HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION NO: 35027 OF 2023

Between:

M/s MANOGNA ENTERPRISES, (A Partnership Firm), H.No.8-3-678/4 F, Mounten View Apartments, Navodaya Colony, Srinagar Colony, Hyderabad - 500033, Telangana, Rep. by its Partner S. Mallikarjuna, S/o S. Nagendrappa, Aged about 35 years.

...PETITIONER

AND

1. The State of Telangana, Municipal Administration and Urban Development Department, Secretariat Buildings, Hyderabad, Rep. by its Special Chief Secretary.
2. The Commissioner and Director of Municipal Administration (CDMA), State of Telangana, AC Guards, Hyderabad - 500004.
3. Nizamabad Municipal Corporation, Nizamabad - 503001, Rep. by its Commissioner.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or Order or Direction more particularly one in the nature of a Writ of MANDAMUS, declaring the action of the 3rd Respondent herein in issuing Short Tender for Manpower Supply Services vide (1) Tender ID.485777, Tender Notice No.11/01, dated 21/12/2023, with Bid Submission dated 23/12/2023 and closing dated 30/12/2023 5.00 PM, for engaging of (30) Nos. Drivers on Outsourcing Basis for Circle IVA, IVB, V Area for lifting of Garbage and Shifting to Dumping Yard, Nagaram for the period 01/01/2024 to 31/12/2024 i.e. (12 months) and (2) Tender ID.485778, Tender Notice No.11/02, dated 21/12/2023, with Bid Submission dated 23/12/2023 and closing dated 30/12/2023 5.00 PM, for engaging of (30) Nos. Drivers on Outsourcing Basis for Circle I, II, III Area for lifting of Garbage and Shifting to Dumping Yard, Nagaram for the period 01/01/2024 to 31/12/2024 i.e. (12 months), without including GST component or without obtaining advance ruling as required under Section 97(2) and Section 100(1) of the Central Goods and Services Tax Act, 2017 and Consequently direct the 3rd Respondent herein to include GST component in the tenders or to obtain Advance Ruling under Section 97(2) and Section 100(1) of the Central Goods and Services Tax Act, 2017, in respect of the Tender Notices vide (1) Tender ID.485777, Tender Notice No.11/01, dated 21/12/2023, with Bid Submission dated 23/12/2023 and closing dated 30/12/2023 5.00 PM, for engaging of (30) Nos.

Drivers on Outsourcing Basis for Circle IVA, IVB, V Area for lifting of Garbage and Shifting to Dumping Yard, Nagaram for the period 01/01/2024 to 31/12/2024 i.e. (12 months) and (2) Tender ID.485778, Tender Notice No.11/02, dated 21/12/2023, with Bid Submission dated 23/12/2023 and closing dated 30/12/2023 5.00 PM, for engaging of (30) Nos. Drivers on Outsourcing Basis for Circle I, II, III Area for lifting of Garbage and Shifting to Dumping Yard, Nagaram for the period 01/01/2024 to 31/12/2024 i.e. (12 months), forthwith.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 3rd Respondent herein not to proceed with the Short Tender Notices for Manpower Supply Services vide (1) Tender ID.485777, Tender Notice No.11/01, dated 21/12/2023, with Bid Submission dated 23/12/2023 and closing dated 30/12/2023 5.00 PM, for engaging of (30) Nos. Drivers on Outsourcing Basis for Circle IVA, IVB, V Area for lifting of Garbage and Shifting to Dumping Yard,. Nagaram for the period 01/01/2024 to 31/12/2024 i.e. (12 months) and (2) Tender ID.485778, Tender Notice No.11/02, dated 21/12/2023, with Bid Submission dated 23/12/2023 and closing dated 30/12/2023 5.00 PM, for engaging of (30) Nos. Drivers on Outsourcing Basis for Circle I, II, III Area for lifting of Garbage and Shifting to Dumping Yard, Nagaram for the period 01/01/2024 to 31/12/2024 i.e. (12 months), till the GST component are included in the tenders or till obtaining Advance Ruling under Section 97(2) and Section 100(1) of the Central Goods and Services Tax Act, 2017, pending disposal of the above Writ Petition.

