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Court : Andhra Pradesh

Decided On : Jan-08-2003

Reported in : 2003(1)ALD808

Judge : Goda Raghuram, J.

Appeal No. : WP No. 22482 of 2002

Appellant : Kiran Graphics

Respondent : Tender Committee Constituted for Technical and Price Bids and ors.

Advocate for Def. : P. Madhavi Devi, Adv.

Advocate for Pet/Ap. : M. Rama Rao, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Goda Raghuram, J.

1. The respondents have cancelled the tendering process notified on 29-08-2002 for supply of printed forms to meet to the day-to-day requirements of the Postal and Railway Mail Services and its' administrative offices. Three tenders were notified bearing Nos. J4/92/2002-03 for the procurement of Forms/Books from alphabet 'A to M' series; No. J4-93/2002-03 for procurement of Forms/Books from alphabet 'M to R' series; and No. J4-94/ 2002-03 for procurement of Forms/Books of 'SB and remaining series'. The petitioner submitted its bids in respect of the three tenders notified on 29-08-2002. Twenty nine tender forms were sold. The last date for receipt of the sealed tenders was on 30-09-2002. The tenders were to be received in two parts viz., (i) Technical Bid and (ii) Price Bid. The technical bid was to be opened on 30-09-2002. The technical bids of the seventeen (17) tenderers, which were received, were opened at 4-00 p.m. on 30-09-2002 and a tabular statement was made out of the price of the bids received.

2. On opening the technical bids, a Committee was constituted comprising three Officers viz., Assistant Director (SD Cell) in the office of the Chief Post Master General, A.P. Circle, Hyderabad-1 as the Chairman; and the Assistant Accounts Officer in the Office of the Chief Post Master General, Andhra Pradesh Circle, Hyderabad-1 as member along with the Superintendent, Postal Stores Depot, Hyderabad as another member. The aforesaid committee met on 09-10-2002 and evaluated the seventeen technical bids received. The committee, on opening the technical bids of the seventeen tenderers, found that nine (9) of the tenderers had submitted particulars, such as the latest Income Tax and Sales Tax clearance certificates, up date of registration with the Government, proof of their viability, list of their earlier clients served and such other particulars; eight (8) of the tenderers did not submit any documents to facilitate the assessment of their capability for performing work tendered for. The petitioner was one of the nine (9) bidders, who had submitted the particulars. On an assessment of the situation, the committee initially wanted to offer further time to the eight (8) tenderers, who had not supplied any documents, to supply the omission. Thereafter, the committee thought it fit to seek a specific decision from the Chief Post Master General on the following three aspects.

'1. Whether to exclude those 8 tenderers' Price Bids who have not submitted the relevant documents in support of their Technical Bids or;

2. Whether to give those 8 tenderers a time margin of 10 days to submit the omitted documents or;

3. Whether to cancel the tender notification issued on 29-08-2002 and to call for fresh tenders with full details.'

3. It requires to be noticed that the technical bid only in respect of the first of the tenders viz., in respect of J4-92/2002-03, were opened and referral made to the Chief Post Master General as aforementioned. The proposals of the committee were considered in the office of the Chief Post Master General, Andhra Pradesh and it was referred for the advice of the Andhra Pradesh Circle's Internal Finance Advisor. The counter affidavit filed on behalf of the 1st and 2nd respondents states that the Internal Finance Advisor tendered his advice on 23-10-2002 recommending that a re-tendering should be resorted to for furnishing the information and documentsthat are required to be submitted along with the technical bid, in the notice inviting tenders, as no requirement to furnish such information and particulars was contained in the notice inviting tenders. Pursuant to the advice of the Internal Finance Advisor, it was decided to resort to a fresh tendering process. Consequently, by the tender notification dated 25-10-2002, the three tenders were notified for a fresh process of tendering.

