

(2008) 11 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 13081 and 17582 of 2008

Panorama Enterprises and Another

APPELLANT

Vs

Tirumala Tirupati Devasthanams and Another

RESPONDENT

Date of Decision : 13-11-2008

Acts Referred:

Citation : (2009) 3 ALD 186 : (2009) 1 ALT 468

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Venu Gopal, T. Balaji and Surender Raj, for the Appellant; S.R. Ashok for D. Sethurami Reddy, S.C., for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Certain conditions incorporated in the tender documents issued by Tirumala Tirupati Devasthanams, while inviting tenders for award of contract of house keeping and sanitation works in some of its establishments, arise for consideration, in these writ petitions.

2. The Devasthanam issued a tender notification in April 2008, inviting tenders for award of contracts for maintenance and sanitation works in various establishments in Tirupati and Tirumala. According to the notification, tender documents would be furnished only to such of the agencies, which give a power-point presentation, as to their performance. Petitioner in W.P. No. 13081 of 2008 gave its power-point presentation, and accordingly it was supplied with tender document, vide letter dated 5.5.2008, of the Chief Engineer of the Devasthanam. The dates of opening of tenders were also furnished. The procedure comprised of technical and financial bids. The former were to be opened on 20.5.2008 and the latter on 26.5.2008. It is stated that the petitioner was qualified in the technical bid, and though he emerged as L1 in the financial bid, it was not awarded the contract. It is pleaded that the petitioner was denied the contract, on the basis of condition No. 4 in the tender document, dated 28.6.2008. It seeks a declaration that the action of the respondents, in not finalizing the contract, is illegal and

arbitrary, and seeks appropriate direction.

3. Petitioner in W.P. No. 17582 of 2008 also feels aggrieved by the conditions. The distinguishing feature is that though it purchased tender document, it did not submit its tender, on the apprehension that the evaluation as per condition No. 4 would result in denial of contract.

4. The petitioners contend that once the minimum qualifications are stipulated for a tender and the procedure of technical bid is introduced, there is no justification for the respondents, in prescribing a procedure to evaluate the qualification, even on the basis of the criteria in the technical bid. Certain other ancillary contentions are also urged.

5. On behalf of respondents, a counter affidavit is filed. It is stated that the condition was incorporated in the tender schedule, with a view to ensure objectivity, and the petitioners are estopped from assailing the same. Respondents contend that condition No. 4 would ensure that a proper and effective evaluation of the capabilities of the tenderers, is undertaken.

6. Heard Sri P. Venu Gopal, learned Counsel for the petitioners, and Sri S.R. Ashok, learned Senior Counsel appearing for the respondents.

7. Both the petitioners feel aggrieved by the condition No. 4. However, the difference is that while the petitioner in W.P. No. 13081 of 2008 submitted its tender and got cleared in technical bid, the petitioner in W.P. No. 17582 of 2008 does not appear to have submitted its tender, at all.

8. Over the years, the procedure to be followed, before any contract for works is awarded by a public authority, has undergone substantial changes. In the initial stages, the process of tender was confined only to identify the persons, who quote the lowest rates, and the contract used to be awarded to such persons. Experience, however, showed that the persons, who do not have the wherewithal and establishment, are prone to quote very low rate, with the sole object of bagging the contract. Therefore, the system of technical bid and price bid was introduced.

9. At the stage of technical bid, the credentials of a tenderer, particularly with reference to the previous performance and capabilities, would be evaluated. The price bids of only those tenderers, who are cleared at the technical bid level, are considered. The evaluation at the technical bid, virtually became irrelevant, in the context of acceptance of price bids, once a tenderer had cleared the hurdle of technical bid. Equalization of the tenderers, irrespective of their credentials, was found to be somewhat unreasonable. Therefore, the respondents thought it fit to take a part of the evaluation in the technical bid stage also, into account, while evaluating the price bid of a tenderer. It was in this context, that condition No. 4 was incorporated in the tender document, prescribing the relevant procedure. It reads as under:

(i) Contract will be awarded based on the joint evaluation of technical and

financial bid. Technical evaluation carries 40% weightage and financial evaluation carries 60% weightage. Technical evaluation is initially done for 30 marks, which will then be converted into maximum score of six, such that tenderer who get up to five marks will get a score of one, score of two for six to ten marks, score of three for eleven to fifteen, score of four for sixteen to twenty marks and score of five for twenty one to twenty five marks and score of six for twenty six to thirty marks. The parameters used for technical evaluation are total turnover relating to facility management services, years of experience and independent verification of tenderer's performance with a few of their existing clients. Based on the financial bids, tenders will be arranged in ascending order and assigned a numerical rank accordingly such that lowest bidder will get highest numerical rank. The ranks of technical score will be then multiplied by 40% and the rank of financial weightage score, the tender will be awarded to a tenderer, who has scored highest in the joint score. If the scores of two tenderers are same, then the tender will be awarded to the tenderer, who has scored higher in technical score.

(ii) If the successful tenderer's financial bid is higher by 50% of the lowest financial bid, the T.T.D. reserves the right to negotiate the rate with the tenderer and final award of tender in such cases is purely on the basis of reaching an agreement between TTD and tenderer. The TTD reserves the right not to award the tender to such tenderer despite getting highest joint score. If tenderer quote exceeds 100% of lowest tenderer, TTD can consider the next highest joint scorer subject to the condition that their financial quote also does not exceeds 10% of the lowest tenderer.

It may be true that the price quoted by the petitioner in W.P. No. 13081 of 2008 may have emerged as the lowest, and on account of the evaluation under condition No. 4, it could not be awarded the contract. However, it cannot be said that the condition referred to above is illegal or arbitrary, in any manner. It applies to everyone and it only provides for proper and objective evaluation of the bids of the tenderers.

10. There is a serious hurdle in the way of the petitioners, even to challenge the condition. The tender document was furnished 15 days prior to the date on which the technical bids were to be opened. The petitioners did not feel any illegality or hardship vis-a-vis condition No. 4. It is only after the tenders are opened that they have chosen to challenge the condition or the steps that ensued on its implementation. They are estopped from challenging the provision, once they did not express any demur, till the opening of the technical or price bids. They cannot be permitted to take a chance and to assail the condition, only when it operated against them. This Court does not find any basis to grant relief to the petitioners.

11. The writ petitions are, accordingly, dismissed.

There shall be no order as to costs.