

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

W.P. No.43831 of 2018ORDER:

The 3rd respondent floated tenders for empanelment of vendors. The last date, after some extensions earlier granted, for uploading the tender documents, including the technical bid and price bid, was 3 p.m. on 27.11.2018. The petitioner submitted his technical bid just two hours before the deadline fixed, and later ventured to submit the encrypted version of his price bid. Alleging that the petitioner could not upload the encrypted version of his price bid within the time prescribed, his bid was not accepted. Alleging that the decision not to allow him to upload the encrypted version of the price bid and not permitting him to participate in the tender process amounts to arbitrary exercise of power, this writ petition is filed.

2. It is not in dispute that the last date for submission of the bids was 27.11.2018 by 3 p.m., and by this time, only the bids have to be submitted in full form as required. Before going into the merits, it is appropriate to note that bids in physical form are not accepted, unless the tenderer submits his tender documents on the website. It is also appropriate to note that granting the prayer sought for by the petitioner would amount to directing the respondents to extend the last date for submission of the tender documents and accepting the petitioner's offer by permitting him to upload the price bid on the website.

3. According to the learned counsel for the petitioner, after submission of his technical bid, several attempts were made by the petitioner to upload his price bid. The price bid is required to be uploaded in encrypted form. The encryption software is designed by the 3rd respondent, and the petitioner has no role regarding encryption of the documents. When the documents were not accepted, the petitioner tried to contact the 3rd respondent-company, but they were not able to resolve the issue. According to the learned counsel, for no fault of the petitioner, the encryption was not accepted, depriving his right to participate in the tender process.

4. The learned Standing Counsel representing the 3rd respondent submits that (9) bids were submitted; (8) bids were in proper form and only the price bid of the petitioner was not submitted in proper form. There were no technical glitches. It is not the case of the petitioner that the computers showed some defects while uploading the documents, and hence, making an allegation against the respondents that the documents submitted by the petitioner alone were not accepted, when the documents submitted by all other participants could be accepted, is not valid. The Standing Counsel would submit that for various reasons such as mismatch of keys to upload all the relevant data, software is not in proper form etc., the encryption may not be possible. There is nothing on record to show that even though the petitioner complied with all the formalities, his documents were not accepted.

5. When the price bid of the petitioner is not accepted by the computer for various technical reasons, not attributable to failure of the online website, the petitioner's bid cannot be directed to be accepted. More particularly, when the bids submitted by (8) participants have been validly processed through the same website without any technical glitches, it cannot be said that due to failure of the website only the petitioner's bid was not accepted. It appears from the documents filed by the petitioner that an e-mail was generated at about 3.54 p.m., i.e., after the time prescribed, where he was pointing out the problem he faced in uploading the documents. As noted above, the prayer sought by the petitioner would be nothing but amounting to extending the last date for submission of the bids, and the same cannot be granted by this court.

6. The writ petition merits no consideration, and is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

P.NAVEEN RAO, J

Date: 04.12.2018
Note: Issue cc in 2 days
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