

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.23869 OF 2018

Date:14.03.2019

Between:

Sri Raja Rajeswari Security Services,
Rep., by its Proprietor D. Chinna Babu,
S/o. D. Kondaiah, aged 35 years,
R/o.H.No.128/2RT (1-8-649), Prakash
Nagar, Begumpet, Hyderabad, Telangana

.. Petitioner

And

Union of India, rep., by its Secretary,
Ministry of Electronics & Information
Technology, New Delhi and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.23869 OF 2018****ORDER:**

Heard learned counsel for the petitioner and Sri K. Lakshman, learned Assistant Solicitor General appearing for respondent No.1.

2. The National Informatic Centre (NIC), the 2nd respondent herein, called for tenders on 25.04.2018 to award contract to private security services. Tender process ultimately resulted in annulling tenders and to call for fresh tenders. Petitioner challenges the decision to call for fresh tenders in this Writ Petition.

3. According to petitioner, the bid submitted by it was evaluated with the technical bid evaluation team duly constituted by the Committee. Thereafter, petitioner has also deposited the earnest money of Rs.2,00,000/-. Therefore, there is no justification in not awarding the contract to petitioner; going for re-tender process and such action is arbitrary, illegal and amounts to improper exercise of power.

4. This Court by order dated 17.07.2018 directed the respondents to complete the tender process pursuant to financial and technical bid submitted by petitioner and take further action in accordance with law. Praying to vacate the said interim order, I.A.No.2 of 2018 is filed.

5. When I.A.No.2 of 2018 is taken up, learned counsel for petitioner as well as learned Assistant Solicitor General consented for disposal of the Writ Petition.

6. The only issue for consideration is, whether going for re-tender process by the respondents is valid?

7. According to learned counsel for petitioner, once the petitioner has completed the formalities and fulfilled all the requirements, there is no justification to go for re-tender process. According to petitioner, in the tender evaluation process, if petitioner is found to be L2 and once L1 is declared as not qualified, the tender ought to have been awarded to L2 and there is no justification to go for re-tender process.

8. According to learned Assistant Solicitor General, Clause 15.21 of tender guidelines, NIC is vested power to cancel the tender without assigning any reason and therefore cancellation of tender cannot be challenged by the petitioner. He would submit that as per the tender conditions, a person, who is participating in the bids, must comply with the statutory requirements, more particularly with reference to payment of wages to the employees. Minimum wages determined was Rs.673/-, whereas in the tender quoted by L1, the offer given by petitioner is far less than the minimum wages required to be paid. By pointing out Clause 15.4 thereof, he would submit that unless the requirement of minimum wages is complied, the tender is liable to be rejected. He would therefore submit that since L1 has not fulfilled this requirement and its tender was rejected, a decision was taken to go for re-tender process. He also points out that one of the tender

conditions is, tenderer should have his registered office located in Hyderabad, whereas the document filed by the petitioner itself would show that the registered office of the petitioner is in Nellore in the State of Andhra Pradesh and therefore the petitioner is not eligible. Hence, the question of awarding of contract to petitioner does not arise.

9. From the averments made in the affidavit filed in support of the Writ Petition, it is apparent that no allegations of *mala fide* are made. The only plea raised by the petitioner is that since it is qualified in technical and financial bid, it should have been awarded contract as L2 once L1 is declared as not qualified. The terms of tender notification clearly vest power in the employer to annul the tender process at any stage. Therefore, annulling of tender process *per se* is not illegal. As no *mala fides* are attributed and the decision taken on this ground cannot be interfered by this Court under Article 226 of the Constitution of India. Further, L1 was disqualified on the ground that he did not fulfill the tender conditions with reference to minimum wages payable to the employees, including dearness allowance and petitioner is also not qualified in accordance with location of its registered office. Thus, even after L1 is declared as not qualified, question of awarding tender to the petitioner does not arise. Further, having found that L1 is not qualified, the committee has recommended for re-tender process. Thus, no illegality is found in the exercise undertaken by the respondents warranting interference by this Court. The Writ Petition merits no consideration.

10. The Writ Petition is accordingly dismissed. There shall be no order as to costs. Pending Miscellaneous Petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:14.03.2019

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