
(2017) 04 AP CK 0017
In the Andhra Pradesh High Court
Case No : 9382 of 2017

N. Chenga Reddy

APPELLANT

Vs

The State of A.P.and 2 others

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Citation : (2017) 04 AP CK 0017

Hon'ble Judges : Challa Kodanda Ram

Bench : SINGLE BENCH

Advocate : V. Surendra Reddy, A. Srikantha Reddy, Kalahasthi Swamivari
Devasthanam, Kalahasthi

Judgement

1. The writ petition is filed questioning the action of the 3rd respondent in not following the conditions as stipulated in its e- procurement open auction tender vide proceedings dated 28.01.2017 by awarding Item No.2 of the tender to the relatives (benami) of the 3rd respondents office employee contrary to the condition No.8 and not awarding the said contract to the next highest bidder.
2. Initially petitioner had not made the successful tenderer as a party respondent. However, thereafter, implead-petitioner filed W.P.M.P.No.14837 of 2017 seeking to add him as 4th respondent and this Court by order dated 10.04.2017 ordered the said M.P by impleading him as 4th respondent.
3. The case of the petitioner is that the 4th respondent made offers pursuant to the tender notification dated 28.01.2017 issued by the 3rd respondent for collection of broken coconut pieces from the Rahu Khetu Puja area of the 3rd respondent temple, for the period commencing from 01.04.2017 to 31.03.2018. While petitioner offered a sum of Rs.46,00,200/-, the 4th respondent offered Rs.50,50,999/-. As the 4th respondents offer being the highest, he was declared as a successful bidder. It is the contention of the petitioner that there is violation of the otified tender conditions as notified in R.C.No.C-2/252/2017, dated 28.01.2017 in particular condition No.8. In terms of condition No.8, the

successful bidder is required to pay 50% of the bid amount within a period of two days or within 48 hours of his being declared as a successful bidder. It is the further case of the petitioner that the 4th respondent did not fulfill these conditions and time was provided to him. Inasmuch as there is violation of fulfilling the tender conditions, declaring the 4th respondent as a successful bidder is arbitrary and illegal.

4. Counter affidavits are filed on behalf of the 3rd respondent as well as the 4th respondent.

5. The fact that the time being provided to the 4th respondent and there being noncompliance of condition No.8 of the tender notification, is admitted. However, the explanations sought to be offered by the respondents 3 and 4 are that the bids of the petitioner as well as the 4th respondent were opened on 10.02.2017 which happened to be Friday, the successful bidder/4th respondent made a representation on 13.02.2017 seeking extension of time for four days for depositing the balance amount of Rs.25,25,500/- stating that on account of public holidays on 11.02.2017 being a bank holiday and on 12.2.2017 being Sunday and also on account of the demonetization and considering the same, four days time was granted to the 4th respondent. The 4th respondent had also contended that there is a discretion vested with the 3rd respondent in condition No.11 to alter the tender conditions. In that view of the matter, both the respondents 3 and 4 prayed for dismissal of the writ petition.

6. Now a short question which falls for consideration in the present writ petition is whether the action of the 3rd respondent in accepting the bid of the 4th respondent as responsive bid and awarding the contract in his favour, is illegal, valid or is liable to be set aside?

7. There is no dispute about the notified condition No.8 of the tender notification. Condition No.8 of the tender notification reads as under:

8. The highest and successful bidder in next two days/48 hours has to pay an amount of Rs.50.00 lakhs bank guarantee otherwise, he will lose his deposit for the first half of six months and the rest of the half amount has to be paid in the 9th month and 11 month, otherwise, he will lose the deposit of Rs.5,00,000/-. The highest tenderer shall provide a bank guarantee for Rs.50,00,000/- and the amount payable for six months in terms of the tender notification in addition to the security deposit. Balance amount is payable in 9th and 11th months. In the event of failure to bid, security amount is liable to be forfeited and appropriated by the temple without any notice. The costs and damages suffered by the temple are liable to be recovered from the licensee.

8. There is no dispute that the 2nd respondent had incurred the disqualification. On a fair reading of condition No.11 of the tender notification, the argument of the learned counsel for the 4th respondent that the condition No.11 gives a discretion to the Executive Officer, is liable to be rejected. The Executive Officer is totally empowered to postpone/stop/cancel/alter the tender conditions,

without assigning any reasons. A fair reading of the above would only empower the Executive Officer to take any of the actions specified in condition No.11 before the auction is conducted and not thereafter. If there is any power to relax the conditions specified in Condition No.8, the same is required to be notified. Not notifying the said power to relax or discretion having been vested in the Executive Officer is fatal as there may be a large number of intending bidders who would have participated, if they are aware of or no doubt that the bid amount is not required to be deposited within 48 hours. In those circumstances, providing opportunity to the 4th respondent being in violation of condition No.8, the award of license in favour of the 4th respondent is liable to be set aside. Condition No.9 of the tender conditions itself provides for a contingency under which the second highest bidder being given an opportunity to be awarded with license subject to the condition such tenderer is willing to match the offer made by the successful bidder. In the present case, petitioner is willing to not only match the price offered by the 4th respondent and is also ready to offer a sum of Rs.55,00,000/- per annum.

9. In those circumstances, as condition No.9 itself mandates that if the first highest bidder fails to comply the conditions within the time, the license can be issued in favour of the next highest bidder and as the petitioner is willing to fulfill the conditions, the writ petition is allowed with a direction to the 3rd respondent to enter into an agreement with the petitioner. During the pendency of the writ petition, the 3rd respondent had issued a short tender notice and for the month of April, 2017 tender was awarded in favour of the 3rd party. In other words, the license in favour of the petitioner would be granted only from 1.5.2017. In those circumstances, the amount payable by the petitioner shall be treated for the period commencing from 1.5.2017 to 30.4.2018 and necessary agreement shall be made by the 3rd respondent accordingly accepting the offer of Rs.55,00,000/- per annum. As the 4th respondent being declared as a non responsive bidder, the 3rd respondent shall return the amount paid by the 4th respondent including the E.M.D within a period of two weeks from the date of receipt of copy of the order. As it is represented by the 3rd respondent that the E.M.D remitted by the petitioner was adjusted towards arrears with respect to the previous years contract of the petitioner, the agreement shall be entered with the petitioner only on deposit of the E.M.D amount of Rs.5,00,000/- and after fulfilling other notified conditions.

10. With the above directions, the writ petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed.