

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.11.2019

PRONOUNCED ON: 01.06.2020

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 20159 of 2019

and

W.M.P. Nos. 19599, 19601 and 19603 of 2019

Sri Vinayaka Caterers & Consultants,  
Partnership Firm,  
Represented by its Partners,  
Mr. K. Eshwar S/o. K. Kannaiah,  
Mrs. K. Vimala W/o. K. Eshwar,  
Having office at No. 3/423,  
3<sup>rd</sup> Cross Street,  
Lakshmana Perumal Nagar,  
Kottivakkam,  
Chennai - 600 041.

... Petitioner

-vs-

1. The Executive Warden,  
International Hostels,  
CEG Campus,  
Anna University,  
Chennai - 600 025.
2. Shri Guru Ragavendra Foods Private Ltd.,  
Rep. By its Managing Director,  
Old No. 13, New No. 22, Thirumalainayakan Street,  
Vanuvampet,  
Chennai - 600 091.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the tender quotation of the First Respondent vide their notification No. 1H/HOSTELS/2019-20 dated 20.05.2019 and to quash the procedure for arriving the lowest bid in so far as providing catering service and forbearing the First Respondent to proceed with the price bid by awarding the contract either to the Second Respondent or to any other person.



WEB COPY

For Petitioner : Mr. S.Sundaresan  
For Respondents: Mr. L.P.Shanmugasundaram,  
Standing Counsel (for R1)

Mr. Arun Anbumani (for R2)

O R D E R

Heard Mr. S.Sundaresan, Learned Counsel appearing for the Petitioner, Mr. L.P.Shanmugasundaram, Learned Standing Counsel appearing for the First Respondent and Mr. Arun Anbumani, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The chronological sequence of events leading to the filing of this Writ Petition are narrated below:-

- (i) The Petitioner, which is a Partnership Firm, was awarded the contract for supply of food and maintenance of mess attached to the International Hostel in the campus of Anna University by the First Respondent for a period of three years from January 2012. That arrangement, however, continued to operate till the First Respondent called for fresh tender in Notification No. 1H/Hostels/2019-2020 dated 20.05.2019. It is significant to notice from the correspondence between the parties during that period, which has been placed on record, that separate rates had been fixed for vegetarian diet and non-vegetarian diet supplied.
- (ii) In the scope of work in the aforesaid tender dated 20.05.2019 issued by the First Respondent, the essence of the contract is to prepare and serve food to about 300 students of the hostels on the outsourced turnkey contract basis at agreed fixed daily rate per student for mess for a period of two years.
- (iii) The form of price bid provided for mess rate without any mention about vegetarian diet or non-vegetarian diet, and on the contrary the menu list in the annexure contains both vegetarian and non-vegetarian dishes.
- (iv) There were five participants in the tender and four of them (including the Petitioner and the Second Respondent) qualified in the technical bid.
- (v) When the price bids were opened, it was found that the Petitioner had quoted two rates of Rs.165/- per person per day for vegetarian diet and Rs. 210/- per person per day for non-vegetarian diet. The other three participants had quoted only one rate, of which Rs.190/- per person per day



WEB COPY

offered by the Second Respondent was found to be the lowest. Since the Petitioner had not quoted a single rate, its price bid was rejected as per the conditions of tender.

(vi) The Second Respondent was called for negotiation and the price was finalized at Rs.185/- per person per day on 07.06.2019 and it was awarded the contract by work order dated 26.06.2019 for a period of one year from 14.07.2019 to 13.07.2020, which may be extended for one more year based on its performance.

Aggrieved thereby, the Petitioner has filed this Writ Petition on 08.07.2019 challenging the aforesaid Tender Notification dated 20.05.2019 issued by the First Respondent and to quash the procedure for arriving at the lowest bid insofar as providing catering service and to restrain the First Respondent to proceed with the price bid by awarding the contract either to the Second Respondent or any other person.

3. It is the contention of the Learned Counsel for the Petitioner that inasmuch as the First Respondent had been hereto adopting different rates for vegetarian diet and non-vegetarian diet, the absence of any mention of such distinction in the impugned tender is in violation of clause (i) of Rule 15 of the Tamil Nadu Transparency in Tenders Rules, 2000, as extracted hereunder:-

"15. Tender documents to clearly specify evaluation criteria:-

(1) The tender documents shall clearly indicate the criteria in addition to price which are to be adopted for evaluating the tenders and how such criteria will be quantified or evaluated; and"

On that premise, it is ventured to persuade that the rejection of the price bid of the Petitioner is illegal. An alternative submission is made that without rejecting the price bid of the Petitioner, the First Respondent ought to have taken the average of its rate quoted for vegetarian diet and non-vegetarian diet, which would be Rs.187.50/- per person per day, and the Petitioner ought to have been awarded the contract as that rate would be the lowest tender.

