



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No. 29058 of 2019

and

W.M.P.No.28841 of 2019

Seena Vaana Chettinadu Hotels A/C
Represented by its Proprietor
S.Kanchi
No.1/44, ECR, Palavakkam
Chennai - 600 041.

...Petitioner

Vs.

1. The Registrar
University of Madras
Chepauk, Chennai - 600 005.

2. M/s. Vaigai Kitchens
Rep. by its Authorised Signatory
No.46, Poonamallee By-pass Road
Opp. MTC Bus Depot
Poonamallee, Chennai - 600 056.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent herein to declare the petitioner to be the successful bidder by issuing work order by rejecting the tender form submitted by the second respondent herein as they have not complied with clauses 3, 4 and 6 of the tender conditions set out in the Tender Notification Ref. F7/Bldgs/SA/2019/226 dated 23.07.2019 issued by the first respondent by considering the petitioner's representation dated 23.09.2019.

For Petitioner : Mr. S.Senthil

For R1 : Mr. L.P.Shanmugasundaram (For R1)
Special Government Pleader

For R2 : Mr. T.K.Viswanath
and
Ms.E.Meenakshi (Joint Vakalat)



O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the first respondent herein to declare the petitioner to be the successful bidder by issuing work order by rejecting the tender form submitted by the second respondent herein as they have not complied with clauses 3, 4 and 6 of the tender conditions set out in the Tender Notification Ref. F7/Bldgs/SA/2019/226 dated 23.07.2019 issued by the first respondent by considering the petitioner's representation dated 23.09.2019.

2. The case of the petitioner is that the petitioner is the Proprietor of M/s.Seena Vaana Chettinad Hotels A/c, East Coast Road, Palavakkam, Chennai. The petitioner has also obtained Form 'C' license under Food Safety and Drug Administration Department. The said Proprietary Concern is a Hotel catering to the needs of customers falling under the umbrella of institutions, and taking contracts in public auctions conducted by such institutions from time to time by issuing tender forms. While being so, the 1st respondent has issued the tender notice on 23.07.2019, governing the auction to be conducted on 14.08.2019 for running a combined canteen and stationery shop in the campus of the University of Madras at Marina and Chepauk, Chennai. As per the conditions stipulated in the said notice, the interested parties can get tender forms from the 1st respondent on payment of Rs.5,900/-. The petitioner got the tender form from the 1st respondent on payment of Rs.5,900/- and submitted the form along with a demand draft for Rs.20,000/- towards Earnest Money Deposit. There were four participants in the tender and the tender auction were opened by the 1st respondent on 14.08.2019 and in the bid, the 2nd respondent was the highest amongst the participants and they were intimated to be successful bidder in the auction.

3.It is the further claim of the petitioner that subsequently on 20.08.2019, it came to his knowledge that the first respondent has issued the tender form to the second respondent even there is non payment of fee for the tender form, non payment of Earnest Money Deposit and failed to remit five months rent to the 1st respondent as stipulated in the tender conditions.

4. Hence, the petitioner has given a representation to the 1st respondent on 22.08.2019 and made a request to reject the tender form of the 2nd respondent and to confirm the petitioner as he is the next highest bidder. However, no reply was forthcoming. Even thereafter, in order to avert any financial loss to the 1st respondent, the petitioner has revised his quotation of monthly rent to Rs.60,000/- as quoted by the second



respondent, as against his original bid of Rs.41,000/- and communicated the offer of enhancement in the monthly rent to the 1st respondent vide his representation dated 23.09.2019, even then, his reasonable request has not been acceded to. Aggrieved by the same, the petitioner is before this Court by way of this Writ Petition.

5. The learned counsel appearing for the petitioner submitted that the second respondent who has attempted to justify the unjustifiable mistake committed by not having remitted both the cost of tender form and the EMD, has come with a lame excuse that they are registered under Micro, Small and Medium Enterprise and are exempt from paying amounts towards tender form and earnest money deposit. In the absence of any such exemption expressly stated by the 1st respondent in the tender conditions, the defence or shelter taken by the 2nd respondent is not sustainable. Further it is pertinent to state that the Earnest Money Deposit of Rs.20,000/- has not been returned to the petitioner. Moreover, 1st respondent ought not to have permitted the 2nd respondent to participate in the tender due to non compliance of the conditions of the tender notification and hence prays for allowing of this petition.

6. The learned Special Government Pleader appearing for the 1st respondent submitted that the respondent University had followed all the rules in accordance with law, while awarding the work order to the 2nd respondent. In this connection, it is pointed out that the general terms and conditions alone will be given in the tender conditions. However it is subject to the Government rules / regulations / orders issued from time to time. Further it is to be noted at this juncture that the second respondent has paid the tender cost of Rs.5,900/- in the form of Demand draft drawn in favour of the University and obtained the tender forms. However, they have applied the tender without paying the EMD amount by enclosing the MSME certificate. MSME certificate holders are eligible to get the tender on free of cost and also to participate in the tender without paying the EMD. Therefore, as per the Government norms, the exemption was given to the 2nd respondent and further they have also paid the Security Deposit of Rs.3,54,000/- and submitted the stamp paper on the same day for preparing the agreement, which is under process and with regard to refund of EMD paid by the petitioner, the same can be refunded only after the issuance of work order to the successful bidder as per the norms.

7. Facts in the present case is not in dispute. The 1st respondent has called for sealed tenders to be submitted before 14.08.2019 for running of combined canteen and stationery shop in the Marina Campus and Chepauk Campus for the benefit of students, teaching and non teaching staff. The 1st respondent has



received four quotations which include the petitioner Firm also and in the auction, the 2nd respondent who was the highest amongst the participants, was intimated to be the successful bidder in the auction. It is the claim of the petitioner that the 2nd respondent has not paid the cost of tender form and also not paid the Earnest Money Deposit and also failed to remit a sum of Rs.3,00,000/- towards 5 months rent as security advance and thereby, the tender awarded to the 2nd respondent is invalid. Though such being the claim of the petitioner, this Court is of the opinion that the respondent University had followed all the rules in accordance with law, while awarding the work order to the 2nd respondent. Though the 2nd respondent paid the tender cost of Rs.5,900/-, they have applied the tender without paying the EMD amount by enclosing the MSME certificate. MSME certificate holders are eligible to get the tender on free of cost and also to participate in the tender without paying the EMD. Therefore, as per the Government norms, the exemption was given to the 2nd respondent and further they have also paid the Security Deposit of Rs.3,54,000/- and submitted the stamp paper on the same day for preparing the agreement, which is under process. Therefore, as alleged by the petitioner, there is no violation of conditions of the tender notification. The respondent University has fulfilled all the rules and regulations in the tender conditions and also the conditions issued by the Government of Tamil Nadu and Government of India. Hence, it is evident that the action taken by the University in awarding the work to the 2nd respondent was done in accordance with law and it does not warrants interference of this Court.

8. For the reasons aforesaid, this Writ Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar
University of Madras
Chepauk, Chennai - 600 005.

W.P. No. 29058 of 2019

AK-II(CO)
RGA(25/01/2022)