

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.5822 of 2019

ORDER ::

The relief sought in writ petition is as under:-

“.....to issue a writ of mandamus or any other appropriate writ or order or direction in the nature of a writ declaring the e-mail communication dated 12-03-2019 issued by the 5th respondent purporting to reject the techno-commercial bid of the petitioner-company in respect of tender no.CM-C&W-36-12T-BOOT-SC-18-19, dated 11-10-2018 as being arbitrary, discriminatory and violative of Articles 14 and 19 (1) (g) of the Constitution of India and principles of natural justice and consequently set aside the same and direct the respondents to consider the tender of the petitioner-company along with other eligible tenderers in the interest of justice and to pass appropriate orders...”

02. Facts stated are:-the petitioner company is engaged in the business of laundry services having good and rich experience in the field. The 3rd respondent issued the impugned tender no.CM-C&W-36-12T-Boot-SC-18-19, dated 11-10-2018 inviting tenders for setting up of 12 ton mechanized laundry including supply and installation of plant/equipment/related infrastructure and operations for a period of 10 years on boot model and collection of solid linen from AC coaches, washing in mechanized laundry, supply and loading of washed linen into AC coaches at Secunderabad and Hyderabad railway stations. That as per Clause 1.1 of the tender conditions, the tenderers should have

satisfactorily completed in the last three previous financial years and in the current financial year, upto the date of opening of the tender, one similar single service contract *i.e.* operation of minimum 4 ton per day mechanized laundry and should have received payment of bills amounting to a minimum of 35% of the annual advertised tender value. That as per Clause 1.3 (g) of tender conditions, the tenderers are required to furnish life certificate and service/spares support certificate from the original equipment manufacturer (OEM) for the main equipment at the time of submission of the tender bid. That as per Clause 1.3 (h) of the tender conditions, the tenderer also required to furnish a certificate from the (OEM) that they are willing and committed to provide warranty and outside warrant support, AMC, supply and fitment of spare parts/machine consumables, breakdowns etc., for ensuring successful operation of mechanized laundry during the life-cycle of the machine. That the petitioner in terms of tender clauses submitted performance/service certificate in Annexure XIII of the format appended to the tender schedule issued by Ashwini Rural Medical College, Hospital & Research Centre. That the tender consists of two packets system, technical bid (packet-one) and financial bid (packet-two). That tenders for technical bid were

opened on 19-11- 2018 and the tender of the petitioner was rejected without assigning any reason.

03. The grievance of the petitioner is that the petitioner company fully satisfied the eligibility criteria for award of the tender in question and submitted the required documents, nonetheless the tender of the petitioner was rejected without assigning any reasons whatsoever, which is illegal, arbitrary and violative of Articles 14 and 19(1) (g) of the Constitution besides violative of principles of natural justice.

04. Counter affidavit is filed by the 4th respondent including on behalf of other official respondents *inter alia* stating that tender notice no.CM-C&W-36-12T-BOOT-SC-18-19, dated 11-10-2018 was issued inviting tenders for setting up of 12 ton mechanized laundry including supply and installation of plant/equipment/related infrastructure and operations for a period of 10 years on boot model including collection of soiled linen from AC Coaches, washing in mechanized laundry, supply and loading of washed linen into AC Coaches at Secunderabad and Hyderabad Stations. That the type of tender is e-tender having a total cost of Rs.90,37,40,000/- with an annual value of Rs.9,37,40,000/- and the tenderers were required to submit deposit earnest money of Rs.46,68,700/-. That as per tender condition no.1.1.1, among

other conditions, the tenderer should be a laundry equipment supplier or manufacturer who has supplied, installed, commissioned and operated a mechanized laundry of minimum 4 ton capacity in India, either directly or through Indian partner for hotels (graded 3 star and above), hospitals (more than 100 beds capacity), Airlines or Railways or in any Central/State Government establishments. That seven tenderers have participated and the tenders were opened on 19-11-2018. That the tenderers who qualify in the technical bid (packet-1), will be considered for vying in financial bid and the technical bid was finalized on 11-03-2019 by the tender Committee. That the tender system is through on-line and the petitioner submitted his tender on-line and once the tender was rejected, it automatically goes to the tenderer's email that his tender is rejected and no reasons required to be assigned for such a direction as per clause 1.9 of the tender conditions.

05. That the case of petitioner could not be considered as it has not complied Clause 1.1.2. That the petitioner has not submitted i) annual turnover certificate of Ashwini Rural Medical College, Hospital and Research Centre, Solapur, which should be more than 500 crores and ii) authorisation letter by the management (Trust members) of the Hospital.

06. That the petitioner's tender was rejected, the communication automatically goes to the tenderer's email, which is permissible under tender condition no.1.9. That recommendations of the tender Committee to reject the tender of the petitioner for technical bid (Packet-1) is legal and valid. That the tender Committee consists of three officers of the Railways who are administrative grade officers have scrutinized the tenders and found that the petitioner has not fulfilled the condition no.1.1.2 of the tender conditions. That there are no merits in the writ petition and the same is liable to be dismissed with costs.

