

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

W.P.No.28613 of 2018

ORDER:

Heard the learned counsel for the petitioner Sri K.Muralidhar Reddy and Smt P.Sarada for the respondents 2 to 4 apart from perusing the material available before the Court.

2. An offline tender notice bearing No.AD(GM)/232/SWIMS-CANTEEN/SVIMS/2017, dated 01.08.2018, issued by the Director-cum-Vice Chancellor, Sri Venkateshwara Institute of Medical Sciences, Tirupathi/fourth respondent herein, inviting bids for the purpose of "Licensing SVIMS canteen including Shop No.04 located near SBI ATM" is under challenge in the present writ petition.

3. According to the learned counsel for the petitioner, Sri K.Muralidhar Reddy, petitioner is a Diet Contractor and the learned counsel attacks the impugned tender notification on two grounds viz., (1) the impugned notification dated 01.08.2018 is contrary to the policy of the State Government vide G.O.Rt.No.1452, HM&FW (M1) Department, dated 16.08.2011 and G.O.Ms.No.325, Health, Medical and Family Welfare (M1) Department, dated 01.11.2011 (2) the impugned tender notification is in violation of Sections 10 and 35 of "Sri Venkateshwara Institute of Medical Sciences University Act, 1995.

4. On the contrary, resisting the said contentions and reiterating the contents of the counter affidavit and the additional counter affidavit filed on behalf of the respondents 2 and 4, Smt.P.Saarada, learned Standing Counsel strenuously contends that there is no illegality nor there exists any material infirmity in the impugned tender notification and in the absence of the same, the questioned action is not amenable for any judicial review under Article

226 of the Constitution of India; that the Governmental orders, referred to *supra*, and which the petitioner seeks to press into service have no application to the respondent/SVIMS, which is an independent institution and that the said Governmental orders and the instructions contained therein are applicable only to the Government hospitals and medical institutions and not to the independent statutory institutions like the respondent/SVIMS; that the Director of SVMIS/fourth respondent herein is competent to issue the impugned notification in view of the provisions of Section 18 of the Act; that pending the writ petition, the licence is already been granted to one Sri Y.Koteswar Rao on 08.09.2018 and without impleading the said successful bidder, the present writ petition cannot be permitted to be proceeded further.

5. In the above backdrop, now the issues which this Court is called upon to answer in the present writ petition are:

1. Whether the orders passed by the State Government vide G.O.Rt.No.1452, HM&FW (M1) Department, dated 16.08.2011 and G.O.Ms.No.325, Health, Medical and Family Welfare (M1) Department, dated 01.11.2011 are applicable to the fourth respondent/Sri Venkateshwara Institute of Medical Sciences, if so, whether the fourth respondent is empowered to issue the impugned tender notification?
2. Whether the provisions of Sri Venkateshwara Institute of Medical Sciences act, 1995 do authorise the fourth respondent to issue the impugned notification?
3. Whether the non-impleadment of the person who emerged as the successful bidder and in whose favour the licence has been granted pending writ petition is fatal to the case of the petitioner herein and whether the writ petition is liable to be rejected on the said ground?

6. Issue Nos.1 to 3:

In order to resolve the issues it would be highly essential and appropriate to refer to the provisions of Sri Venkateshwara Institute of Medical Sciences University Act, 1995. The State Government enacted Sri Venkateshwara Institute of Medical Sciences University Act, 1995, Act.12 of 1995 and the same received the assent of His Excellency the Hon'ble Governor on 10.02.1995 and the same was published on 13.02.1995 in the A.P. Gazettee Part IV-B (Ext.). The said legislation came into force with effect from 08.09.1994. According to Section 3 of the said Act, Sri Venkateswara Institute of Medical Sciences shall be a body corporate having perpetual succession and a common seal. Section 4 of the said legislation deals with the objects of the institute and the said provision of law reads as follows:

- “4. Objects of the Institute:- The objects of the Institute shall be, _
- (a) to create a centre of excellence for providing medical care, educational and research facilities of a high order in the field of medical sciences in the existing super-specialities and such other super-specialities as may develop in future, including continuing medical education and hospital administration;
 - (b) to develop patterns of teaching in post-graduate level and in super-specialities so as to set a high standard to medical education;
 - (c) to provide for training in paramedical and allied fields, particularly in relating to super-specialities;
 - (d) to function as a referral hospital;
 - (e) to provide for post-graduate teaching and conduct of research in the relevant disciplines of modern medicine and other allied sciences, including inter-disciplinary fields of Physical and biological Sciences. “

7. Section 6 of the enactment deals with the authorities of the institute and Section 7 deals with the officers of the institute and according to Section 8 of the said Act the Hon'ble Chief Minister of the State shall be the Chairman

of the institute. Section 9 of the Act deals with the Governing Council and the Registrar of the University shall Act as Secretary of the Governing Council. One of the relevant Sections for adjudication of the issues in the present writ petition is Section 10 of the Act and the said provision of law deals with the functions of the Governing Council and the said Section reads as follows:

“10. Functions of the Governing Council:- (1) Subject to the provisions of this Act, the Governing Council shall be responsible for the general supervision, direction and control of the affairs of the Institute.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Governing Council shall perform, the following functions, namely :

- (a) take steps for achieving the objectives of the Institute;
- (b) hold, control and administer the property and funds of the Institute;
- (c) acquire or transfer any movable or immovable property on behalf of the Institute;
- (d) administer any funds placed at the disposal of the Institute for specific purposes;
- (e) manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the Institute and for that purpose appoint such agents as it may think fit;
- (f) invest the money belonging to the Institute (including any income from trust and endowed property) in such Public Financial Institutions ensuring maximum security for the amounts invested as it may from time to time think fit,
- (g) enter into, carry out, vary and cancel contracts on behalf of the Institute;
- (h) regulate and determine all other matters concerning the Institute in accordance with the provisions of this Act, and the rules and regulations made thereunder;
- (i) delegate any of its powers to a Committee or the Director or to any officer of the Institute; and
- (j) co-operate with other Institutions, Universities and other authorities in such manner and for such purpose as it may determine.”

