

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 14471 of 2017

Order:

Heard learned counsel for the petitioner, learned Standing Counsel for the respondents 2 and 3 and learned counsel for the fourth respondent.

The petitioner was an existing contractor for supply of manpower pursuant to a tender notification issued earlier. Its contract came to an end on 20.03.2017. The second respondent issued tender notification on 28.02.2017 inviting tenders for supply of manpower of sanitation and also procurement of material for maintenance of the sanitation works. The petitioner submitted its tender along with other eligible tenderers and the tenders were opened on 14.03.2017 in the presence of all the participants. The petitioner was found to be the lowest one. The petitioner was not informed of any further developments, but, however, another tender notice was issued on 10.04.2017 inviting tenders for the same work. In view of the same, challenging the second tender notice, the present Writ Petition was filed on the ground that the second respondent cannot issue a tender notification without cancelling the earlier tender notice.

This Court, by order dated 24.04.2017, gave liberty to the second respondent to proceed with the opening of pre-qualification/Technical bid and also price bid at the appointed date, but restrained the second respondent from releasing the work order to the successful agency until further orders.

As a result of the said order, the petitioner firm was continued and it is continuing as on today. Seeking vacation of the said order, the respondents 2 and 3 filed I.A.No.1 of 2017 (W.V.M.P.No.2140 of 2017) on 06.06.2017, but the said application could not be listed before this Court. In the meanwhile, pursuant to the opening of tenders, the lowest tenderer filed separate application seeking impleadment as fourth respondent and the same is ordered. He also filed I.A.No.2 of 2017 (W.V.M.P.No.2234 of 2017) seeking vacation of the said order.

The counter affidavit of the third respondent states that the petitioner was not the lowest tenderer as claimed by the petitioner for the following reasons:

- a) The service charges quoted for supply of manpower for sanitation was lowest with two agencies having quoted 0.01% (namely M/s. Indian Security Force and M/s. Chaitanyajyothi Welfare Society).
- b) The petitioner firm had quoted the service charges at 0.1% which was higher than the other two companies and was disqualified in the price bid.
- c) It is to submit that the second respondent had issued the tender notice vide BH2/38/B9T)/Tpt/2017, dated 10.04.2017, for supply of manpower and material which are two different entities.”

It is further stated that the authorities scrutinised the tenders and came to the conclusion that the work should be re-tendered. Since there was a clause in the tender notification empowering the Director to cancel the tenders without assigning any reasons, second notification was issued. The decision was taken by the respondents 2 and 3 to re-tender the work in order to bring in more transparency. The petitioner was not put to any loss as it completed the previous work on 20.03.2017. Pursuant to the original tender notification, five parties participated and out of five parties

one party, M/s. Scotland Security Services was disqualified for not adhering to the tender conditions. The petitioner also did not submit performance certificate and experience certificate. It also not quoted the individual rates of items to be supplied. In view of the same, it was decided to re-tender the work.

It is now stated by the learned counsel for the petitioner that the fourth respondent also tendered the work along with the petitioner and the fourth respondent also submitted another tender pursuant to the second tender notice, but the petitioner could not file its tender in view of pendency of the present Writ Petition.

Learned counsel for the petitioner could not show any right in favour of the petitioner for continuance of original tender notice and for challenging the second tender notice issued. However, he submitted that since the petitioner did not file a fresh tender pursuant to the second tender notice, he should be given an opportunity by directing the respondents 2 and 3 to issue fresh tender notice. This relief cannot be granted by this Court, since the petitioner could not show its right to challenge the issuance of second tender notice and, more so, this Court did not prevent the petitioner from participating in the tender proceedings. A reading of the interim order passed on 24.04.2017 clearly shows that the second respondent was allowed to proceed with the opening of the tenders pursuant to second tender notice. No prejudice is caused to the petitioner by issuing second tender notice and it is not an absolute rule of law to award tender to the lowest tenderer, even if it is presumed that the petitioner is the lowest tenderer. The assumption of

the third respondent that the tendering authority has the power to cancel the tender on its discretion is not challenged in the present Writ Petition.

In the circumstances, the Writ Petition is dismissed as devoid of merits. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALI NGESWARA RAO, J

Date: 30.04.2018
Nsr

