

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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W.P. NO. 2298 of 2015

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Date of Judgment: 25.2.2015

Between:

M/s. V.K.A. Constructions Engineers & Contractors
...Petitioner

And

The State of Telangana and others

..Respondents

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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ORDER:

The petitioner herein is a contractor in civil engineering works with various Governmental departments (Central and State). On 24.12.2014 the respondents issued a tender notification inviting bids for two works/bid evaluations under e-procurement for periodical renewals to Sangareddy-Narsapur-Toopran-Gajwel-Jagdevpur road from km 25/0 to 35/6, 36/2 to 45/0 in Medak district and heavy periodical renewals to

Sangareddy-Narsapur-Toopran-Gajwel-Jagdevpur road from km 45/0 to 73/0, 74/0 to 75/5 and 77/4 to 91/050 in Medak district. The petitioner offered his tender for the said works and uploaded all the required documents to show his technical qualifications etc for getting the tender works. One of the eligibilities is that the bidder should have satisfactorily completed as prime contractor for similar nature of road works of the specified value in one financial year during the last five financial years i.e., from 2009-2010 to 2013-2014. The petitioner submits that he uploaded all the documents except experience certificate. It is stated that the petitioner himself was carrying out similar road works for the respondents themselves and sought experience certificate from 6th respondent-Executive Engineer under letters dated 21.8.2014, 25.8.2014, 22.11.2014 and 16.12.2014 to enable him to participate in the tender process. In response to the said letters, the petitioner was informed by the 6th respondent under his letter dated 17.12.2014 that the experience certificate for various works was already submitted to the 5th respondent-Superintending Engineer for counter-signature. But the petitioner did not receive the experience certificate duly counter signed by the 5th respondent, therefore, he could not upload the said experience

certificate. The present writ petition is filed when the petitioner's bid was rejected at the pre-qualification stage.

Counter-affidavit is filed on behalf of respondent No.4 and reply to it is also filed by the petitioner.

I have heard learned counsel for the petitioner as well as learned Government Pleader for Roads and Buildings appearing for the respondents.

It is stated by the learned Government Pleader for R & B that the petitioner having failed to upload the experience certificate, was found not qualified at the pre-qualification stage. He submits that the tender condition specifically stipulates that experience certificate issued by Executive Engineer and counter-signed by Superintending Engineer must be uploaded showing satisfactory completion of works and its quantity done by a tenderer during the last five financial years and it is on account of the said deficiency in complying with the tender condition that the petitioner's tender could not be considered at the pre-qualification stage. The learned Government Pleader also submits across the bar that tenders have since been finalized with regard to both works which are subject matter of tender notification and agreements were also executed in favour of successful bidders vide Agreement No. 61/2014-15, dated 11.2.2015 in favour of M/s. Sree Sai Ram Enterprises and

Agreement No. 63/2014-15, dated 16.2.2015 in favour of M/s. Siddhardha Constructions Pvt. Limited.

Evidently the petitioner who was working with the respondents was denied experience certificate in spite of his consistent demand as referred to above. Denial of such experience certificate by the respondents themselves has apparently resulted in the petitioner not uploading the experience certificate and consequently he was disqualified at the pre-qualification stage. Para-7 of the counter-affidavit specifically states that the petitioner has uploaded information in the form of M.B. extracts and correspondence with 6th respondent in respect of quantities of the items executed in the work of improvements to Peerzadiguda – Jodimela road in Ranga Reddy district, but the same was not accepted as it is not the requirement under the tender notification.

It is well settled that tender conditions which are essential are required to be complied with and fulfilled and neither Department nor tenderer can deviate the same. Hence it is not possible to overlook the deficiencies so far as the petitioner's tender is concerned that he did not have experience certificate. But it appears very unfair as the petitioner who was working with the respondents as a contractor for similar nature of works was denied the

experience certificate and thereby he lost an opportunity to get the tender and execute the works. However, remedy for the petitioner, in such a situation, is to take an appropriate action for damages, but no relief in the present case can be granted to the petitioner particularly in view of the fact that the works in question have already been allotted to third parties and the third parties have already entered into agreements with the respondents.

In the circumstances, therefore, the writ petition is dismissed along with miscellaneous applications, if any. However, the petitioner is at liberty to take such other appropriate steps in accordance with law as advised with respect to denial of the experience certificate to him and resultant loss suffered by him. No order as to costs.

VILAS V. AFZULPURKAR, J

Dt. 25.2.2015
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