(2017) 04 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No.7004 of 2017

Andhra Infra Projects & Industries Pvt Ltd. APPELLANT

Vs

State of Telangana RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 3 AndhLD 617

Hon'ble Judges : Challa Kodanda Ram, J.

Bench : Single Bench

Advocate : Sri Kishore Rai, Advocate, for the Petitioner; Government Pleader for Municipal Administration, for the 1st Respondent; Sri V. Narasimha Goud, Standing Counsel for HMDA, for the 2nd Respondent; Sri Mahmood Ali, Advocate, for the 3rd Respondent

Final Decision : Disposed Off

Judgement

Challa Kodanda Ram, J.—The award of the tender in favour of the 3rd respondent is challenged by the petitioner, who also is one of the participants in the response to the tender notification dated 05.01.2017.

2. The Hyderabad Metropolitan Development Authority-2nd respondent invited the tenders calling for participants for issuance of "License for Design, Procurement, Installation, Operate and Maintenance of Children Play Inflatable & Entertainments in NTR Gardens, Hyderabad for three years" . It is not in dispute that the petitioner as well as three others participated in response to the tender notification. Invitation to tender consists of two parts; one is the technical evaluation and other is the financial bid. The petitioner after scrutinising of the bids, petitioner as well as the 3rd respondent alone were found to be responsive bids and 3rd respondent emerged as the successful bidder by offering Rs.99,99,999/- as annual license fee, as against the petitioner offered Rs.72,99,999.99 ps.,

3. It is the case of the petitioner that the 3rd respondent offer was not a

responsive bid, especially the 3rd respondent had failed to fulfil the technical eligibility criteria viz.,

(1) The experience certificate produced by the 3rd respondent does not indicate the petitioner having installed an amusement rides / activity in the last five years from the bid due date.

(2) The 3rd respondent also shall not have the net worth of Rs.50,00,000/- at the close of the audited financial year preceding the Bid Due Date and the Chartered Accountant''s certificate produced by the petitioner is defective, as the Chartered Accountant has not categorically certified that the certificate is being issued based on the audit of the 3rd respondent''s financial statements / accounts.

(3) Likewise, even with respect to the average annual turnover of 3rd respondent having a minimum of Rs.35,00,000/-, though the Chartered Accountant certificate is produced, the same also has not been certified as having been given based on the audited financial statements/accounts.

4. Both the respondents 2 and 3 have filed their respective counter affidavits denying the various allegations made by the petitioner. Both the respondents have also filed respective documents to justify that the 3rd respondent bid is a responsive bid.

5. Sri Kishore Rai, learned counsel for the petitioner points out that the 3rd respondent had failed to produce all the documents i.e., the Income Tax returns and also the participation of the 3rd respondent in Maha Utsav Mela as required in terms of the tender notification, but the same were furnished in response to the letter dated 25.02.2017 of the 2nd respondent. Learned counsel by reiterating the contentions raised in the writ petition prayed for allowing of the writ petition.

6. Sri V. Narasimha Goud, learned counsel appearing for the 2nd respondent by copiously taking this Court through the Income tax returns and other documents furnished by the 3rd respondent submit that the 3rd respondent bid is a responsive bid and there is no malafidies attributed in the case. He would also further submit that the emphasis in the bid evaluation is on S.No.10 - Criteria for Selection of Bidder/s. The sole criteria for selection of the bidders is the highest license fee payable to the respondent-HMDA. He would reiterated that the 3rd respondent had offered Rs.27,00,000/- in excess of the offer made by the petitioner and that would endure to the benefit of the respondent, which is in public interest. Learned counsel by placing reliance on the judgments in B.V. Subba Reddy v. Chief Engineer, Hyderabad Urban Development Authority and others 1995 (2) ALD 368 and Jagdish Mandal v. State of Orissa and Ors.,(2007) 14 SCC 517 would submit that the scope of the judicial scrutiny in contractual matters, under Article 226 of the Constitution of India, is limited and this Court ought not to interfere with the process of selection, which has been done in transparent way, especially considering the fact that there are no malafides

alleged. It is further asserted by the learned counsel that at the time of technical evaluation on 15.02.2017 petitioner had participated but he has not raised any objection with respect to the disqualification of the 3rd respondent, though he had raised objection with respect to the disqualification of one M/s Sadguru Techno Fab (P) Limited. Even on that ground learned counsel asserts that the Writ Petition ought to be dismissed.

