

Indus Secure Services vs District Health and Family Welfare Society -R-

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Court : Karnataka Orders

Decided On : Jul-31-2024

Judge : H.P.Sandesh

Appeal No. : WP/106096/2023

Appellant : Indus Secure Services

Respondent : District Health and Family Welfare Society -R-

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 31ST DAY OF JULY, 2024 BEFORE THE HON'BLE MR. JUSTICE H.P.SANDESH WRIT PETITION NO. 106096 OF 2023 (GM-TEN) BETWEEN: INDUS SECURE SERVICES PRIVATE LIMITED, A COMPANY REGISTERED UNDER THE COMPANIES ACT REPRESENTED BY ITS DIRECTOR SRI. NAVEEN H.C. S/O. H.S. CHANDRASHEKAR, AGED ABOUT 43 YEARS, OCC: BUSINESS, R/O. NO.202, RANI CHANNAMMA NAGAR, DHARWAD, TQ AND DIST: DHARWAD-580001. PETITIONER (BY SRI. G.I. GACHCHINAMATH, ADVOCATE) AND:

SAROJA HANGARAKI 1. DISTRICT HEALTH AND FAMILY WELFARE SOCIETY
Location: HIGH COURT OF KARANTAKA NATIONAL HEALTH MISSION,
DHARWAD BENCH DEVAGIRI, HAVERI-581110, DIST: HAVERI,

REPRESENTED BY ITS PRESIDENT/MEMBER SECRETARY.

2. THE DISTRICT HEALTH AND FAMILY WELFARE SOCIETY NATIONAL HEALTH MISSION, DEVAGIRI, HAVERI-581110, DIST: HAVERI, REPRESENTED BY ITS VICE - PRESIDENT/DHO. -2-

3. M/S. GAJANAN ENTERPRISES, NO.133, SHOP NO.4, ANANTAPUR, SINGANAYAKANAHALLI POST, BENGALURU URBAN, BENGALURU-560064, REPRESENTED BY ITS PROPRIETOR. RESPONDENTS (BY SRI. PRAVEEN K. UPPAR, AGA FOR R1 & R2; R3-SERVED) --- THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED CONDITION NO.9 IN RESPECT OF TENDER NOTIFICATION

DATED NIL BEARING NO.DPMU/HVR/RCH/MANPOWER TENDER FILE/01/2022-23 PRODUCED AS ANNEXURE-A WHICH SPECIFIES TO CHOSE THE SUCCESSFUL BIDDER BY WAY OF LOTTERY SYSTEM ISSUED BY THE RESPONDENT NO.1 AND ALSO QUASH THE ENDORSEMENT/CIRCULAR DATED 28-9-2023 BEARING SL NO.DPMU/HVR/NHM/RCH/55/2023-24 PRODUCED AT ANNEXURE-D ISSUED BY THE RESPONDENT NO.2 BY ISSUE OF WRIT OF CERTIORARI OR ANY OTHER SUITABLE WRIT OR ORDER OR DIRECTIONS; ISSUE A WRIT OF MANDAMUS DIRECTING THE RESPONDENTS NO.1 AND 2 TO ADOPT THE SYSTEM OF CHOSING THE SUCCESSFUL BIDDER BY CONSIDERING THE FINANCIAL ANNUAL TURN OVER AND ETC. THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING: -3- CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE H.P.SANDESH)

1. This matter is listed for consideration of I.A No.1/2024 for vacating stay filed by learned AGA and with the consent of petitioner counsel and counsel for the State, the matter is heard on merits.

2. The petitioner is before this Court by invoking Articles

226 and 227 of the Constitution of India, praying this Court to quash the impugned condition No.9 in respect of tender notification No.DPMU/HVR/RCH/MANPOWER TENDER FILE/01 /2022-23 produced as per Annexure- A which specifies to choose the successful bidder by way of lottery system issued by the respondent No.1 and also to quash the endorsement/circular dated 28.09.2023, produced at Annexure-D issued by respondent No.2 by issue of writ of certiorari or any other suitable writ or order or directions. The petitioner also prayed the Court to issue writ of mandamus and directing the respondents No.1 and 2 to adopt the -4-

system of choosing a successful bidder by considering the financial annual turnover and grant such other relief as deems fit under the circumstances of the case.