8. Another important provision of law which is germane and relevant is Section 35 of the Act, which deals with the directions by the Government.

The said provision of law reads as under:

“35. Directions by the Government:- (1) In the discharge of its functions under this Act, the Institute shall be guided by such directions on question of policy relating to State purposes or in case of any emergency as may be given to it by the Government.

(2) If any dispute arises between the Government and the Institute as to whether the question is or is not a question of policy relating to the State purposes or whether an emergency has arisen, the decision of the Government thereon shall be final.”

9. A reading of the above provisions of law clearly demonstrates that according to the Clause (g) of Sub-Section (2) of Section 10 of the Act, the Governing Council is vested with the power to enter into, carry out, vary and cancel contracts on behalf of the Institute. It is also very much evident from a reading of Section 35 of the Act that the policy decisions taken by the State Government are binding on the institution and in the event of there being any dispute between the Government and the institute, the decision of the State Government shall be final.

10. The State Government obviously in the direction of implementing the policy decision constituted the Diet Committee vide G.O.Rt.No.1452, HM&FW (M1) Department, dated 16.08.2011, with the Director of Medical Education as Chairman with the duty of specifying the diet schedule to the general patients, therapeutic patients, duty doctors and attendants of the Tribal patients and to submit their recommendations based on calorific norms and nutritional value. In furtherance of the implementation of the said policy, the State Government issued G.O.Ms.No.325, Health, Medical and Family Welfare (M1) Department, dated 01.11.2011, stipulating about the Management

Committee and according to the same the District Diet Management Committee consists of the following members:

Joint Collector	Chairman
District Medical & Health Officer	Member
Chief Dietician / Dietician	Member
Inspector (Health) where Dietician is not available	Member
NGO / Voluntary Organization	Member
Most Senior Physician & Paediatrician in the District	Members
Resident Medical Officer of Teaching/District Hospital	Member
District Coordinator for Hospital Services	Convener
Superintendent of Teaching	

11. According to paragraph 9 of the said Governmental Order, the District Diet Management Committee (DDMC) would be responsible for calling tenders and select the most competent diet contractor and is authorised to monitor the quality of food supplied to the inpatients/duty Doctors. According to paragraph 12 of the said Governmental Order, the Bidding process will be finalized by the District Diet Management Committee through transparent and competitive means. Apart from the above, paragraph No.14 of the said Governmental order prescribes the Hospital Diet Management Committee (HDMC) also and according to which there shall be a Committee in every hospital with the Superintendent as Chairman and Dietician as the Convener and the Resident Medical Officer (RMO), Senior-most Physician, Paediatrician and Obstetrician, a representative of the junior Doctors in cases of their diet may be made a member.

12. According to paragraph 15 of the said Governmental Order, it is the duty of the Hospital Diet Management Committee to ensure supply of hygienic and balanced diet to the patients and for close monitoring of its quantity and quality also.

13. A reading of the above Governmental order clearly demonstrates that the said instructions have been issued by the State Government as a policy decision. Therefore, as per Section 35 of the SVIMS Act, 1995 this policy

decision taken by the State Government is also binding on the respondent institution. In view of the same, the contention contra advanced by the learned Standing Counsel for the respondent institution that the said Governmental orders cannot be pressed into service against the respondent institution, cannot be sustained in the eye of law.

14. Yet another contention of the learned Standing Counsel that there is no place for the respondent institution in the District Diet Management Committee and the same consists of all the officers of the State Government only, cannot be sustained, in view of the reason that the Chief Dietician and the Resident Medical Officer of Teaching/District Hospital are also included in the District Diet Management Committee and the contention to the said effect is hereby rejected.

15. Yet another contention raised by the learned counsel for the respondent that non-impleadment of the person viz., Y.Koteswar Rao in whose favour the license is granted vide proceedings dated 08.09.2018 is fatal to the case of the writ petitioner, in the considered opinion of this Court, cannot be sustained in the eye of law as the said development has taken place pending the writ petition. On the ground of non-impleadment petitioner cannot be non- suited when this Court is inclined to hold that the very action of issuing the tender notification by the fourth respondent suffers from inherent lack of jurisdiction.

16. For the aforesaid reasons, the writ petition is allowed, setting aside the offline tender notice bearing No.AD(GM)/232/SWIMS-CANTEEN/SVIMS/2017, dated 01.08.2018, issued by the Director-cum-Vice Chancellor, Sri Venkateshwara Institute of Medical Sciences, Tirupathi/fourth respondent herein. It is needles to observe that all the consequential proceedings are also liable to be declared as null and void. Respondents are directed to

proceed as per the Governmental Orders referred to *supra*. 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:10.10.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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