7. Sri Mohammad Ali, learned senior counsel appearing on behalf of the 3rd respondent while reiterating the contentions raised in the counter affidavit would submit that the 3rd respondent''s offer being highest, the 2nd respondent had accepted the bid and in the absence of any malafides the selection of the 3rd respondent as a responsive bid cannot be questioned.

8. Having considered the respective submissions, as can be seen from the invitation to the tender, the argument of the learned counsel for the petitioner that the 3rd respondent had not satisfied with the eligibility criteria with respect to the financial capacity is to be rejected, as the tender condition required only a Chartered Accountant certificate to be submitted certifying that the bidder has satisfied the condition with respect to the average annual turnover, as well as the net worth. In the present case, the 3rd respondent had submitted Chartered Accountant''s certificate issued by the Deepak Daga & Associates Chartered Accounts. The final aspect, which the learned counsel for the petitioner has pointed out that the said certificate is not based either on the financial statements or on the audited accounts, but the same is based on the information furnished by the 3rd respondent, is also liable to be rejected. The requirement in terms of the eligibility criteria is only a certificate, certified by the Chartered Accountant, for the audited financial year. There is no stipulation that the same is required to be based either on audited financial statements or on the accounts. The only other aspect which requires to be considered is whether experience certificate furnished by the 3rd respondent is not in conformity with the requirement as notified by the 2nd respondent. The experience certificate reads as under:

"This is to Certify that Ms. MIRZA SANA BAIG is operating and maintaining amusement rides like Ranger, Break Dance, and Columbus etc., in our exhibitions Maha Ustav Mela for more than 5 years, starting from the year 2012."

9. Now for the purpose of better appreciation of this aspect, it is useful to extract the requirement as notified in the tender notification;

(a) "Technical Capacity: The Bidder shall have the experience as mentioned below

Bidder shall have one year completed experience of installation, Operation and Maintenance of any Amusement rides/ activity in the last Five (5) years from the bid due date. The completed experience certificate shall be from Govt.,/ Public/ Private Sector Organisations".

10. The experience certificate produced by the 3rd respondent is in conformity, in

all respects, except with respect to the experience of installation (emphasis supplied). Though the learned counsel for the 2nd respondent vehemently contends that it is within the power of the respondent to take into consideration of the experience, the same cannot be accepted as the notified requirement is that experience of installation also is a pre-requisite. It may be noted that the very notice calling for tenders reads as "Grant of License for Design, Procurement, Installation, Operate and Maintenance of Children Play Inflatable & Entertainments in NTR Gardens, Hyderabad for three years-Tender document." It may also be noted that in the very tender document the obligations of licensee have been specified clearly. Now, the obligations of licensee is required to design, procure, install, operate and maintain the specified project facilities within one month from the license agreement date. In other words, 2nd respondent has invited a tender from the competent persons, who have expertised or experienced with respect to the design, procurement, installation, operating and maintenance. In those circumstances, it cannot be said that the aspect of the installation shall not play major role and it is only who offer highest bid is only sole criteria for selection of the licensee cannot be accepted. Undisputably, the certificate produced by the 3rd respondent lacks the specific component that the 3rd respondent having established or having installed any rides in any amusement park. While, on this point it may also be noted that the certificate produced by the 3rd respondent is a certificate issued by the father of the 3rd respondent, who is undertaking an amusement rides etc., The required experience or the capability of the father of the bidder is irrelevant and the same cannot enure to the benefit of the 3rd respondent. In those circumstances, the writ petition is liable to be allowed.

11. Accordingly, the Writ Petition is allowed setting aside the selection of the 3rd respondent as a responsive bid. There shall be no order as to costs.

12. Miscellaneous Petitions pending, if any, shall stand closed.