3. Learned counsel for the petitioner vehemently

contended that, the very condition No.9 found in Annexure-A for the lottery system is to decide the best of the bidders. There is no such provision under the Karnataka Transparency in Public Procurement Act, 1999 (hereinafter referred to as the KTPP), which prescribes for adopting lottery system to choose the successful bidder. Hence, the very incorporation of the condition to choose the bidder by way of lottery is void ab initio. The petitioner has raised objections and has also taken a specific contention that no law permits respondents No.1 and 2 to adopt the lottery system to choose the bidder and respondents, who committed an error in adopting the method of successful bidder by conducting the lottery, fails to take note of the annual turnover. After adopting the lottery system no transparency can be maintained. The petitioner has -5-

also given written objections to respondents No.1 and 2.

4. Respondents No.1 and 2 have not chosen to hear the

petitioner nor the contentions urged by the petitioner in the objections have been taken note of while conducting lottery system. It is also contended that other public procurement entities would look over the financial turnover and also financial capacity of the tenders which would help the public procurement entities to effectively and successfully complete the tender. The counsel also relying upon Annexure-A, particularly condition No.9, would contend that the same is not permitted under the KTPP Act. The counsel also brought to the notice of this Court that Annexure- F, the tender document of Rani Chennamma University, Belagavi and tender evaluation criteria are brought to the notice of this Court. If there is more than one number of eligible L-1 financial bidders, then the agencies having higher turnover in the last two financial years (2020-2021 and 2021-2022) will get a -6-

preference over others. The decision of the Accepting Authority will be final in this regard.

5. The counsel referring to this also would contend that,

the financial year turnover has not been taken note of in the present case. The counsel would also submit that there must be an uniformity while conducting tender by different authorities and no such uniformity has been followed and condition No.9 is against the law of KTPP Act and hence, this Court has to quash Annexures-A and D.

6. Per contra, learned AGA appearing for the State would

submit that, having accepted Annexure-A, the petitioner is now contending that there cannot be any selection of bidder through lottery and the fact that both of them have quoted the very same price and tie has been taken place has not been disputed. Learned AGA also submits that, even under the KTPP Act also there is no provision in case if any tie

has been taken place and contend that the very contention that Annexure-D is void ab initio cannot be accepted. -7-

Learned AGA also vehemently contended that, the turnover of the previous year also to be taken note of cannot be accepted and considering Annexure-F with regard to the previous turnover as per the Rani Channamma University, Belagavi, cannot be the basis for deciding the same. Learned AGA also submits that, condition No.9 is not in case the tie has been taken place and the same is only when there are more than one number of eligible L-1 financial bidders, then the procedure to be followed has been stated therein and the same cannot be the criteria for consideration of this tender. Hence, the very contention of the petitioners counsel cannot be accepted.

7. Having heard the petitioners counsel and the learned

AGA appearing for the respondents and also considering the material and record, it is not in dispute that the tender is invited in terms of Annexure-A. It is also important to note that, when the conditions are imposed in the tender itself and particularly condition No.9 is also very clear with regard to if any tie has -8-

been taken place, when the same rate has been quoted, the same has to be finalized by conducting the lottery.

8. Having taken note of this condition only, the petitioner

has applied for tender and when the bid has been taken place between the two, now he cannot contend that the lottery method cannot be accepted. Though the learned counsel appearing for the petitioner would contend that the said condition is against the KTPP Act, but even under the KTPP Act also, there is no any specific provision made when there was a tie. When such being the case, it cannot be contended that the said condition is void ab initio. The other contention that, as per

Annexure-F, condition is stipulated to take note of previous turnover referring the document of Rani Chennamma University, Belagavi, while calling for tender, the method adopted by different institutions cannot be the basis. When the specific condition is imposed in the tender itself, the petitioner cannot press into service of Annexure-F. Even having considered -9-

Annexure-F also, the condition is very clear with regard

to the tender evaluation criteria. If there are more than one number of eligible L-1 financial bidders, then the agencies having higher turnover in the last two financial years will get preference over others. The decision of the Accepting Authority will be final in this regard. Even considering this condition also, it is not in a case of any tie having taken place, but only when more number of eligible L-1 financial bidders have approached, then the said method has to be adopted. When there is no specific provision in any enactment in case of any tie having taken place, what would be the mode for consideration for finalizing the tender is concerned, it now cannot be contended that the same is void ab initio., Having accepted the condition mentioned in Annexure-A and applied for a tender, the petitioner now cannot question the same when the tie has been taken place. When such being the case, I do not find any contravention of this condition in any of the enactment and no ground is made out to quash

- 10 - Annexure-A and Annexure-D as sought for in the writ petition.

9. I do not find any merit in the petition and hence the following:

ORDER

Writ Petition is dismissed. Sd/- (H.P.SANDESH) JUDGE PMP - upto para 7 gab - para 8 to end CT-MCK List No.: 1 SI No.: 24

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