07. 6th respondent filed counter affidavit wherein it is stated that he became the successful tenderer as his financial bid was the lowest bid for a sum of Rs.90,37,40,000/-, which is known to writ petitioner as well as other tenderers. That the said bid was finalized on 12-03-2019, but the letter of allotment could not be issued in view of the interim orders passed by this Court. That writ petitions are filed on 26-03-2019 *i.e.*, after coming to know about its lowest bid. That the petitioners knowing fully well that they do not have any chance to qualify even their technical bid is considered, resorted to file these writ petition without any merit, which is nothing short of misuse of process of law for ulterior purposes.

08. Heard the learned counsel for the petitioners Sri B. Nalin Kumar, Sri CV Rajeev Reddy, learned standing counsel for the respondent-Railways and Sri R Raghunandan, learned senior counsel appearing for the party respondent

09. Sri B. Nalin Kumar, learned counsel for the petitioner strenuously contended that once the petitioner fully complied the criteria laid down for technical bid, rejection of his tender without reasons whatsoever is illegal and arbitrary. It is stated that though Clause 1.9 of the tender conditions authorizes the respondent-Railways not to assign any reasons for the cause of rejection of any tender nor is it under any obligation to assign reasons for declining to consider or reject any particular tender, cannot be construed to give unfettered power to reject the tender without recording reasons more particularly in the light of the petitioner fulfilling the eligibility criterion. Learned counsel further contended that power to reject any tender without assigning any reasons is circumscribed by rule of law and such sweeping discretion does not include power to reject the bid offered merely because it has such power of rejection without any assigning any reasons.

10. Learned standing counsel for the respondent-Railways Sri CV Rajeeva Reddy contended that the petitioner having accepted

the tender conditions submitted his technical, it is not now open to assail those clauses on the grounds of arbitrariness or violative of principles of natural justice. It is also stated that no vested right is accrued to the petitioner only on mere submission of the tender to participate in the technical bid. It is also stated that interference of this Court under Article 226 of the Constitution by way of judicial review in matters of award of tenders is minimal and interference warrants in exceptional cases where the decision taken is illegal, irrational, *mala fide* and against public interest. Reliance is placed on the decisions of this Court in **KRANS-TVSR (JOINT VENTURE) vs. SOUTH CENTRAL RAILWAY, (2017 (6) ALT 587)**, **VASUDEVA INFRA vs. UNION OF INDIA, (2018 (3) ALT 516)** & **SAI RAM CONSTRUCTIONS vs. STATE OF TELANGANA, (2019 (2) ALT 157 (TS & AP))**.

11. Sri R Raghunandan, learned senior counsel appearing for the party respondents submits that R-6 has requisite experience and qualifies as per tender conditions, as such his bid was accepted, which can not be interfered. He also submits that the case of R-6 was considered based only on the letters from Jiangsu Sea-Lion Machinery Company Limited and Transferon Laundry

Machines, Asia Company Limited, which are also in similar line of business.

12. The impugned order passed by the 5th respondent reads thus:-

“Your techno-commercial bid against tender no.CM-CW-36-12TBOOT-SC-18-19, which was due on 19-Nov-2018 15:30 hrs has been found technically unsuitable due to following reasons:

Comments: Rejected

*Thanks & Regards,
Administrator EPS, CRIS”*

13. Clause 1.9 of the tender conditions speaks of (Right of Railways to deal with bidders); which reads thus:-

“The Railways reserves the right of not to invite tenders for any of railway services when tenders are called, to accept a tender in whole or in part or reject any tender or all tenders without assigning reasons for any such action. The authority for acceptance of the tender will rest with the Railway. It shall not be obligatory on the said authority to accept the lowest tender and no tenderer/ tenderers shall demand any explanation for the cause of rejection of his/their tender nor the Railway assign reasons for declining to consider or reject any particular tenders.”

14. Under PART-I (SYSTEM OF TENDERING) Clause 1.0 speaks of eligibility criteria. Clause 1.1.2 of the tender conditions is as follows:

“Work experience Certificates/Credentials issued by private individuals shall not be accepted. Certificates from public listed company/private company/Trusts having annual turnover of Rs.500 crore and above subject to the same being issued from their Head Office by a person of the company duly enclosing his authorisation

by the Management for issuing such credentials shall be considered. Authorisation letter and turnover certificate shall be submitted along with the experience certificate.”

15. It is to be seen that Clause 1.9 of the tender conditions, the respondent-Railways has a discretion to accept or reject any tender and no tenderer can demand any explanation for the cause of rejection of such tender. It is true rejection of a tender has an impact of throwing out the tenderer from the competition, the doctrine of legitimate expectation demands such discretion exercised will have to be in conformity with Article 14 of the Constitution of India.