Counsel for the Petitioner: SRI K.R.SASIDHARAN NAIR
Counsel for the Respondent Nos.1 & 2: GP FOR MCPL ADMN & URBAN DEV
Counsel for the Respondent No.3: SRI V.SATYAM REDDY, SC FOR MPCL

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.35027 of 2023

ORDER:

The petitioner has challenged in the present Writ Petition the action of respondent No.3 in issuing Short Tender for supply services of vide Tender ID:485777, Tender Notice No.11/01 dated 21-12-2023 for provision of manpower services of 30 numbers of drivers on outsourcing basis for Circle IVA, IVB, V area for lifing of garbage and shifting to Dumping Yard, Nagaram for the period from 01-01-2024 to 31-12-2024 and similarly providing 30 numbers of drivers vide Tender ID No.485778 Tender Notice No.11/02 without including GST component or without obtaining advance ruling as required under Section 97(2) and Section 100(1) of the Central Goods and Services Tax Act, 2017, as being illegal and arbitrary.

2. Heard learned counsel for petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing on behalf of respondent Nos.1 and 2 and Sri V.Satyam Reddy, learned Standing Counsel appearing on behalf of respondent No.3 and perused the record. With the consent of

learned counsel appearing for the parties, the Writ Petition is taken up for hearing and disposal at the admission stage.

3. Petitioner contends that in the tender document issued by respondent No.3 authority for supply of manpower services of drivers, the authorities did not include the GST component payable on the consideration received for supply of manpower, which activity is liable to tax under the provisions of the Goods and Services Act, 2017 (for short 'the Act').

4. Learned Standing Counsel appearing on behalf of respondent No.3 on the other hand submits that the tenderers are required to quote the price including the tax and therefore the claim of the petitioner that the GST component has not been included in the tender document is incorrect.

5. I have taken note of respective contentions urged.

6. A perusal of the clause-8 of the Tender Document specifies that the terms and conditions of the tender are available online and can be downloaded. The terms and conditions of the aforesaid tender as placed before this Court indicates that the tender provides for inclusion and exclusion of various taxes from consideration. Clause-44 of the said condition states as under:

"44. Note.

a) In case of Security Guards for every 6 (six) days of duty of personnel one day off with payment will be given. The tenderer will have to bear cost of providing personnel for this weekly off. The total monthly rates quoted shall <u>inclusive</u> of all these, including profits, overheads, bonus, gratuity etc and <u>taxes</u> whatsoever payable."

7. A reading of the aforesaid clause shows that the same covers two aspects of Tender i.e. (i) relating to Security Guards and (ii) relating to quoting of rates and its inclusions and exclusions. This would be evident from indication of clause (a) under the heading 'Note' which is applicable in relation to weekly off to be allowed for Security Guards.

8. However, it is to be noted that due to omission to mention (b) thereafter in relation to inclusion of taxes in the price quoted cannot be considered as only in relation to clause (a).

9. The aforesaid clause of the tender condition clearly takes in its ambit, be it direct tax or indirect taxes payable by the successful tenderers on being awarded with the contract.

10. Thus, the monthly rates quoted shall be inclusive of profits, overheads, bonus, gratuity etc. and taxes whatsoever applicable even in relation to the manpower services for which the impugned tender is issued.

11. Since the petitioner claims that the tender conditions does not include GST component payable, which as noted above, appears to be contrary to the tender conditions, this Court is of the view that no case is made out for grant of any relief in the Writ Petition.

12. Thus, Writ Petition is devoid of merits and it is accordingly dismissed. No costs.

13. As a sequel, miscellaneous petitions pending if any shall stand closed.

SD/- K.SREERAMA MURTHY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. One CC to SRI K.R.SASIDHARAN NAIR, Advocate [OPUC]
2. Two CCs to GP FOR MCPL ADMN & URBAN DEV, High Court for the State of Telangana at Hyderabad. [OUT]
3. One CC to SRI V.SATYAM REDDY, SC FOR MPCL [OPUC]
4. Two CD Copies

PSK.
GJ

HIGH COURT

DATED:29/12/2023

ORDER

WP.No.35027 of 2023

DISMISSING THE WRIT PETITION WITHOUT COSTS.

7 Copies MBC 20/01

GBR