

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22314 OF 2019

ORDER:

The case of the petitioner is that in respect of offering of items of 2nd respondent Dargah, the 1st respondent issued tender notification dated 08-03-2019 and in pursuance of the same, one Mohammed Naseer, became the highest bidder having quoted an amount of Rs.1,52,52,000/-. Since said Naseer failed to deposit the amount within time, time was extended vide proceedings dated 18-03-2019 against the tender conditions. Questioning the same, the petitioner filed WP.No.6814 of 2019 on the ground of violation of tender conditions and the petitioner being the second highest bidder having quoted an amount of Rs.1,35,30,590/-, he becomes eligible person to be offered the contract and the said writ petition was accordingly allowed. But instead of offering the contract to the petitioner, fresh tender notification is issued. Aggrieved by the same, the present writ petition is filed.

02. Learned counsel for the petitioner submits that period of contract was for one year but the respondents offered only six months period, which is against the tender notification. Since the petitioner filed contempt case against respondents, the impugned tender notification is issued.

03. On the other hand, learned Standing Counsel submits that in the earlier order, respondent-Board was given liberty to issue fresh tender notification. As such, the present impugned tender notification is issued and as a matter of right, the petitioner cannot seek award of contract. He also submits that upset price is fixed

at Rs.1,68,00,000/- in the fresh notification and the petitioner cannot be given contract at the less rate.

04. It is to be seen that earlier the writ petition filed was allowed when the respondents extended the time for payment to highest bidder against the terms of tender conditions and the petitioner also offered to pay the highest bid amounts. Since this Court granted liberty, the present impugned notification was issued. Learned Standing Counsel submits that this Court permitted the tender process to go on. But, now it is stated that there no fresh bids pursuant to the fresh notification. The petitioner participated in the earlier tender notification and the writ petition filed by him was allowed in his favour. The operative portion of the order passed in WP No.6814 of 2019, reads as under:-

“9. Thus, the order extending time to 3rd respondent vide proceedings dated 18-03-2019 is set aside in terms of condition no.8 (a) of the terms and conditions of auction. Petitioner shall pay the offer to award contract with the same terms and conditions as required and petitioner shall deposit the entire amount as agreed upon matching the offer given by the highest bidder. The amount deposited by the 3rd respondent shall be refunded to him after excluding the EMD amount. However, this order does not come in the way of Board taking decision to give fresh tender notification, for any other reason.”

05. It is seen that the respondent-board extended time for payment of amounts by highest bidder even after allowing the earlier writ petition, but it did not chose to award the contract to the petitioner herein, though he has offered highest bid amount, which the highest bidder failed to deposit. Admittedly, the petitioner is not claiming anything new. He has already participated in the tender notification issued earlier and offered

highest bid and there are no new bids in the present tender notification. This Court allowed the respondents to issue fresh tender notification on any other reason, but no reasons are given except stating that this Court granted liberty to them to issue fresh notification.

06. In the facts and circumstances of the case, this writ petition is allowed and the petitioner is entitled for award of contract in question as per the earlier tender notification as he stood 2nd highest bidder. However, in the order passed in the earlier writ petition it was one of the condition that award of contract amount shall match the offer given by the highest bidder, who could not deposit the amounts. Hence, the petitioner is entitled to award of contract at a bid amount of Rs.1,52,52,000/- which is the highest bid amount and in fact the petitioner himself conceded in the affidavit filed in support of this writ petition to pay the bid amount of Rs.1,52,52,000/-, though he is the 2nd highest bidder and quoted Rs.1,35,30,590/-. Pending miscellaneous applications if any shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

25-10-2019

Nvl/Nrg



