

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

W.P.No.23403 of 2018

ORDER:

Awarding of contract work, in favour of the fourth respondent by the third respondent/Director, BIRRD (Trust) Hospital, TTD vide proceedings No.BH2/38/B(T)/Tpt/2017, dated 16.06.2018 for "maintenance of cleanliness and sanitation works in BIRRD (T) Hospital through outsourcing covered by tender notice BH2/38/B(T)/2017, dated 12.04.2017", is under challenge in the present writ petition.

2. Petitioner herein is a man power supply agency. The respondent issued a tender notice dated 28.02.2017, inviting tenders for supply of man power for sanitation work and procurement of material for maintenance of sanitation work. In the said tenders, petitioner's bid was the lowest, but the same was cancelled. Thereafter, the third respondent issued a fresh tender notice dated 12.04.2017. Questioning the said tender notice and cancellation of the earlier tender dated 28.02.2017, M/s.Yeshoda Housing Keeping Sanitation Works, who participated in the process pursuant to the earlier tender notice dated 28.02.2017, filed W.P.No.14471 of 2017. In the said W.P.No.14471 of 2018, this Court on 24.04.2017 passed an interim order, directing the third respondent not to release the work order to the successful L1 till further orders. Though, the earlier period of M/s.Yeshoda House Keeping Sanitation Works came to an end on 20.03.2017, the said agency continued thereafter also in the light of the orders of this Court mentioned *supra*. Petitioner herein filed WMP.No.2140 of 2017 to vacate the above said interim order and this Court dismissed W.P.No.14471 of 2017 on 30.04.2018.

3. After dismissal of the said writ petition, according to the petitioner herein, it was waiting for the award of work by the third respondent pursuant to the tender notice dated 12.04.2017 as the petitioner's bid being the lowest. The third respondent issued the impugned proceedings dated 16.06.2018, awarding work in favour of the fourth respondent.

4. Petitioner herein admittedly quoted 0.01 percent towards service charges for the supply of man power and Rs.16,500/- towards the supply of sanitation material per month and also quoted rates for each item of material separately as required under the tender notice. The fourth respondent quoted 0.01 percent towards service charges and Rs.64,400/- towards supply of house keeping material.

5. Heard the learned counsel for the petitioner and Smt.K.Lalitha, learned Standing Counsel for the respondents 2 and 3. Despite service of notice, there is no representation on behalf of the fourth respondent.

6. It is submitted by the learned counsel for the petitioner that since the petitioner herein is the lowest bidder, tender is liable to be awarded to the petitioner; that on the ground that the fourth respondent assured to supply the material free of cost, the third respondent awarded the work to R.4 instead of disqualifying the financial bid as he quoted Rs.64,400/- towards the supply of material; that the fourth respondent is not a genuine contractor and his intention is to secure the work on one reason or the other, as such, the third respondent ought not to have yielded to the free offers given by the contractors with in-genuine intentions; having issued the tender notification, the third respondent is required to follow the norms of the tenders strictly; that the man power supply company has to discharge a number of statutory obligations after receiving the amounts from the employer and needs to pay EPF and ESI contributions to each employee within time; that the salaries

have to be paid to the outsourcing employees without default and contractor has to engage a supervisor to monitor the execution of work, as such, it is highly impossible for the fourth respondent to supply the staff with 0.01 % service charges with supply of sanitation material, as such, R.4 offer is ill-motivated and not feasible; that the fourth respondent may resort to any sort of irregularities affecting the interests of outsourcing employees and in the event of there being any breach of the terms of contract by the fourth respondent, the third respondent cannot proceed against R.4 as the offer is a charity and that the fourth respondent did not assign any reasons as to why it quoted Rs.64,400/- earlier.

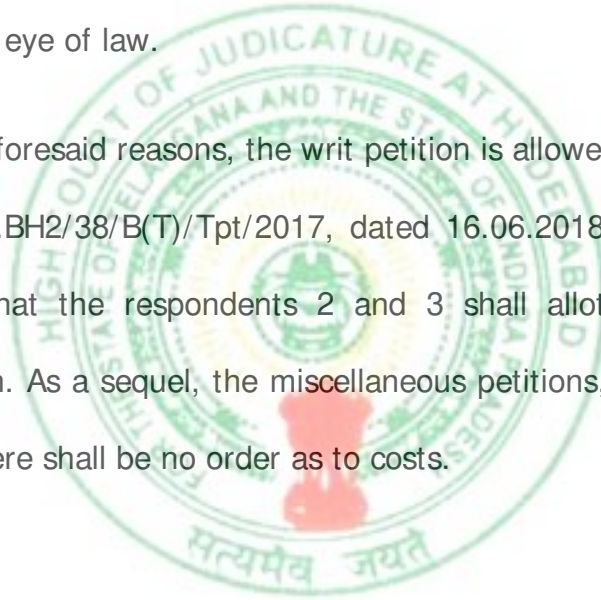
7. On the other hand, it is submitted by the learned Standing Counsel for the respondents 2 and 3 that there is absolutely no illegality in the impugned action and as the fourth respondent came forward with the offer to supply the sanitation material free of cost, respondent No.3 opted to the tender quoted by the fourth respondent as the same is beneficial to the third respondent.

8. There is absolutely no dispute with regard to the fact that the petitioner herein as well as the fourth respondent are the contractors by avocation and the competition between them cannot be doubted. It is also not in dispute that in response to the tender notification issued by the third respondent, petitioner herein quoted 0.01 % towards service charges for supply of man power and Rs.16,500/- towards supply of sanitation material per month. It is also not in dispute that the fourth respondent though quoted equal percentage towards service charges for supply of man power quoted a sum of Rs.64,400/- for supply of house keeping material. The above quotations clearly disclose that the petitioner herein is the lowest tenderer. Obviously, after the process of evaluation, the fourth respondent

came forward with the free offer of supply of sanitation material. In the considered opinion of this Court, the said action is an attempt to eliminate the petitioner from the tender. The reason for quoting Rs.64,400/- initially in the tender and the reason for offering free supply subsequently is not forthcoming.

If these types of offers are permitted, there cannot be any sanctity for the process of tenders and it leads to unhealthy atmosphere in the transactions. As observed supra, the fourth respondent is also a commercial establishment and is not a charitable one. Therefore, the reason obviously for offering free service is to eliminate the petitioner herein from the fray. This cannot be sustained in the eye of law.

9. For the aforesaid reasons, the writ petition is allowed, setting aside the Proceedings No.BH2/38/B(T)/Tpt/2017, dated 16.06.2018 and consequently it is directed that the respondents 2 and 3 shall allot the work to the petitioner herein. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.



A.V.SESHA SAI, J

Date:12.10.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.23403 of 2018

Dated: 12.10.2018

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