HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 2828 of 2019

Date : 07.3.2019

Between:

T Sagar Singh Son of Raja Singh Aged about 48 years
Resident of Hyderabad

Petitioner

And

Telangana State Road Transport Corporation
Represented by its Vice Chairman and Managing Director Bus Bhavan Musheerabad Hyderabad & others

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 2828 of 2019

ORAL ORDER:

Heard learned counsel for petitioner Sri.C.Ramachandra Raju and learned standing counsel for respondent TSRTC Sri N.Vasudeva Reddy.

2. On 18.12.2018 Tender Notification was issued to run two wheeler parking in Stall No. 95 in Mahatma Gandhi Bus Station (for short MGBS). Petitioner claims to have participated in the tenders by offering Rs.2,60,000/- as license fee per month. On 5.1.2019 tenders were opened. Petitioner's offer was highest. Not satisfied with the offer, negotiations were made; petitioner agreed to enhance license fee to Rs.2,71,119/-. However, without awarding contract to him, fresh tenders are called on 31.1.2019. Petitioner challenges the same in this writ petition.

3. According to learned counsel for petitioner, earlier to the present notification, contract was awarded to the previous licensee on payment of .2,20,000/- per month as license fee which is enhanceable by 10 % after two years. As per the enhanced license fee, the previous lessee was required to pay .2,32,000/-, however, his license was prematurely terminated and tender notification was issued. The offer given by the petitioner being higher than the license fee payable by the previous licensee before his contract was terminated, the contract ought to have been awarded to him and not awarding the contract and going for fresh tenders is ex-facie illegal.

3.1 According to learned counsel for petitioner, Circular No.31/2017-OPD(M&C) dated 2.11.2017 deals with various aspects of licensing. Clause IX deals with 'Finalisation of tenders by the Committee'. By placing reliance on Clause IX (e) he would submit that as petitioner's offer was higher than license fee payable by the previous licensee before prematurely terminating his contract, petitioner is entitled to awarding of the contract. He would further submit that even if the offer given by the bidder is not to the satisfaction, negotiation is permissible, accordingly negotiations were made and petitioner agreed to offer more license fee, therefore tender ought to have been awarded to him.

4. Learned counsel for petitioner also contended that as per Circular No. 31 of 2017 if the offer given by the tenderer is not acceptable, the EMD has to be returned. The tenders have to be finalized within two days and EMD has to be returned, whereas, EMD was not returned and this would imply that respondents accepted the proposal of the petitioner for awarding the contract and therefore they cannot turn around and deny awarding of the contract.

5. Per contra, learned standing counsel would submit that terms of license with the previous contractor were renewed and after due negotiations, the license fee of the previous contractor was enhanced to . 3,15,000/-; enhanced license fee came into force from 17.5.2018, and was realized. However, on the request made by the previous licensee his license was prematurely terminated. As per Clause IX (e), the amount realized in the previous license period was .3,15,000/- per month and the offer given by the petitioner even after negotiations is falling short of this amount and therefore respondent corporation has no option but to call for fresh tenders.

5.1 Along with the counter affidavit and additional counter affidavit, correspondence between the respondent corporation and the previous licensee and approved revised license fee collected by corporation are placed on record.

6. In reply, learned counsel for petitioner would submit that as per the normal agreed terms of license, the previous licensee was required to pay only .2,32,000/-, he was compelled to enhance the license fee and since it was not within his means to pay enhanced license fee, he sought for termination of the license. Having regard to the background facts, the respondent corporation could not have taken the amount fixed for the previous licensee at .3,15,000/- per month as amount realized and it does not amount to realized amount in terms of circular No. 31 of 2017.

7. The facts are not in dispute. In response to the tender notification, the offer given by the petitioner after negotiations was .2,71,119/-. The last amount paid by the previous licensee was .3,15,000/-. Therefore, offer given by the petitioner is less than the amount paid by the previous licensee.

8. The only issue for consideration is whether the decision of the respondent corporation to treat the amount of .3,15,000/- as realized license fee and to treat the offer of petitioner as less than the realized license fee and go for fresh tender is valid.

9. Before appreciating the respective contentions and the issue for consideration, it is appropriate to note at this stage that respondent corporation is the owner of subject property. It is a bus station. Thousands of people use the bus station to go to various destinations and also disembark and reach their destinations in the city. Various spots in the bus station are earmarked for commercial development by respondent corporation, to sell Tea and snacks, Electronic Goods, Toys, Photo Copying, Lamination, ‘Sale of Bakery items’ etc. A portion of land is also earmarked for two wheeler parking to enable those who come to drop or receive their near and dear or those who come for various other

purposes to park their vehicles. The respondent corporation conducts auction to grant license to run above commercial activity. As owner of the property, respondent corporation can analyse how much of profit it can earn by leasing out its premises. It is within its competence to expect more returns on its property. Therefore, per se, decision of respondent corporation in not accepting the offer of petitioner and go for fresh tenders cannot be faulted.

10. Tender notification issued on 18.12.2018 also covered two wheeler parking space. In so far as, parking space is concerned, license was earlier granted to M/s. Morgan Enterprises. Initially license fee fixed was .2,20,000/- per month, it was later enhanced to .2,32,000/- per month. Thereafter there were negotiations between respondent corporation and previous licensee and license fee was enhanced to .3,15,000/- per month. The documents filed along with the writ petition, disclose that said licensee paid enhanced amount till he sought for termination of his contract. It is also not in dispute that previous licensee voluntarily requested for termination of his contract, which request was accepted and contract was terminated.

