HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 44222 of 2017

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the second respondent in rejecting the proposal of the petitioner vide its Letter No.SAC/COO/F.No.82/D.No.____/2017, dated 23.09.2017 by merely stating that the price quoted is high although the petitioner is the lowest bidder, as arbitrary, discriminative, malafide, highhanded and illegal.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner is a proprietary firm engaged in treatment of solid waste and waste water. The petitioner has the entire necessary infrastructure for the purpose of collecting the waste from door to door; transporting; dumping; curing and converting the same into required manure. The petitioner firm is established with a view to give better solutions for the management of Solid Waste in Urban Local Bodies. It is stated that the first respondent has established Swachha Andhra Corporation ie., the second respondent, which was incorporated on 01.05.2015 with a view to achieve the campaign "Swachh Bharat Mission". As a part of the said mission, the second respondent through

the third respondent issued tender notice vide No.9/SCA/SWM/14-ULD/2016, dated 27.07.2017, inviting proposals for Municipal Solid Waste Management in 14 Urban Land Bodies (ULBs) which are 1. Palakonda, (2) Rajam, (3) Parvathipuram, (4) Yelamanchili, (5) Tuni, (6) Mummidivaram, (7) Giddalur, (8) Nandigama, (9) Hindupur, (10) Kadiri, (11) Madakasira, (12) Puttaparthi, (13) Allagadda and (14) Pulivendula of Andhra Pradesh. Against the said 14 ULBs, the petitioner submitted its offer for five ULBs viz. (1) Rajam, (2) Giddalur, (3) Hindupur, (4) Kadiri and (5) Puttaparthi, by quoting the tipping fee on sale of compost towards processing the segregated MSW delivered at dumpsite of 5 ULBs as Rs.9,300/-, 9,600, 8,900/-, 9,200/- and 9,850/- respectively. While things stood thus, the second respondent vide its letter dated 23.09.2017, informed to the petitioner that the proposals sent by the petitioner pertaining to ULBs, Hindupur and Kadiri were rejected as the price quoted by the petitioner is high. Challenging the same, the present writ petition came to be filed.

3) Learned counsel for the petitioner mainly submits that this cancellation was done with a malafide intention by the respondents 2 and 3, so as to favour K.L.K.Projects. She would further submit that time and again the Apex Court has held that while inviting fresh tenders, the Court has to see

whether there are any malafide, un-reasonableness and arbitrariness in tender process. Unless the said allegations are established, calling for fresh tenders by canceling the earlier proposal cannot be entertained as a course. She further submits that since the score of the petitioner is on a higher side, and stood as L1, his proposal came to be cancelled without assigning reasons except stating that price quoted is high. It is urged that if really the values are high, the petitioner could not have been declared as L1.

4) Learned Government Pleader for Municipal Administration and Urban Development, would submit that clause 3.3.7 of the tender notice prescribe that "not withstanding anything contained in this RFP, the SAC reserves right to accept or reject the Proposal and to annul the Bidding Process and reject all proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons whatsoever. It is pleaded that since the tipping fees quoted by the petitioner is very high, his proposal is rejected.

5) As seen from the impugned letter, the reason for rejection given by the second respondent is that the tender proposal submitted for the projects Hindupur and Kadiri are rejected, as the price quoted by the petitioner is on a higher side. No other details are given for canceling the proposal.

The impugned letter does not also indicate as to which portion of the proposal appear to be on higher side. Clause 1.2.3 of the tender notice postulates that the bid valuation will be based on a weighted technical and financial score and will be the basis for selection. It would be appropriate to extract the said clause, which is as under:

> "The bid valuation will be based on a weighted technical and financial score and will be the basis for selection The same is detailed in Clause 4.2.2. The letter of intent (LOI) will be issued to the shortlisted bidder and after receipt of consent from the bidder. The letter of Award (LOA) will be issued to the bidder by SAC for entering into a concessionaire agreement with ULB."

