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Court : Andhra Pradesh

Decided On : Oct-08-2012

Judge : C.V. Nagarjuna Reddy

Appeal No. : W.P.No.20054 of 2012

Appellant : B. Gopal Reddy

Respondent : The A.P. Transco, Represented by Its Chief Managing Director and Others

Advocate for Pet/Ap. : Sri. Kasa Jagan Mohan Reddy

Judgement :

This Writ Petition is filed for a mandamus to declare proceedings in Lr.No.CE/KDPZ/KDP/ADE-T3/AE-T5/F.O.andM/D.N.1713/12, dated 29-6-2012 of respondent No.2 whereby he has awarded the contracts of maintenance of 132 and 220 KV sub-stations, each at Rayadurg and Shahpuram respectively, to respondent No.4 and 132 KV sub-station at Uravakonda to respondent No.5, as illegal and arbitrary. The petitioner sought for a consequential direction to the respondents to consider his tender for grant of the maintenance contracts.

Even though notices were served on respondent Nos.4 and 5, they have not entered appearance.

I have heard Sri Kasa Jagan Mohan Reddy, learned counsel for the petitioner and Sri S.V. Ramana, learned Counsel appearing for Sri O. Manohar Reddy, learned Standing Counsel representing respondent Nos.1 to 3.

In response to the notification issued by respondent No.2 inviting tenders for carrying out operation and maintenance works including house keeping, gardening, ward and watch, MRT assistance and assistance for Telecom of EHT sub-stations on contract basis for the years 2012-14 in Kadapa Zone, the petitioner filed his tenders for 132/11 KV sub-stations, at Rayadurg and Uravakonda, Anantapur District, quoting 14% of the administrative charges along with experience certificate, no complaint certificate, bank guarantee etc. Respondent Nos.4 and 5 also have submitted their tenders. By the impugned proceeding, respondent No.2 has awarded the contracts of maintenance of 132 and 220 KV sub-stations at Rayadurg and Shahpuram, respectively, to respondent No.4 and 132 KV sub-station at Uravakonda to respondent No.5. Feeling aggrieved thereby, the petitioner filed this Writ Petition.

The prime plea on which the petitioner assailed the award of the above mentioned contracts in favour of respondent Nos.4 and 5 is that they do not possess any experience in the maintenance of sub-stations. The petitioner placed reliance on Condition No.3(III) of the tender conditions pertaining to experience, and stated that the certificates of contractor licences of respondent Nos.4 and 5 filed by him show that respondent No.4 has registered herself as an electrical contractor on 11-1-2012 and respondent No.5 has registered himself as such on 29-2-2012.

On behalf of respondent Nos.1 to 3, a counter-affidavit is filed wherein they sought to justify the award of contracts in question in favour of respondent Nos.4 and 5. The purport of their plea is that the eligibility criteria is prescribed in condition No.2 of the tender conditions and that condition No.3(III) thereof applies only in cases where the prices quoted by the tenderers are equal.

In order to resolve this controversy, it is necessary to reproduce the unnumbered para-1 of condition No.2 and clauses (II) and (III) of condition No.3 of the tender conditions, hereunder:

Unnumbered para-1 of condition No.2: The Works Contract will be awarded to registered contractors of APTRANSCO in carrying out the above work with valid Electrical License of 'A' Grade from Chief Electrical Inspector of Government of A.P., valid labour license from Deputy Commissioner of Labour or Assistant Commissioner of Labour of the concerned region, EPF and ESI code numbers and any man power co-operative society as registered for this purpose of manning of electrical installations viz., EHT sub-stations, miscellaneous/CBD gangs, MRT etc., who are having above qualifications. They are only eligible to participate in Tenders. However, the Labour license mentioned above can be submitted at the time of entering into agreement.”

Clause (II) of condition No.3: The tender will be decided taking into account the administrative/supervision charges and conveyance charges for the vehicle with driver. When more than one bidder quotes the same rates on par with lowest rates, then selection from such bidders will be made depending upon the native district. Performance certificate issued by field officer has to be enclosed to the tenderer. (The decision of APTRANSCO will be final and no correspondence whatsoever be entertained).

Clause (III) of condition No.3: Experience: In EHT sub-stations with minimum 1 year or in 33/11 KV sub-stations with minimum 2 years experience. The bidder shall indicate the same in Schedule-B along with documentary evidence.

The above reproduced condition No.2 of the tender conditions, in my opinion, has to be read in conjunction with clause (III) of condition No.3 thereof. If these two conditions are read together, it is clear that a person is not eligible to participate in the tender process unless he is registered with the A.P. Transco as a contractor, possesses valid licence of 'A' Grade from the Chief Electrical Inspector Government of A.P., and valid labour licence from the Deputy Commissioner of Labour or the Assistant Commissioner of Labour of the concerned region. Under condition No.3(III), it is clearly envisaged that a tenderer for EHT and 33/11 KV sub-stations, shall have minimum experience of one year and two years, respectively. Unless a tenderer satisfies the requirements of both condition No.2 and condition No.3(III), he is not eligible for award of contract. On a careful

analysis of these conditions, I am of the opinion that the submission of the learned Standing Counsel that only in cases where the rates are quoted by more than one tenderer are same, condition No.3(III), which stipulated the eligibility criteria with regard to experience, will apply, is wholly without any merit. In such cases, condition No.3(II) alone will apply, which mandates that when more than one bidder quotes the same rates on par with the lowest rates, the selection from such bidders will be made depending upon the native District of the tenderers. Therefore, the prices quoted by the tenderers have no nexus with their experience, for experience is needed to make sure that the persons to whom the contracts are awarded, will work to the satisfaction of the organisation with the required efficiency. From the contractor's licence of respondent Nos.4 and 5, copies of which are filed by the petitioner, it is evident that respondent No.4 was registered as a licenced contractor on 11-1-2012, while respondent No.5 was registered as such on 29-2-2012. The tender notification for the above mentioned works was issued on 4-4-2012. Thus, respondent Nos.4 and 5 have hardly any experience in executing the works awarded to them. Hence, the impugned proceeding awarding the contracts in question in favour of respondent Nos.4 and 5 is contrary to the tender conditions and the same is accordingly set-aside. Respondent No.2 is directed to consider the petitioner's tender and take a decision thereon within two weeks from the date of receipt of this order.

The Writ Petition is accordingly allowed to the extent indicated above.

As a sequel, WPMP No.25696/2012 is disposed of as infructuous.

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