4. The petitioner assails the aforesaid action of the respondents in tendering the three packages afresh by the Notification dated 25-10-2002. It asserts that the action of re-tendering is arbitrary and as there were sufficient number of qualified tenderers, who had qualified in the technical bid, viz., nine (9) in number, including the petitioner, even if the respondents felt that the bids submitted by them were of a higher value, negotiations ought to have been undertaken with these nine (9) tenderers for the purpose of ensuring reasonable prices. It is also contended on behalf of the petitioner that it is common knowledge that a technical bid should contain particulars such as registration certificates, Income Tax and Sales Tax clearance and other particulars and also documentation in support of the tenderer's viability and competence to execute the work tendered for. As part of

this contention, it is alleged, the failure in the tender notification specifically asking for enclosure of the documentation in support of such particulars, is not material as all tenderers are aware that such documentation is an integral part of a technical bid. Another contention urged is that the petitioner has suffered an injury, as his technical bid and later the price bid also in respect of the first of the tenders viz., J4-92/2002-03 for procurement of Forms/Books from alphabet 'A to M' series, has been opened and it's quotation would be known to all the other intending tenderers, who would bid consequent on the fresh Notification nowissued i.e., 25-10-2002. The petitioner alleges mala fides on the part of the 3rd respondent in paragraph No. 5 of the affidavit filed in support of the writ petition. It asserts that the respondents have not considered the petitioner's tender, or that of others submitted pursuant to the notification dated 29-08-2002, as 'one of their candidates i.e., Devaja Printers, who is an interested candidate to respondent No. 2 and 3, has not qualified and in order to accommodate him, the tenders were cancelled and fresh tenders were called for. It is further alleged that the 2nd respondent, who is also impleaded by name as the 3rd respondent, orchestrated the re-tendering process after knowing the price quoted by the petitioner in its tenders so as to benefit that particular tenderer -Devaja Printers. The petitioner asserts to have understood that the only reason for cancellation of tenders is to provide a chance to the candidate of the 2nd respondent-Devaja Printers.

5. Insofar as the allegation regarding mala fides is concerned, the 3rd respondent has filed a counter affidavit categorically and unequivocally denying the allegations of mala fides. It is categorically asserted by this respondent that there is no relationship with M/s Devaja Printers and that it is known to the respondent as only one of the tenderers. Any relationship with any tenderers, who participated in the tender, is denied. The allegations of mala fides against the 3rd respondent do not commend acceptance by this court. The petitioner has made vague and open textured mala fides that there is a relationship between the respondent and M/s. Devaja Printers. M/s Devaja Printers had not been impleaded as a party and even the relationship allegedly between M/s Devaja Printers and respondent No. 3 has not been specified. The assertions in the counter affidavit filed on behalf of the respondent Nos. 1 and 2 clearly disclose that a recommendation was made by a Committee comprising theAssistant Director, Assistant Accounts Officer of Chief

Post Master General, A.P. Circle and the 2nd respondent. The 2nd respondent was one of the members of the committee. The committee, in fact, did not take any decision on its own, but suggested three alternative courses of action for the consideration of the Chief Post Master General. The decision to re-tender was taken by the Chief Post Master General's office, which had the ultimate authority; and such a decision was taken after obtaining the advice of the Internal Finance Advisor, who had recommended re-tendering. In the totality of circumstances, this court is of the considered view that no serious and adjudicable allegations of mala fides, in fact, have been pleaded, urged or demonstrated. This contention must fail and it is, accordingly, rejectee.

6. The other contentions of the petitioner are required to be dealt with and could be considered together. They are (1) that instead of re-tendering, the respondents should have resorted to the process of negotiations with the nine (9) qualified tenderers, which included the petitioner, (2) that reasons should not only be recorded, but communicated to the petitioner and other affected tenderers, preceding the decision to call for tenders afresh and (3) that the decision to go in for re-tendering is arbitrary on account of the fact that the petitioner's price bid with regard to the one of the tenders is known to all the intending tenderers, therefore, putting him at a disadvantage in the fresh tendering process.