11. Circular No. 31 of 2017 prescribes elaborate guidelines in awarding of the licenses. The issue in the present writ petition narrows down to the scope of Clause 9 of the said guidelines, more particularly, sub clauses (c), (e) and (f). They read as under:

> "(c) The earlier license fee shall be taken as base price for finalizing all the contracts. However, in case of premature termination of the contract before completion of Minimum period of one year of contract, the tender committee shall analyse the reasons and fix a reasonable base price as per market trends for finalizing the tenders.
>
> (d)...
>
> (e) If the offer made by the highest tenderer is reasonable and higher than the earlier realized license fee or the rate fixed by the Tender Committee in case of premature termination before completion of Minimum period of one year of contract,

> the stall shall be allotted to him/her. If the highest bidder backs out or does not take up license for whatsoever reasons, the tender committee shall forfeit the EMD paid by the tenderer.
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> (f) In case the offer made by the highest tenderer is less than the earlier realized licence fee or the rate fixed by the Tender Committee in case of premature termination before completion of Minimum period of one year of contract, the tender committee shall negotiate with the highest tenderer to increase the offer. If the highest tenderer expresses his/her unwillingness to increase the offer, the same has to be obtained in writing and EMD has to be refunded."

12. Sub clause (c) deals with fixation of base price to license. As per this clause, earlier license fee should be base price for finalization of the contracts. However, in case of premature termination of contract before completion of minimum period of one year of contract, the Tender Document Committee is required to analyse the reasons for such termination and can fix reasonable base price. According to sub clause (e), if the offer made by the highest bidder is reasonable and higher than the earlier **realized** license fee or the rate fixed by the Tender Committee, the stall should be allotted to him. According to sub clause (f), if the offer made by the highest bidder is less than the earlier **realized** license fee or the rate fixed by the Tender Committee, the Tender Committee is competent to negotiate with highest bidder to increase the offer and only if highest bidder expresses unwillingness the same shall be obtained in writing and his EMD has to be refunded. In sub clauses (e) and (f) the word on which both sides made elaborate submissions is **'Realized'.**

13. On plain reading of relevant clauses of circular 31 of 2017, it is apparent that ordinarily earlier license fee should be taken as a base for finalizing the contracts. Guidance can be obtained as to what is the license fee that can be taken from sub clauses (e) and (f). According to sub clauses (e) and (f) to assess the offer given by the prospective bidder, it is necessary for the competent authority to verify what was the

realized license fee. This contingency would arise only in case where the Tender Committee has not fixed any rate. In this case, Tender Committee has not fixed any rate, therefore, what has to be seen is what was **realized** license fee. In other words, what was the license fee received by respondent corporation from the previous contractor before his license was terminated. The material on record enclosed along with the counter affidavit and additional counter affidavit and averments made in counter affidavits would clearly disclose that though initially the license fee agreed and payable by the earlier licensee after expiry of two years was .2,20,000/-, there were negotiations and license fee was enhanced to .3,15,000/- and said licensee fee was paid from May, 2018. The reason for revision of license fee and acceptance by the previous contractor was that licensee was authorized to collect enhanced user charges. It thus appears that as the user charges are increased, the corporation also decided to increase the license fee. Since the license fee increased was accepted by the previous contractor and he has paid the revised license fee till his contract was terminated, in accordance with Clause IX (e) and (f), amount of .3,15,000/- is **realized as license fee** and that shall be the bench mark to assess the offer made by petitioner. It is not in dispute that the offer made by the petitioner even after negotiations is far less than the realized license fee. I therefore see no illegality in the decision of the respondent corporation in not accepting the revised offer of the petitioner and going for fresh tenders.

14. Having regard to the scope of Circular No. 31 of 2017, as analysed above, merely because EMD amount was not immediately returned, it cannot be assumed that offer given by the petitioner was accepted and petitioner has to be awarded the contract.

15. Learned counsel for petitioner also contended that as there were negotiations for enhancement of the license fee and ultimately

license fee was enhanced by due negotiations and that revised license fee came into existence in May, 2018, it has to be deemed that there was new contract entered into by the respondent corporation with the previous licensee and the said license was cancelled within one year thereof and therefore Clause IX (c) is attracted.

16. I see no force in the contention. As per Clause IX (c), the earlier license fee should be the base price for finalization of the subsequent tenders. If what is contended by the learned counsel for petitioner is correct, then sub clauses (e) and (f) are not attracted and Clause (c) would attract. As per this clause if contract is terminated within one year of contract, it is open to the Tender Committee to assess the reasons for termination of previous contract and arrive at a particular figure of what can be the base price, other than the earlier license fee. In the normal circumstances, the base price is Rs.3,15,000/- unless redetermined by the Tender Committee. Clause IX (c) only vests discretion in the Tender Committee but if the Committee has not chosen to revise, petitioner cannot assume the base price as something less than Rs.3,15,000/-. In the instant case, Tender Committee has not determined any particular price as base price other than the license fee paid by previous licensee. Therefore, this contention also fails.

17. At this stage, learned counsel for petitioner states that even in pursuant to the subsequent tender notification impugned in the writ petition, there was no proper response and even now price sought by the respondent corporation is not obtained and if an opportunity is given, petitioner is willing to negotiate.

18. While holding the action of the respondent corporation in going for fresh tenders as valid, it is needless to observe that if petitioner comes forward with any further offer, it is open to the respondent

corporation to consider the said offer and take appropriate decision as warranted by law and in the best interest of respondent corporation and this order does not come in the way of such consideration. Writ Petition is accordingly disposed of. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 07-3-2019
TVK

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