6) At this stage, it would also be appropriate to extract clause 4.2.2 and 4.2.4.1, which are as under:

"4.2.2. Techno-financial evaluation criteria (50 marks)

Sl. No.	Details of Technical Capability	Unit of Measure	Marks allotted per contract	Maximum Marks	Marks obtained by Bidder (s)
1.	Experience in Designing, developing and operating of MSW facility in last 5 years	Tons per day		25	
		< 50	15		
		50 to 100	20		
		>100	25		
2.	Experience in Waste-to Bio-methanation to process Municipal Solid Waste ie., Waste	One project	10	10	

	to Biogas to Bottling				
3.	Average Annual Turnover from Sales (Also includes biogas-to-power, biogas-to-bottling, Biogas Manure, MSW Compost etc in last 5 years	Rs. Lakhs	---	15	
		< 100	05		
		100-500	10		
		> 500	15		
			Total:	50	

Bidder has to submit only one proposal for Financial Evaluation against Clause 4.2.1, and one proposal for Technical Evaluation for Points 1, 2, and 3 in Table in clause 4.2.2 above. Bidders will be evaluated for each ULB applied against these criteria."

4.2.4: Bid Evaluation:

4.2.4.1 Scoring of bids:

The bid evaluation will be based on a Technical Score and a Financial Score.

Total Score = {(0.70* Technical Score) + (30* Financial Score)}

7) As seen from the tender notice, the cut off mark for qualifying in technical bid is 75 and only if one gets 75 marks his financial bid will be opened. The petitioner herein got 75 marks and stood as L1 in financial bids for Hindupur and Kadiri. But the impugned order came to be passed rejecting the proposal on the ground that the tipping charges are on higher side compared to the rates quoted by the bidders in the tender proposals for other areas namely Palakonda, Rajam, Parvathipuram, Yelamanchili, Tuni, Mummidivaram, Giddalur, Nandigama, Madakasira, Puttaparthi, Allagadda and

Pulivendula. The material on record show that where the maximum tipping fee quoted was about Rs.4,500/-, the petitioner is said to have quoted Rs.8,900/- for Hindupur and Rs.9,200/- for Kadiri. Therefore, merely because the petitioner stood as L1, does not by itself mean that the tender should be awarded to him, when his tipping rates are found to be higher than the proposals made at other centers. It appears that if the tender process of the petitioner is accepted, there is every possibility of causing huge loss to the State Exchequer, as the tipping charges quoted for other centers were very low. Apart from that, clause 3.3.7 of the tender notice postulates that not withstanding anything contained in RFP, the SAC reserves right to accept or reject the Proposal, to annul the Bidding Process and reject all proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons whatsoever. Since the tipping fee quoted by the petitioner is very high compared to other centers, the action of the authorities in rejecting the bid cannot be faulted. Hence, the authorities were right in issuing letters of intent to other 11 ULBs on 21.09.2017 excluding Hindupur and Kadiri.

8) Since another notification was in the process for other 9 ULBs, these two centers ie. Hindupur and Kadiri, came to be

included in the fresh notification dated 27.01.2018, in which the petitioner is said to have participated and presented his bid, wherein the petitioner herein is said to have quoted a price higher than what he did in the earlier proposal. This information came to be furnished to the Court by way of an additional counter, with a request that the said information be kept confidential as the selection process herein is yet to be finalized. As stated earlier, one of the grounds urged by the learned counsel for the petitioner is that the reason for canceling the proposal of the petitioner was to please KLK Chitra Sea Foods, which appears to be incorrect, for the reason that the rates quoted by KLK Chitra Sea Foods for Hindupur and Kadiri were on a higher side compared to the petitioner in the first round of tender process. Therefore, the argument of the petitioner that it is being done only to favour KLK Chitra Sea Foods is incorrect. In fact, in the proposals received in the second tender process, the tipping fee quoted by another firm, was found to be far less than what has been quoted by the petitioner and K.L.K. Chitra Sea foods.

9) Having regard to the above circumstances, it cannot be said that there was any malafide exercise of power or arbitrariness or unreasonableness on the part of the authorities in issuing the second tender notification for Hindupur and Kadiri along with nine other ULBs.

10) Accordingly, the Writ Petition is dismissed. 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

15.11.2018
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