7. The counter affidavit filed on behalf of respondents 1 and 2 sets out in detail the circumstances in which the decision to go on in for fresh tendering has been taken. Both, the committee of three persons, which opened the technical bids in respect of the first package of tenders, as well as the Internal Finance Advisor andthe Post Master General, were of the view that the requirement of submission of documentary support in respect of the particulars such as Registration Certificate, Income Tax and Sales Tax Clearance and particulars regarding the capability of the tenderer to execute the work, had not been spelt out in the notice inviting tenders. It is possible that rejection of the eight (8) bids, which had not furnished such documentation, could potentially result in litigation on the ground that their bids were rejected on parameters they were not notified about. While some of the requirements of documents to be associated with the technical bids may be known to persons in the contractual field, not all the minutiae and

particulars could be presumed as known to all persons, who are desirous of tendering. In order to avoid a potential litigation, a consequent infinite delay in the finalisation of the contract, sensitized to the infirmity in the tender notification and after a rational deliberation and pursuant to the recommendation by a committee as well as the receipt of advice by the Internal Finance Advisor, the respondents are seen to have taken a decision to go in for fresh tendering. The decision in the above circumstances, does not present itself as vitiated by any irrationality in the decision making process. It is not the province of this court to speculate whether any other course of action was a better suited response to the administrative dilemma presented to the respondents. Such decision making process and upon a rational choice cannot be the subject matter of judicial review normally. No extraneous circumstances are present in fact situation warranting a judicial scrutiny of the decision making process of the respondents culminating in the choice of going in for fresh tendering.

8. Two decisions have been urged in support of the contention of the petitioner that reasons will have to be recorded and communicated to the affected persons.Petitioner relies upon the decisions of the Supreme Court in Star Enterprises v. C.I.D.C. of Maharashtra Ltd., : [1990]2SCR826 and in State of V.P. v. Vijay Bahadur Singh, : AIR 1982 SC1234 , to contend that reasons would not only have to be recorded, but communicated to the affected persons, including the petitioner before the earlier tender process could be withdrawn and a fresh tendering process initiated. None of the decisions cited by the learned counsel for the petitioner postulates any such 'requirement in respect of wholesale cancellation of a tender and calling for fresh tenders. No doubt, on empirical principles, as the tendering process of a public authority has a public interest component and the decision of giving up a tendering process midway and calling for a fresh notification involves expenditure from the public exchequer, it is necessary to record reasons at least on the file, as to why such a course had been adopted. But communication of reasons to affected persons is a concept that does not come into play in such situations. No serious and recognizable injury is suffered by any tenderer in a situation where the tendering process is withdrawn and fresh tenders are called for. Implicit in the petitioner's urge that instead of cancellation, a negotiation could have been initiated, suggests that the prices

quoted, at least by the petitioner, were negotiable. In the circumstances, it could not be contended nor such contention accepted by this court, that the price quoted by the petitioner having been disclosed by the opening of its price bid in the earlier tender, would jeopardize its chances of a fair competition in the fresh tendering process. Law does not deal with trifles Lex Non Curat De Minimis. Larger public interest is served by avoiding a potential litigious situation, by rectifying the notification inviting tenders.

9. Both the decisions relied upon, on behalf of the petitioner, deal with factsituations where higher bids were not accepted and in that context Supreme Court, in recognition of the expanding horizon of administrative law principles, pronounced that recording of reasons by the executive, including in cases of rejection of higher offers, subserves public interest and ensures accountability of public authorities. Such recording of reasons, disciplines public conduct and improves the culture of accountability. Recording for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. In the context of the facts considered by the Supreme Court, where higher offers were rejected, the Supreme Court also held that the stand of the appropriate authority shall be made available and communicated to the concerned parties unless there be any specific justification not to do so.

10. In the case on hand, there is no rejection of the highest offer nor of the petitioner. En blanc the tendering process initiated by the tender notification dated 29-08-2002 has been rescinded and a fresh tender notification issued on 25-10-2002. The petitioner is equally entitled to participate in the fresh tendering process and it suffers no injury as a consequence of the cancellation of earlier tender process warranting a communication to it of the reasons for cancellation of the earlier process.

11. In the totality of circumstances and on the analysis above, I discern no merits in the writ petition, which is, accordingly, dismissed. No costs.

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