

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.17537 OF 2007

ORDER:

This Writ Petition is filed originally seeking to issue a Writ of Mandamus declaring the action of the respondents in declaring the petitioner as unsuccessful bidder by letter dated 01.06.2007 and returning the EMD by letter dated 20.06.2007 as illegal and arbitrary.

2. The facts of the case are that the first respondent had issued tender notification termed as 'Request For Proposal (RFP) document' inviting tenders in respect of commercial development of vacant land of 2836 Sq. Mtrs. at old bus station, Vijayawada. The petitioner and 5th respondent along with others submitted tenders. The tender was allotted to the 5th respondent (impleaded respondent) being the highest bidder. Thereafter by virtue of an order dated 02.11.2007 in WPMP No.30189 of 2007, the prayer of the writ petition was amended as follows:

“to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the contract awarded in favour of the 5th respondent as illegal, arbitrary, and contrary to the terms and conditions of RFP documents and violative of Articles 14 and 21 of the Constitution of India, besides violative of principles of natural justice and consequently set aside the contract awarded in favour of the 5th respondent in respect of commercial development of vacant land of 2835 sq. mts. at Old Bus Station, Vijayawada.”

3. This Court on 30.08.2007 directed that in case the work in pursuance of the award of contract has not been commenced as yet, there shall be interim stay of the same for a period of three weeks. Subsequently, the interim stay was not extended.

4. Respondents 1 to 5 filed counter stating that there is no illegality or violation of any procedure in the process of inviting and processing bids, after following due procedure, the bids were opened, the 5th respondent M/s.Ambica Empire was the successful bidder, agreement was concluded on 30.05.2007, the site was handed over to the developer on 22.06.2007 and the work is already commenced. It is further stated that clause 6 specifies to refund the EMD amount to the unsuccessful bidder on expiry of one year from the date of opening of the bids or on deciding upon the acceptance or otherwise of the proposal, whichever is earlier. However, the EMD amount could not be refunded to the petitioner as the petitioner being the second highest bidder would have an opportunity to get the project in case of any failure on the part of the highest bidder in executing the agreement.

5. Today, the learned standing counsel for respondents 1 to 5, on instructions, would submit that though according to clause 6, the agreement has to be entered with the successful bidder within a period of one year from the date of opening of the bid, the agreement with the 5th respondent-successful bidder was entered on 30.05.2007 due to site problems and other administrative reasons. Thereafter, the EMD amount was returned to the petitioner through demand draft and the same was also en-cashed.

6. In view of the submissions made by the learned standing counsel, on instructions, this Court is of the view that there is no illegality or arbitrariness on the part of respondents 1 to 5 in awarding contract to the 5th respondent.

7. Therefore, the Writ Petition is dismissed.

8. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

14th February, 2018
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