

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 45571 of 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the second respondent, in issuing Public Notice in Rc.No. 140/ 2018/ F6/ PH dated 07.12.2018 inviting Expression of Interest from experienced Agency/ NGO for providing operation and maintenance of the First Referral Units located at Arilova and Sriharipuram without awarding the earlier tender issued vide Public Notice Rc.No. 140/ 2018/ F6/ PH dated 24.09.2018 wherein the petitioner was declared as lowest bidder, as illegal, arbitrary and violative of principles of natural justice.

2) The petitioner herein is a Non-Governmental Organisation and registered under Societies Registration Act. The petitioner was associated with various projects with the significant support from all the Government Departments. Pursuant to the public notice dated 24.09.2018 issued by the second respondent inviting expression of interest to the work "Providing Operation and Maintenance of the First Referral Units (FRUs) located at Arilova and Sriharipuram separately in Greater Visakhapatnam Municipal Corporation, the petitioner has submitted his tender form. The said bid was cancelled on

09.10.2018. Thereafter, second tender notice came to be issued on 07.12.2018 for the same work. Challenging the second tender notification dated 07.12.2018, the present writ petition came to be filed.

3) Learned counsel for the petitioner mainly submits that the tender conditions imposed in second tender notification dated 07.12.2018 are modified to favour a particular agency. According to him, though earlier tender prescribed experience of 10 years in medical and health services but the second tender reduced the experience to three years and prescribed experience of three years in public health and IT health care in Visakhapatnam District. He also submits that second tender prescribes a condition that the bidder should have experience of three years in developing minimum 2,00,000 electronic medical records from any Government Agency in Visakhapatnam District. Obviously the same was introduced only to favour a particular person or group. Hence, pleads that the action of the authorities in calling for second tender is illegal, improper and incorrect.

4) On the other hand, Sri S.Lakshminarayana Reddy, learned Standing Counsel appearing for the second respondent would submit that the petitioner has no locus to question the tender notification since he did not participate in the bid till date. According to him situation would be different had the

petitioner participated in the tender. He also placed on record the endorsement issued by the office of the Commissioner, Greater Visakhapatnam Municipal Corporation, showing reasons as to why the first bid was cancelled. In view of the above, he would contend that the request of the petitioner cannot be considered.

5) It is to be noted here that the second tender came to be published on 07.12.2018 and the last date for submission being 20.12.2018. Admittedly, the petitioner herein has not submitted his tender form till date. His grievance is that the two conditions referred to earlier were modified only to suit a particular group/person, but the affidavit filed in support of the writ petition is silent as to the person, who is going to be favoured, by these modifications.

6) Today, the learned counsel for the petitioner, on instructions from his client, states that the tender conditions are modified to favour one e-Vaidya Private Limited, but no material has been placed on record as to how the said e-Vaidya Private Limited would be benefited. It is to be noted that one does not know the number of persons who going to participate in the said tender and whether the said alterations will benefit only e-Vaidya Private Limited or others as well, as the last date of closing the tender is 20.12.2018. Therefore, the argument of the learned counsel for the

petitioner that the tender conditions were modified only to favour somebody in Visakhapatnam, cannot be accepted at this stage.

7) The next ground urged by the learned counsel for the petitioner is that though the first tender was cancelled, the second respondent Corporation did not refund the Earnest Money Deposited by him. Learned Standing Counsel for the second respondent-Corporation would submit that the earnest money deposited by the petitioner would be refunded and that some delay has occurred in paying the same. He states across the bar that the Corporation would return the amount to the petitioner tomorrow itself.

8) Leaving it open to the petitioner to question the proceedings at an appropriate stage with all the relevant material, the writ petition is dismissed. Further, the second respondent shall return the amount deposited by the petitioner towards earnest money.

9) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

17.12.2018
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