned counsel for petitioners pointed out that tabulated statement would disclose that even though some of the tenderers met all the parameters by securing maximum marks in experience, nativity, experience in RTC/hospital, etc., they were disqualified on the ground of 'no experience' and therefore if what is contended by the learned senior counsel is true, question of holding them not qualified on the parameters of experience does not arise.

12. To appreciate the respective contentions, it is necessary to consider relevant clauses in the tender notification, tender schedule and Circular no.5/2012. As already noticed above, condition no.5 of the tender notification dated 23.02.2016 prescribes that tenderer should enclose experience certificate, if any. A bare reading of this clause appear that tenderer is required to enclose experience if he has experience and does not appear to reflect as mandatory. However, it is not in dispute that the tender conditions are governed by Circular no.5/2012 and to be read inconsonance with the tender schedule. The terms and conditions imposed in the tender schedule would show that to secure contract for major and 'A' class Bus stations, experience of working in organizations mentioned therein in the preceding three years is mandatory. This clause replicates provision in clause 2 of Circular no.5/2012. On closer scrutiny contention of learned senior counsel that to participate in the tender, requirement of experience in the last three years may not be insisted upon has no merit. To process the tender forms and to award contract experience in

the last three years should be insisted. In other words, while evaluating the tenders submitted by tenderers, first requirement to be seen by the tender committee is whether in the last three years prior to submission of tender forms, the tenderer has experience of working in leading organizations, such as, TRSRTC/APSRTC, Railways, Airports etc. However, mere possessing such eligibility is not sufficient, he must secure minimum eligibility marks, must have ESIC & EPFO certificates and his offer should be the lowest. Thus, clause 2 ought to be read with clause 9 of the circular no.5/2012.

13. The Corporation was alarmed on large volume of complaints received from traveling public on poor maintenance of toilets, lack of cleanliness in Bus station premises and platforms, littering of debris and collection of huge charges from the toilet users. To review the work of sanitation in bus stations and to take remedial steps, opinion of the Field Managers was obtained. Taking note of opinion expressed by field managers orders were issued in circular no.6/2010. Opinions of Field Managers were codified in paragraph-2.5 of the circular. As seen from this paragraph, Regional Managers suggested that preference should be given to SSOs with experience. Based on the feedback given by the Field Managers, instructions were codified therein. Paragraph-7 deals with selection criteria. Tender committee is required to evaluate performance and experience for deciding the allotment. Paragraph-8 deals with qualifying parameters. According to 8(1), length of experience in the related field from date of registration of the SSO to date when tenders were called would carry marks, at the rate of five for each year. Paragraph-8.2 deals with awarding of marks from working in

airports, railways, hospitals, IT companies and respondent corporation Bus stations.

14. There was further review of functioning of contractors and revised orders were issued in circular no.5/2012. Significant change brought out is prescribing experience in the last three years for major and 'A' class bus stations. It requires the competent authority to insist experience in prescribed organizations in the immediate three years preceding tender notification. Thus, previous experience is given higher priority in selecting a contractor to execute subject work.

15. Object underlying experience and past performance can be culled out from the circulars 6/2010 and 5/2012. It is to ensure that contractor has previous experience in the field and that in the previous assignment he was not adversely commented by the employer. Working in specified organizations also carry additional marks. All this is to ensure that he would discharge the responsibilities properly in maintaining cleanliness in the bus station premises and better service is provided to passengers. On careful consideration of various clauses in these circulars and tender conditions, it is apparent that tenderer must cross the hurdle of having experience of working in the last three years preceding the tender notification for further evaluation. This is an essential condition and non compliance should earn disqualification.

16. Once experience hurdle is crossed, tenderer would normally move to the final stage, subject to his offer matches the offer of other eligible tenderers and he has ESIC and EPFO registration.

Awarding of marks on other parameters has limited scope as eligibility to qualify is pegged at 40 marks only. I am therefore of the opinion that experience in the organizations mentioned in the tender document and in the Circular No.5/2012 for three years immediately preceding tender notification is crucial to acquire eligibility to award contract.

17. Sanitation in bus terminals is appalling. The commuters are put to lot of inconvenience and hardship. Thus, insistence experience in the immediate three years in the organizations mentioned in the circulars and tender document is in furtherance to the objective of providing better services to passengers. It is also in public interest to insist for such qualification. As seen from the evaluation by the tender committee, they also understood in the said manner but in assessing the eligibility they were selective in granting eligibility.

18. Admittedly, respondents 4 & 6 did not submit experience certificates of having rendered similar work for three years preceding the tender notification mentioned in clause 2 of Circular no.5/2012 and clause 3(v) of tender schedule appended to tender notification. Only to overcome this hurdle, learned senior counsel as well as Smt. Madhavi representing 4th respondent submitted that experience clause is not mandatory, but is required only for evaluation. Having regard to the assessment of relevant clauses and the object of insisting such experience, as noted above, this contention is stated to be rejected.

19. I am therefore of the opinion that respondent Corporation grossly erred in holding respondents 4 and 6 as qualified and

subjecting them to final selection process of draw of lots and awarding contracts to some of the bus stations notified in the tender notification dated 23.2.2016. Awarding of contract to respondents 4 and 6 is not sustainable and is accordingly set aside. In the subsequent evaluation as respondents 3 and 5 were disqualified, and no contract was awarded to them no opinion is expressed on their eligibility. W.P.No.31113 of 2016 is accordingly allowed. W.P.No.8604 of 2016 is disposed of. All pending Miscellaneous Applications stand closed. No costs.

Date: 12.03.2018
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JUSTICE P.NAVEEN RAO



HON'BLE SRI JUSTICE P.NAVEEN RAO



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