

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.7578 of 2011

ORDER:

The petitioner seeks Writ of Mandamus declaring the action of the respondents 2 and 3 in issuing proceedings in Letter No.GMH/SB/2011/1503, dated 24.02.2011 without considering the representation made by the petitioner dated 02.02.2011 as illegal and arbitrary as permission was not obtained under Section 421 of Greater Hyderabad Municipal Corporation Act, 1955 (for short "GHMC Act") from Greater Hyderabad Municipal Corporation and consequently direct the respondents to accept the bid amount soon after the permission is accorded by GHMC for erection of hoardings in the premises of Government Maternity Hospital, Sultan Bazar, Hyderabad.

2a) Petitioner's case is that pursuant to tender notification issued by 2nd respondent in the newspapers dated 26.12.2010 calling upon sealed tenders for erection of advertisement boards/hoardings in the space available at old and new building in the premises of the Government Maternity Hospital, Sultan Bazar, Hyderabad, the petitioner submitted its quotations and became successful bidder. On 02.02.2011, the petitioner addressed a letter to the 2nd respondent stating that it received orders accepting its tender and in order to grant permission for erection of hoardings, GHMC has formulated a comprehensive policy on advertisements and stopped issuance of fresh permissions until further orders. It is further stated that GHMC was not accepting any new

applications for erection of hoardings and hence the petitioner has no other option except to wait until the permission was accorded by GHMC and requested the 2nd respondent to treat the commencement of contract period from the date of issuance of permission by GHMC. The petitioner enclosed Demand Draft for Rs.1,80,200/- towards 20% of first year lease amount and also assured that balance amount of 1st year annual rental will be made on receipt of permission from GHMC. The petitioner also addressed a letter to GHMC on 04.02.2011 bringing to its notice about the 2nd respondent accepting its bid. While so, the 2nd respondent all of a sudden issued impugned notice dated 24.02.2011 stating that 20% amount deposited by the petitioner i.e. Rs.1,80,200/- would be returned to it, but the EMD would be forfeited as the petitioner failed to deposit the amount quoted in the tender.

b) The grievance of the petitioner is that as per Section 421 of GHMC Act, no person shall, without the written permission of the Commissioner of GHMC, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure. In the recent past, as some hoardings have fallen due to rain and gales, the Corporation was considering taking a decision to formulate a scheme in this regard. Therefore, the petitioner requested the respondents to consider its case, but the respondents without considering its request, unilaterally took a decision to forfeit the EMD amount which is quite unjust.

Hence, the instant writ petition.

c) The 2nd respondent filed counter admitting that the petitioner quoted highest bid amount of Rs.9,00,999/- per annum and orders were issued by proceedings No.1288/HDS/GMH/SB/2011/1384, dated 19.01.2011 with a request to deposit the 1st year lease amount of Rs.9,00,999/- immediately. In response to the said order the petitioner has submitted a letter along with DD for only Rs.1,80,200/- and stated in its letter, as per their enquires the GHMC had confirmed that they were not accepting any new applications for erection of hoardings. Further, the petitioner—firm had requested to treat the commencement of two years contract period from the date of issuance of permission from the GHMC and further stated that payment of balance of 1st year annual rental will be made on receipt of permission from the GHMC.

d) It is further averred, a note was put up to the Chairman, Hospital Development Society, Government Maternity Hospital, Sultan Bazar, Hyderabad mentioning the circumstances stated by the petitioner in his letter. The Chairman had made an endorsement to the effect “*It is essential that we generate revenue till formal ratification from GHMC is received, we can write to JD, IEC, APSACS to take over the hoardings for social messaging through these existing hoardings*”. Accordingly as per the instructions of Chairman, the existing hoardings space available at old hospital building has been handed over to JD, IEC, APSACS vide office letter No.HDS/GMH/SB/2011, dated 01.03.2011 and 20% amount deposited by the petitioner was ordered to be refunded to him and the same was sent by registered post vide office letter No.1503/GMH/SB/11 dated

24.02.2011 and the receipt of acknowledgement has also been received. Further, the EMD amount paid by the tenderer along with the tender form at the rate of 2.5% has been ordered by the Chairman to forfeit, as the petitioner—firm failed to deposit the lump sum bid amount after contract was awarded. Respondent thus prayed to dismiss the writ petition.

3) Heard arguments of Sri N.Subba Rao, learned counsel for petitioner and learned Government Pleader for Medical and Health and Family Welfare for respondents.

