

HON'BLE THE CHIEF JUSTICE  
SRI THOTTATHIL B. RADHAKRISHNAN  
AND  
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1481 OF 2018

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.O.Manohar Reddy, learned Senior Counsel for appellant, Mrs.K.Lalitha, learned Standing Counsel for Tirumala Tirupati Devasthanam and Mr.P.Udaya Bhaskara Rao, learned counsel for 1<sup>st</sup> respondent/writ petitioner.

2. M/s Chaitanya Jyothi Welfare Society/4<sup>th</sup> respondent in W.P.No.23403 of 2018 is the appellant and it challenges the order dated 12.10.2018 in W.P.No.23403 of 2018. The parties are referred to as arrayed in the writ petition.

3. M/s Indian Security Force filed writ petition challenging proceedings Roc.No.BH2/38/B(T)/2017 dated 16.06.2018 giving work order of maintenance of cleanliness and sanitation works in the BIRRD Trust Hospital to M/s Chaitanya Jyothi Welfare Society/4<sup>th</sup> respondent for a period of three years with effect from the date of execution of the order.

4. The 2<sup>nd</sup> respondent/TID issued Notice Inviting Tender (NIT) for providing man power for sanitation, maintenance and materials for BIRRD Trust Hospital, TID (3<sup>rd</sup> respondent). The writ petitioner and the 4<sup>th</sup> respondent have participated in the tender. The writ petitioner quoted 0.01% towards service charges for supply of man power and Rs.16,500/- towards supply of sanitation material per month. The writ petitioner also quoted rate of sanitation materials item wise.

*Per contra*, it is alleged the 4<sup>th</sup> respondent quoted 0.01% towards service charges and Rs.64,400/- towards supply of house keeping material. The 4<sup>th</sup> respondent to make its quotation lowest assured to supply sanitation material free of cost. The 4<sup>th</sup> respondent is treated as the lowest bidder, the offer of 4<sup>th</sup> respondent is accepted and through proceedings impugned in the writ petition, the work order of providing man power, sanitation, maintenance and materials to BIRRD Trust Hospital has been awarded. The petitioner challenges the action of 3<sup>rd</sup> and 4<sup>th</sup> respondents by contending that NIT is a composite tender for providing man power and materials to undertake the following job:

- “1. To undertake daily sweeping, cleaning, washing and mopping of the BIRRD Hospital measuring 3,38,138 Sq. feet built in area, premises, in and around Toilets, E-Block, Parking Area round the clock (the tenderer can visit site and assess the area before for submission).
2. To arrange removal of cob webs in the building premises.
3. Cleaning and washing of the floor surface, rooms, windows, doors etc.
4. Neat and tidy maintenance of the total building.
5. Prompt removal the garbage's and no stocking of garbage's within the premises are not permissible.
6. All toilets in the building to be maintained in clean and odourless condition.
7. All care shall be taken by the tenderer to avoid any damages to the properties of the BIRRD Hospital and shall be held responsible for any breakages the amount shall be recovered from the monthly payments.
8. Removal of sanitary drainage blockages to be attended instantaneously.
9. Cleaning of all peripheral areas around the building”.

The nature of job is such that materials are very much necessary and essential for effective and proper discharge of obligation undertaken by the successful contractor. The materials

if allowed to be supplied free of cost, such deviation or separation of these two components substantially changes the nature of NIT, and further the rules of the game are changed after the bids have been received.

5. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed counter affidavit and contested the matter. The 4<sup>th</sup> respondent in spite of receipt of notice did not contest the case. The learned Single Judge through the order under appeal has recorded the following findings.

“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.

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”.

Hence, the writ appeal at the instance of 4<sup>th</sup> respondent.

6. Mr.O.Manohar Reddy contends that the finding recorded in the order under appeal viz., with the change of quotation from supplying materials at the cost of Rs.64,400/- free of cost, is contrary

to the stand taken by 3<sup>rd</sup> respondent. According to appellant, the free supply of materials is uploaded by 4<sup>th</sup> respondent. The non-appearance of 4<sup>th</sup> respondent is explained by stating that the writ notice is received for admission of writ petition but not final disposal. He further contends that the decision making process if is found to be untenable, the award of contract to writ petitioner, treating him as lowest bidder, is beyond the scope of judicial review. The case ought to have been remitted for consideration by 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

7. Mr.Udaya Bhaskar Rao contends that the free supply of materials is untenable and against the very scope and object of the subject NITs. The free supply of materials now accepted by respondents will not go consistent. The object and scope of sanitation contract particularly having regard to the tenor of Clauses 28 and 34 of NIT read thus:

Untidiness, unhygienic and uncleanliness complaints against the License will be penalized not exceeding Rs.500/- at a time per occasion in a month.

XXXXX

XXXXX

Every month the sanitation material required for a period of one month like detergents cleaning material and other equipment should be handed over to medical stores/RMO BIRRD (T) Hospital, TTD's, Tirupati for being kept in the stores and to issue the everyday as per the requirement in the Hospital. Then only the previous month's bill will be process and paid to the Contractor.

According to him, the findings in the order under appeal are tenable and no ground is made out for interference by this Court.

8. We have perused the order under appeal and noted the submissions of learned counsel appearing for the parties.

The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have accepted the findings in W.P.No.23403 of 2018 and as on date have not filed appeal challenging the order dated 12.10.2018. Mrs.Lalitha does not have instructions on whether the 2<sup>nd</sup> and 3<sup>rd</sup> respondents would be preferring appeal or not.

9. The writ appeal is at the instance of successful bidder/ 4<sup>th</sup> respondent. The NIT is issued for providing man power for sanitation, maintenance and materials for BIRRD Trust Hospital, TTD, Tirupati. The nature of job for which tenders are issued is already excerpted, for satisfactory discharge of obligation undertaken, materials such as phenyl, soap oil, broomsticks etc., are essential. The NIT is for providing man power for sanitation and maintenance and for materials used in the sanitation and maintenance. We are of the view that the acceptance of free supply of materials does not go with the very object of the subject NIT.

10. Be that as it may, the finding recorded in the order refers to changing the rules of game after the last date of submission of bids, and accepting the bid of 4<sup>th</sup> respondent as illegal and arbitrary. Examining the appeal within the scope of review in intra Court appeal, we are of the view that the challenge to the proceedings dated 16.06.2018 has been made out and writ petition was ordered accordingly. We are persuaded to take up the last contention viz., that the award of contract to writ petitioner as a consequential direction ought not to have been given, the same amounts to examining the relative merits of tenderers. The decision of 2<sup>nd</sup> and 3<sup>rd</sup> respondents if it is vitiated as contrary to the terms and conditions



of NIT or that the rules of game have been changed, such decision ought to have been set aside but not direct issuing work order to the writ petitioner. The order under appeal to that extent required to be set aside is, accordingly, set aside and writ appeal is ordered as follows:

The findings in the order under appeal setting aside the proceedings dated 16.06.2018 are sustained. The direction to issue work order to writ petitioner is untenable and, hence is set aside.

After the order is dictated, to our query, Mrs. Lalitha assures the Court that within four weeks from today the tender process for appointing a new service provider for providing man power for sanitation, maintenance and materials for BIRPD Trust Hospital, TTD, Tirupati would be undertaken and completed. The statement is placed on record and accepted.

10. The writ appeal is, accordingly, ordered as indicated above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

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THOTTATHIL B. RADHAKRISHNAN, CJ

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S.V. BHATT, J

08<sup>th</sup> November, 2018  
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