16. There is no dispute with the propositions laid down by this Court in the decisions cited by the learned standing counsel for the respondent-Railways with regard to the parameters of this Court within which the matters of this nature could be examined and interfered with. The right of the tendering authority to choose one tender from others cannot be said to be arbitrary unless otherwise contrary appearing from the decision-making process exercised for the intended purpose. The petitioner fully aware of the tender conditions and with such awareness submitted his bid and not questioned any of the tender conditions as being illegal arbitrary

and being violative of Article 14 of the Constitution of India, it is not open for the petitioner to seek to test the legality or otherwise of those tender conditions on the touchstone of Article 14 of the Constitution, except exercise of discretion in accordance with law. But what is discernible from the counter affidavit filed by the respondent-Railways for rejection of the tender of the petitioner is that the petitioner has not fulfilled the condition no.1.1.2 of the tender.

17. In the counter affidavit filed by the respondent-Railways it was repeatedly stated that the petitioner failed to submit valid work experience certificate. Learned standing counsel for the respondent-Railways submitted that the work experience certificate submitted by the petitioner, which is public charitable trust hospital, Solapur, the Trust members of the said hospital have not issued the work experience certificate nor authorized the Administrator, but is signed by the Administrator of the said hospital. No authorisation from the Trust members of the hospital is produced nor filed to show that it has complied condition 1.1.2 of the tender conditions.

Though the learned standing counsel produced a copy of document showing that Ashwini Rural Medical College, Hospital & Research Centre, is run by a Trust, same was not refuted by learned counsel for petitioner and no reply affidavit is filed to the contrary. Though the petitioner might have sufficient experience and expertise in executing the projects, but petitioner has not fulfilled condition 1.1.2 by producing necessary certificate issued by the person authorized.

18. In ***Union of India vs. Dinesh Engineering Corporation*** 2001 (8) SCC 491, Hon'ble Supreme Court at para 15 held as under:-

"15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under Clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any of every offer that may be made by the writ petitioner while responding to a tender that may be

called for supply of spare parts by the Railways. Mr. Iyer, learned senior counsel appearing for the EDC, drew our attention to a judgment of this Court in [Sterling Computers Ltd. v. M/s. M. and N. Publication Ltd.](#), (1993) 1 SCC 445 which has held:

"Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

".....But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognized by Courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law especially Article 14 of the Constitution."

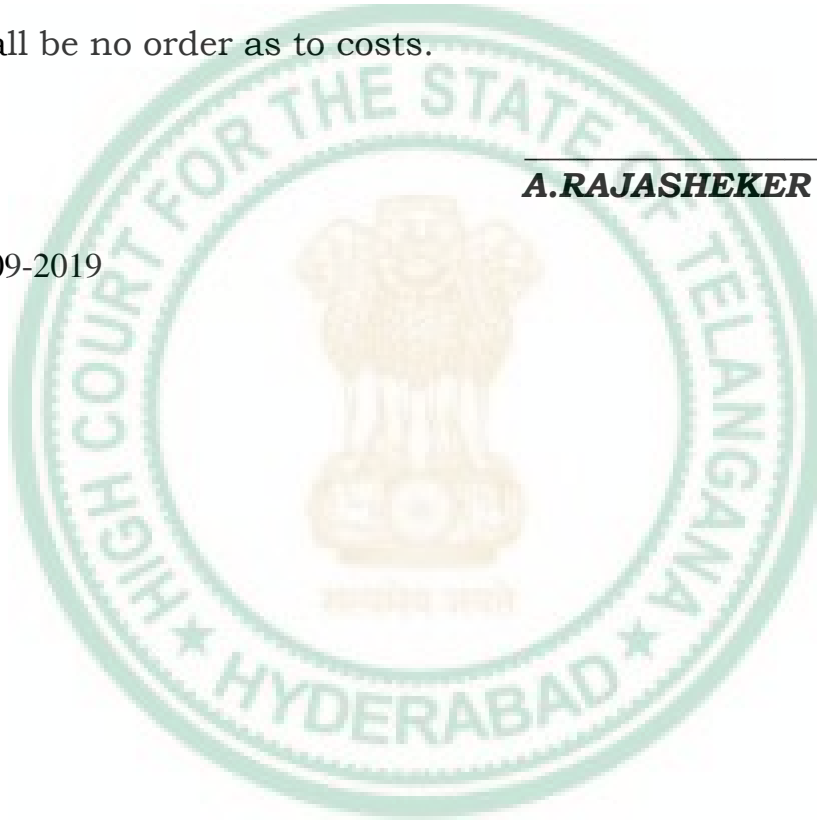
19. In the instant case the respondent-Railways has discretion under the tender conditions to accept or reject any tender but the only requirement in taking a decision either to accept or reject objectively and to sub-serve the ends of justice. Since there is no proof of the petitioner producing the valid experience certificate as required under Clause 1.1.2 of the tender conditions, the tender of the petitioner could not pass through the technical bid.

20. For the above said reasons it cannot be said that the decision taken by respondent railways is arbitrary, erroneous and illegal warranting interference by exercising powers of judicial review under Article 226 of the constitution of India and as a necessary corollary, the petitioner is not entitled for any relief. The writ petition fails and it is accordingly dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 09-09-2019
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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