

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 38120 of 2018

ORDER:

1) To declare the action of the second respondent in issuing expression of interest inviting the agencies for 'collection and transportation of waste from chicken and mutton stalls in Greater Visakhapatnam Municipal Corporation (GVMC) area' for a period of two years, from entrustment of work or till implementation of G.O.279 whichever is earlier, vide paper publication dated 05.10.2018, is subject matter of challenge in the present writ petition.

2) The petitioners herein were entrusted with the work of collection of waste from restaurants/hotels/chicken/ and mutton stalls as per council ratification No.244/2009 dated 25.06.2009 from 23.07.2010 to 22.07.2012. The first petitioner was permitted to collect the waste from Zone-I, II and III of GVMC, while the second petitioner was authorized to collect waste from Zone-IV, V and VI of GVMC, on payment of collection charges at Rs.275/- per ton. The said work was extended from 23.07.2013 to 06.12.2015, as per the Corporation resolution No.94/2013 dated 24.04.2013, by enhancing the collection charges to Rs.475/- per ton. It is said that the agencies have been permitted to continue

the work from 31.03.2016 till implementation of Government new guidelines as per the order of the Commissioner dated 21.03.2016. The grievance of the petitioners is that without issuing any fresh guidelines, the impugned paper publication came to be issued calling for tenders.

3) Learned counsel for the petitioners mainly submits that the process of inviting tenders is contrary to the earlier office endorsement dated 31.03.2016, since no fresh guidelines are issued till date.

4) On the other hand, Sri S.Lakshminarayana Reddy, learned standing counsel for respondent/GVMC on instructions would submit that the petitioners have no right to question the conditions or manner of notification, since the agencies have come forward to take up the work on remunerative basis. According to him, the GVMC cannot be put to loss by allowing the petitioners to continue their work on nomination basis on a meager amount. It is his plea that if the petitioners are interested to continue with the work, they can as well participate in the tenders and be successful in getting the work allotted to them.

5) As seen from the record, earlier the petitioners herein filed W.P.No.34087 of 2018 seeking to issue a Writ of mandamus declaring the action of respondent authorities, particularly

respondents 2 and 3 in interrupting petitioner's contract work in collecting the Garbage and food waste generate from hotels, restaurants, messes, commercial establishments, waste generated from mutton and chicken stalls etc., in Zone-I, II and III of GVMC area by the 1st petitioner and in Zone-IV, V and VI by the 2nd petitioner, as illegal, arbitrary and against the principles of natural of justice and consequently to direct the respondent No.2 and 3 to continue the petitioner's agencies for collecting the garbage and food waste generate from hotels, restaurants, messes, commercial establishments, waste generated from mutton and chicken stalls etc., in Zone-I, II and III of GVMC area by the 1st petitioner and in Zone-IV, V and VI by the 2nd petitioner.

6) By an order dated 20.09.2018, this court disposed of the writ petition with the following observation:-

"When the matter is taken up, it is submitted by the learned Standing Counsel for the Municipal Corporation Sri S.Lakshminarayana Reddy, on instructions, that earlier the Corporation permitted the petitioners to carry on the work till the issuance of the regular tenders. It is further submitted by the learned counsel that the corporation authorities are not interfering with the petitioners' activity as alleged in the writ petition and will not interfere till the finalization of the tenders.

Recording the said submission of the learned Standing Counsel, the writ petition is disposed of. As a sequel thereto, miscellaneous petitions, if any, pending in the Writ Petition, shall stand disposed of. No order as to costs."

7) From the judgment referred to above, it is clear that the Corporation was proposing to go-head with the tender process by inviting tenders from the general public. The said order of the learned Single Judge, with regard to interference by the Corporaiton till finalization of tenders, was not challenged. Thereafter, the expression of interest is invited by tender notification dated 04.10.2018 published in Indian Express and Praja Sakthi daily news paper on 05.10.2018. Pursuant to which, about 15 bidders submitted their bids.

8) The learned counsel for the respondent placed on record the instructions received stating that the technical bids were opened in the chambers of ADC (G) along with Examiner of Accounts & CMOH, in the presence of all the bidders on 23.10.2018. In the evaluation of Technical bids, the first petitioner was disqualified, which was informed to him over phone. In view of the orders passed by this Court in W.P.No.38120 of 2018 on 26.10.2018, the financial bids were also opened, but the same were not finalized. From the narration of events, it is very clear that the petitioners herein were disqualified at technical bids stage itself.

9) However, the learned counsel for the petitioners would submit that without issuing the guidelines, the respondents erred in going for tender notification. As seen from the record, the

petitioners herein were awarded the work on nomination basis. Initially, they were awarded the work @ Rs. 275/-per ton, which was later enhanced to Rs.475/- per ton. The learned counsel for the respondent would submit that the action of the Corporation came to be questioned by various societies stating that they are ready to work on remunerative basis. In fact, in the earlier order passed, this Court directed that "the Corporation will not interfere with the work of the petitioners till tender process is completed", which was never challenged. Therefore, the petitioners now cannot question the tender process adopted by the respondents. Apart from that, it is also to be noted here that by adopting the tender process, the corporation is getting more income than what it used to get while allotting the work on nomination basis.

10) Since the decision relating to award of contract is in public interest, the Courts will not, in exercise of the power of judicial review, interfere even if a procedural aberration or error in awarding the contract is made out. The power of judicial review will not be permitted to be invoked to protect private interest by ignoring public interest. Attempts sought to made by unsuccessful bidders with an artificial grievance and to get the purpose defeated by approaching the Court on some technical and procedural lapses, should be handled by Courts with firmness. The

exercise of the power of judicial review should be avoided if there is no irrationality or arbitrariness. (**Municipal Corporation, Ujjain and Another v. BVG India Limited and others (2018 Law Suit (SC) 259)**)

11) In the case on hand, I do not find any irrationality, illegality or arbitrariness on the part of the Corporation in going for public auction, more so, when the corporation is getting more income than what it used to get on nomination basis. Having regard to all the circumstances stated above, I see no grounds to interfere with the tender process.

12) Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:01.11.2018

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