4) Mr.N.Subba Rao would submit that since the GHMC has not accorded permission to the petitioner in terms of Section 421 of GHMC Act, it could not put up the hoardings at the place allotted by the respondents and therefore, its prayer is only to direct the respondents to refund the EMD amount of Rs.23,000/- which was forfeited as per the impugned order dated 24.02.2011. He would submit that petitioner's failure to put up hoardings was not due to its negligence or fault but because of non-granting of permission by GHMC and therefore the respondent authorities ought not to have withheld the EMD amount of Rs.23,000/- and as the respondents have refunded 20% of bid amount deposited by it, in the same manner they should have refunded the EMD also. He would further submit that the terms and conditions of the tender notification do not contain any clause giving right to the respondents to forfeit the EMD amount in the event the highest bidder failed to honour the bid knocked in his favour. Learned counsel would further submit that Clause-6 of the terms and conditions would show that EMD amount is

refundable one. He thus prayed that the respondent authorities may be directed to refund the EMD amount.

5) Per contra, learned Government Pleader while opposing the petition would submit that petitioner failed to deposit the balance bid amount within the stipulated time and therefore, as per the instructions of the Chairman, 20% bid amount was refunded while forfeiting the EMD of Rs.23,000/-. There is no illegality in such forfeiting and hence writ petition may to be dismissed.

6) The point for determination is:

“Whether there are merits in this writ petition to allow?”

7) **POINT:** Admittedly, the petitioner is the highest bidder and it deposited 20% of the 1st year lease amount i.e. 1,80,200/- and it also deposited EMD amount of Rs.23,000/- i.e. 25% of the total bid amount. Petitioner's case is that since GHMC has not accorded permission as per Section 421 of GHMC Act, it could not erect the hoardings though it was the highest bidder.

8) In this regard, a perusal of Section 421 of GHMC Act would show that no person shall without the written permission of the Commissioner of GHMC, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure. The section also contains certain exceptions but both the learned counsel would admit that petitioner's case do not fall within the exceptions and

therefore, petitioner was necessarily obtain permission from the GHMC in terms of Section 421 of GHMC Act.

9) Added to it, in Condition No.21 of the tender notification, it is clearly mentioned that the tenderer should obtain all the necessary permissions from the departments of GHMC, TRANSCO etc. whatever required. Then, a perusal of copy of the letter dated 04.02.2011 filed along with material papers would show that petitioner addressed a letter to the Additional Commissioner (Advertisement), GHMC, Hyderabad seeking permission for erection of hoardings in the space allotted in Government Maternity Hospital, Sultan Bazar, Hyderabad. Learned counsel would submit the GHMC authorities have neither passed any order on it nor communicated to the petitioner and in those circumstances petitioner could not proceed with the process of erecting hoardings.

10) In the considered view of this Court, there was no fault on the part of petitioner. Though it made application to the authorities of GHMC, they have neither accorded sanction nor communicated the refusal proceedings. In such circumstances, petitioner deserves refund of EMD amount which it deposited.

11) The respondent authorities, by impugned proceedings, rightly refunded 20% of bid amount i.e. 1,80,200/-. However, there is no justification for them for forfeiting EMD of Rs.23,000/- on the ground that the petitioner failed to deposit the entire amount quoted in the tender. The petitioner in its letter dated 02.02.2011 addressed to the 2nd

respondent, clearly mentioned that it was waiting for the permission from GHMC and it would deposit the balance amount of 1st year annual rental on receipt of permission from the GHMC. Hence, its failure to deposit the balance amount cannot be treated as a wilful act. Therefore, it deserves refund of EMD amount of Rs.23,000/- also. Further, Condition No.6 of terms and conditions reads thus:

“The EMD @ 2.5% on total bid amount should be deposited through Demand Draft (Refundable).”

Thus, Condition No.6 is clear to the effect that the said amount is refundable one.

12) Learned Government Pleader by referring Condition No.3 sought to justify the action of the respondents in forfeiting the EMD. Condition No.3 reads thus:

“The successful tenderer has to deposit the bid amount in lump sum immediately after opening of tenders”

This condition is only lays down the successful tenderer has to deposit the amount in lump sum immediately after opening of tenders. However, there is no further stipulation in the said condition as to what consequences that will ensue, if the successful tenderer failed to deposit the bid amount in lump sum immediately after opening of tenders. No penal clause is attached to Condition No.3 nor mentioned elsewhere in the terms and conditions of tender notification. Therefore, the respondent authorities cannot take shelter under Condition No.3 to forfeit EMD

amount. In contrast, there is a justification for the petitioner to seek for refund of EMD.

13) In the result, this Writ Petition is allowed and respondents are directed to refund the EMD amount of Rs.23,000/- deposited by the petitioner—Firm within eight (8) weeks from the date of receipt of a copy of this order, failing which they are liable to pay interest at the rate of 6% per annum from the date of this order till realization. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

Date: 23.10.2018
Murthy

U. DURGA PRASAD RAO, J

