

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

Writ Petition No.40287 of 2014

Date: 28.08.2015

Between :

M/s. Sri Sai Constructions, Office at D.No.9/430,
Near Balaji Gas Agencies, Srinivasa Nagar,
Proddatur, Kadapa District, rep.by its Managing
Partner, K.Prabhakar Reddy.

..... Petitioner

And

The State of Andhra Pradesh, rep.by its
Principal Secretary, Panchayat Raj Department,
Secretariat, Hyderabad and others.

..... Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.40287 of 2014

ORDER:

E-procurement tender notification was issued on 14.10.2014 for execution of work of providing BT surface to the road from TO 6-Mudigubba to Payagattupalli with an estimated cost of Rs.621.38 lakhs. The last date for receipt of the bids was 29.10.2014. The technical bids were opened on 30.10.2014 and the price bids were opened on 01.11.2014. The petitioner is one of the participants in the said tender process. According to the petitioner, even before the technical bids were opened, having regard to the conditions imposed in the tender notification, a representation was submitted by him seeking to relax the condition, more particularly with reference to possession of Hot Mix Plant within the radius of 70 KMs from the place of execution of work. No reply was furnished to the petitioner, but technical bids and price bids were opened as per the schedule and on 15.12.2014 the petitioner was given a communication disqualifying him from the tender process. Aggrieved thereby, the present writ petition is filed.

2. Learned counsel for the petitioner submits that imposing the condition of owning the Hot Mix Plant within the radius of 70 KMs from the work spot is an arbitrary decision and is not conducive to ensure fair competition by the contractors and it restricts the competition to the

persons who own/hires Hot Mix Plant within the distance and with high financial capacity. He further submits that the pre-condition of owning Hot Mix Plant within 70 KMs distance from the work spot is applicable only for execution of works up to Rs.5.00 Crores. Learned counsel primarily attacks the order of rejection of the petitioner's tender on the ground that it is bereft of reasons as to why his tender was rejected.

He further submits that the petitioner has possessed Hot Mix Plant within the distance of 78 KMs from the place of work and the Government of Andhra Pradesh issued orders in G.O.Rt. No.179, Transport, Roads and Buildings (R-I) Department, dated 06.02.2014, which exempts possession of Hot Mix Plant within 70 KMs radius of the place of work, if the cost of work is more than Rs.5.00 Crores and that the nature of work undertaken by the Roads and Buildings Department and the Panchayat Raj Department being one and the same, similar conditions would apply and not extending the same to the Panchayat Raj Department is illegal. He further submits that the entire tender process is vitiated on this ground and is liable to be set aside and the respondents may be directed to conduct fresh tender process for awarding the contract work.

3. This Court, by order dated 30.12.2014, made in WPMP No.50529 of 2014, directed that award of any tender, pursuant to e-procurement notice, vide NIT No.6/PMGSY-II/2014-15, dated 14.10.2014 of SEPR, ATP, for providing BT surface to the road from TO6- Mudigubba to Payagattupalli, including execution of work, be subject to the result of the writ petition.

4. The Government filed counter and sought vacation of the interim order.

5. Learned Government Pleader for Panchayat Raj submits that with due regard to the interim orders passed by this Court, directing that the award of any tender pursuant to e-procurement notice including execution of work should be subject to result of the writ petition, the tender process is not finalized and on account of pendency of the writ petition the work could not be taken up. He further submits that the GO relied on by the learned counsel for the petitioner has no application to the case on hand as the said GO was issued by the Transport, Roads and Buildings Department. He further submits that when similar request was made to the Panchayat Raj Department by the builders association to grant relaxation of possession of Hot Mix Plant if the work proposed to be executed is more than Rs.5.00 Crores, the said request was considered and rejected, vide proceedings, dated 25.03.2014, by assigning valid reasons. He, therefore, submits that the GO issued by the Transport, Roads and Buildings Department is not applicable to the Panchayat Raj Department. He further submits that there was no irregularity or illegality in rejecting the tender of the petitioner. It is not open to the petitioner to challenge the finalization of the tender process and insistence of possession of Hot Mix Plant within the radius of 70 KMs from the work spot as it is one of the conditions prescribed in the tender notification and, admittedly, the petitioner does not possess Hot Mix Plant within the radius of 70 KMs from the work spot.