4. Learned Counsel for the First Respondent justifying the rejection of the price bid of the Petitioner for having quoted two rates, points out that the terms of the impugned tender are clear enough for one to understand that an applicant in the tender is required to quote only one rate in the price bid, and the menu furnished in the annexure contains a consolidated list of vegetarian and non-vegetarian dishes to be served to about 300 students in buffet without any distinction of rates. Learned Counsel for the Second Respondent, in support



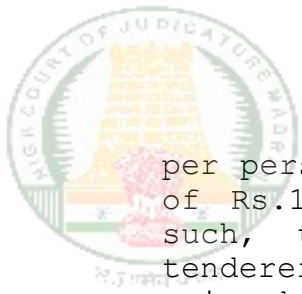
of the aforesaid explanation made by the First Respondent, contends that except the Petitioner, all other three bidders had rightly understood that only one rate had to be quoted without any distinction for vegetarian diet and non-vegetarian diet. It is also highlighted that if there had been any doubt regarding quoting of the rate in the price bid before submitting its bid, the Petitioner ought to have approached the First Respondent before submitting its bid for necessary clarification as provided in Condition No. 22 of the Conditions of Tender, which reads as follows:-

"22. For any queries regarding submission of quotation, bidders to contact the Hostels Office number 044-22359826 or by e-mail: annaihostels@gmail.com."

It is buttressed from the fact that since the Petitioner did not seek any clarification before submitting its bid, the Petitioner is estopped from challenging the conditions of tender after having unsuccessfully participated in that tender.

5. On a careful analysis of the rival submissions made, it is not possible to accept the self-serving contentions of the Petitioner. It is common ground that the terms of the tender do not mention any distinction between the vegetarian diet and non-vegetarian diet and the menu provided in the annexure has the consolidated list of vegetarian and non-vegetarian dishes. In this incontrovertible fact situation, it is not even possible to speculate that there has to be different rates for vegetarian diet and non-vegetarian diet in the price bid of the tender. The circumstance that it has been the past practice of the Petitioner as the erstwhile caterer to collect separate rate for vegetarian diet and non-vegetarian diet cannot give rise to any assumption that such distinction would necessarily continue in the subsequent tender also.

6. It would be fallacious to take the average of the two rates for vegetarian diet and non-vegetarian diet quoted by the Petitioner in the price bid and consider it with the other qualified bids inasmuch as there is nothing available on record to assume that only half of the students would consume non-vegetarian food. Having regard to the fact that the food was expected to be served through buffet system, it is absolutely the choice of the individual student to take or not to take any dish, be it vegetarian or non-vegetarian, and what has been required from the caterer is to provide food as per the menu of the day for about 300 persons. In any event, the ultimate finalization of tender after negotiation at the rate of Rs.185/-



per person per day is evidently lower than the said average rate of Rs.187.50/- per person per day of the Petitioner, and as such, the Petitioner cannot claim that it was the lowest tenderer. When only one rate was required to be quoted in the price bid by the unequivocal terms of the tender, the necessity of any separate evaluation to ascertain what would be most beneficial in the financially quantifiable terms as the definition of lowest tender in 2(cc) of the Tamil Nadu Transparency in Tenders Act, 1998, does not arise. In that view of the matter, it is not possible to accept this facet of the claim of the Petitioner as well.

7. There is also considerable force in the contention of the Second Respondent that the Petitioner ought to have sought clarification if it had any doubt in terms of Condition No. 22 of the Conditions of Tender before submitting the bid and could not be permitted to challenge the terms of the tender after having unsuccessfully participated in the same.

8. It has been held by the Hon'ble Supreme Court of India in *G.J. Fernandez -vs- State of Karnataka* [(1990) 2 SCC 488] that the Tender Issuing Authority has the right to punctiliously and rigidly enforce the conditions and stipulations in a tender notice and if a tenderer does not strictly comply with that requirement, it is open to the Tender Issuing Authority to decline to consider that tenderer for the contract and if such tenderer comes to Court challenging such action, relief has to be declined. The Hon'ble Supreme Court of India in *Maa Binda Express Courier -vs- North - East Frontier Railway* [(2014) 3 SCC 760], has lucidly explicated the scope of judicial review in matters relating to award of contract by the State and its instrumentalities in the following words:-

"8. .... submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open



to the judicial scrutiny unless it is found that the same have been tailor made to benefit any particular tenderer or class of tenderers. .... "

Viewed from that perspective, there does not appear to be any infirmity in the decision-making process of the First Respondent warranting interference of this Court in exercise of discretionary powers under Article 226 of the Constitution.

9. Above all, the Petitioner has not whispered, much less established, as to how public interest has been affected by rejecting his price bid in the impugned tender, in the absence of which the public law remedy of Writ Petition could not be invoked by a participant in a tender as reiterated by the Hon'ble Supreme Court of India in Bharat Coking Coal Ltd. -vs- AMR Dev Prabha (Judgment dated 18.03.2020 in Civil Appeal No. 2197 of 2020).

10. Though the explanation of the Petitioner for not having availed the alternative remedy of appeal under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, does not appear to be satisfactory, the claim of the Petitioner on facts has been found to be without any merits, and as such, it would not serve any purpose to relegate the Petitioner to that forum now.

11. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

s/d-  
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vjt  
To

The Executive Warden,  
International Hostels,  
CEG Campus,  
Anna University,  
Chennai - 600 025

W.P. No. 20159 of 2019

MR(CO)  
SP(05/06/2020)