

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.7221 of 2019

ORDER:

On 18.03.2019, the Telangana State Wakf Board issued notification calling for sealed tenders undertaking assignment of various items of offering in the Dargah Hazrat Syed Saadullah Hussaini (Rh), Badapahad, Jalalpur Village, Nizamabad District. On evaluation of the tenders, the third respondent was found to be the highest bidder as compared to others. The third respondent offered an amount of Rs.3,16,00,000/-. As per the tender conditions, the successful bidder has to deposit the entire contractual amount agreed upon along with 1% auction expenses within three days from the date of opening of tenders. The tenders were opened on 28.03.2019. Therefore, the successful bidder has to deposit the money in the treasury of the respondent board within three days. The tender conditions stipulate that if the successful bidder does not deposit the money within the time granted, the person whose offer is next best to the successful bidder can be considered for awarding of the contract.

2. This writ petition is filed by the petitioner, who claims to be the second highest bidder, contending that as the third respondent did not deposit the amount, as required, within three days, he gets disqualified and therefore, the contract ought to have been awarded to the petitioner. Awarding of the contract to the third respondent is illegal.

3. According to the learned standing counsel, the successful bidder had three days time from 28.03.2019 to deposit the money but the

last of the three days was a Sunday i.e. 31.03.2019 and the commercial transactions were closed in the banks on 01.04.2019 on account of the closure of the financial year and therefore, the third respondent could not secure the demand drafts for payment of the amount as required by him within three days. However, the third respondent obtained the demand drafts and deposited the same in the treasury on 02.04.2019. He, therefore, submits that it is deemed that the third respondent has complied with the tender conditions and therefore, he is entitled for awarding of the contract.

4. Learned counsel for the petitioner emphasises that as the clause in the tender notification requires deposit of the money within three days and does not stipulate three working days and as no further clarification was issued by the respondent board on extension of time or clarification that the deposit can be made within three working days, the deposit of money after three days from the date of opening of tenders, by the third respondent, cannot be treated as valid deposit and therefore, the contract cannot be awarded to him.

5. It is not in dispute that the tenders were opened on 28.03.2019 and three days time, from the date of opening of the tenders, expired on 31.03.2019, which was a Sunday and on 01.04.2019, the commercial transactions in the banks were closed due to the end of financial year. Therefore, the successful bidder could not secure the requisite demand drafts from the accounts of his banks before 02.04.2019 and on 02.04.2019, he obtained the amount and deposited into the treasury.

6. Learned standing counsel produced a statement of the demand drafts deposited by the third respondent from the State Bank of India, Andhra Bank, HDFC Bank etc., on various dates. It also contains the demand draft numbers and the branches from where the said demand drafts were obtained. The total amount against which the demand drafts were obtained on 02.04.2019 was Rs.2,19,16,000/- and on 29.03.2019 it was Rs.1,00,00,000/-, thus, the entire amount was secured and deposited by 02.04.2019.

7. As fairly submitted by the learned counsel for the petitioner, the offer given by the petitioner is far lower as compared to the third respondent. Further, even according to clause (1) of the tender notification and clause 8(a) of the terms and conditions of auction read together it is apparent that it is only a discretion to consider the second bidder's eligibility but it does not automatically result in awarding the contract to the second bidder even if the first bidder is disqualified. Therefore, there is no right vested in the petitioner to insist not to award contract to the third respondent and to award contract to the second bidder as a matter of course.

8. Having regard to the facts of this case, as noted above, and the clauses incorporated in the tender notification and the terms and conditions of auction (Ex.P2), it has to be deemed that three days granted by the respondent board for depositing the contractual amount with 1% charges would be on the immediate next date on which the banking transactions are available. In the instant case, the third respondent deposited the entire amount on the next immediate

available banking transaction date. Therefore, this Court does not see any merit in the writ petition.

The writ petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

P. NAVEEN RAO, J

April 4, 2019
DSK