6. The facts which are not in dispute are that the e-procurement tender notification was issued for execution of work of providing BT surface to the road from TO 6-Mudigubba to Payagattupalli with an estimated cost of more than Rs.6.00 Crores. One of the conditions prescribed as eligibility for participation in the

tender process is possession of Hot Mix Plant within 70 KMs distance from the work spot. Bidder can either own or hire. Admittedly, the petitioner did not possess Hot Mix Plant within 70 KMs distance from the work spot. Thus, though the tender notification mandates possession of Hot Mix Plant within the radius of 70 KMs from the work spot as condition precedent to participate in the tender process, knowing fully well his ineligibility the petitioner submitted his tender. Having realized that he is not qualified, he submitted a representation for relaxation of that condition.

7. The question of consideration of individual request does not arise when as a matter of policy, the department has taken a decision that they would insist for possession of Hot Mix Plant within 70 KMs distance from the work spot, even for the works of value of more than Rs.5.00 Crores, more so, when filing of bids concluded.

8. It is settled principle of law that the scope of constitutional Court in matters concerning the tender conditions and awarding of contracts is very limited. The Court can interfere where a larger public interest is involved; huge financial loss is caused to the State on account of certain tailor made conditions or an arbitrary/illegal decision is taken by an authority to favour one of the bidders. The case on hand does not come in the exceptional category of cases where the Court can interfere. The tender notification prescribed conditions to be fulfilled by bidders. Petitioner is asking for relaxation of mandatory conditions.

9. It is for the concerned department to insist fulfillment of appropriate conditions for proper execution of the works undertaken by it. In that view of the matter, the decision of the Panchayat Raj Department that the bidder should own a Hot Mix Plant or obtain lease of Hot Mix Plant within 70 KMs distance from the work spot for the

reasons as enumerated in the proceedings, dated 25.03.2014, cannot be found fault with.

10. It was the further contention of the learned counsel for the petitioner that the respondents, through mail dated 15.12.2014, only informed the petitioner that he was not selected in pre-qualification/technical bid, but did not assign reasons for rejecting his tender.

11. The e-mail, dated 15.12.2014, sent to petitioner shows that his tender was rejected and that he was advised to log into the web address given for more details. Learned counsel for the petitioner has not stated as to whether the petitioner has logged into the web address given and that the details for rejection of his tender are not available on web address given. Be that as it may, in the instant case, the reasons for rejection of his tender, obviously, as now stated in the counter affidavit, is that the petitioner did not fulfill the tender conditions, as he did not possess the Hot Mix Plant within 70 KMs distance from the work spot. This fact was also known to the petitioner. He was ineligible to participate in the tender process at the inception. Therefore, it cannot be said that prejudice is caused to the petitioner or there is serious violation of principles of natural justice warranting interference of this Court. Mere infraction by statutory authority in assigning reasons for rejection, when the reason is obvious and known to party, cannot be a ground to interject the bidding process by the competent Court in exercise of equitable and discretionary jurisdiction under Article 226 of the Constitution of India. In **Suryodaya Infra Projects (I) Private Limited v. National Mineral Development Corporation Limited**^[1], the learned single Judge of

this Court, on review of the entire case law on the subject, held that there is no need for the competent authority to assign reasons for rejection of any tender.

12. Therefore, I see no merit in the contentions of the learned counsel for the petitioner. Having regard to the facts of the case, the writ petition is devoid of merit and the same is liable to be dismissed.

13. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

14. As a sequel thereto, the miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P. NAVEEN RAO, J

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