

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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**WRIT PETITION No.11583 OF 2015**

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Between:

M/s.Chennai Radha Engineering Works (P) Ltd.

.. Petitioner

And

State of Telangana rep. by its Principal Secretary, Telangana, Secretariat,  
Hyderabad, and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 04.08.2015

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

1. Whether Reporters of Local newspapers Yes/No  
may be allowed to see the Judgment?

2. Whether the copies of judgment may be Yes/No

marked to Law Reporters/Journals

3. Whether Their Lordship wish to

see the fair copy of the Judgment? Yes/No

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**WRIT PETITION No.11583 of 2015**

**ORDER:**

Heard the learned Counsel for the petitioner, learned Standing Counsel for respondent Nos.1 to 4 and

Sri D.Prakash Reddy, learned Senior Counsel for respondent No.5.

The petitioner – Company is stated to be a specialist in Cargo handling operations, mechanical and electrical maintenance of Conveyor System in Thermal Power Stations. It has successfully undertaken coal handling contracts at Kakatiya Thermal Power Station – Stage – I and Rayalaseema Thermal Power Station – Stage –II in the erstwhile united State of Andhra Pradesh. While so, the respondents called for a tender for augmentation of coal handling plant at Kakatiya Thermal Power Plant – Stage –I and Stage –II by way of specification dated 27.10.2014. The tender was required to be submitted on the e-procurement platform by 4.00 p.m. on or before 12.11.2014. The tender process consists of two stages, one technical or prequalification bid and the second is price bid. The petitioner as well as the fifth respondent qualified in the technical or prequalification bid. In the case of price bid, the tenderer is supposed to upload the information in schedule – B and schedule B1 to B4. The petitioner originally submitted first bid at 3.43 p.m. on 12.11.2014 uploading the required information under the price bid for an amount of Rs.196,15,40,325/-. The said bid was revised with a revised figure of Rs.188,27,57,544/- later before 4.00 p.m. but, while uploading the information, it retained B1 schedule corresponding to the first quotation but uploaded B11 schedule which was not prescribed. The tender of the petitioner was not accepted. The petitioner

approached this Court by filing W.P.No.10950 of 2015 and, when the said matter was taken up for consideration, the second respondent informed that a letter of intent dated 15.04.2015 was issued in favour of the fifth respondent. The letter of intent issued on 15.04.2015 in favour of the fifth respondent is impugned in this Writ Petition.

Counter affidavit is filed by respondent Nos.2 to 4 admitting participation of the petitioner and the fifth respondent in the e-procurement platform for the above work. It was stated that, at 3.59 p.m. on 12.11.2014, the petitioner submitted its tender in commercial bid by uploading only schedule B11 which is not in line with the commercial template specified in specification. It was specifically denied that the system would not accept the amended price schedule with the same file as B1, B2 etc. It is also stated that the petitioner's second incomplete bid was uploaded with schedule B11 which was not mentioned in the tender document schedule and, as such, the same was not considered. The fifth respondent stood as L1 with the amount of Rs.189,00,00,000/- and the petitioner stood as L2 quoting the amount of Rs.196,15,40,325/- (first quotation).

A separate counter affidavit is filed by the fifth respondent specifically stating that the petitioner did not avail the operation of 'delete option' while uploading the revised schedule and, in view of the incomplete tender filed by the petitioner in the e-procurement portal, the second tender of the petitioner was not taken into consideration and the fifth respondent became the lowest tenderer. The other averments, in the counter affidavit filed by the fifth respondent, are not material for the disposal of the present case.

A reply affidavit is filed by the petitioner to the counter affidavit filed by respondent Nos.2 to 4 as well as counter affidavit filed by the fifth respondent. It is stated that the price bid may be the vital document where the bidder would directly type the lumpsum amount of contract value which would be encrypted and, if the lumpsum price was revised before the closing time, the price bid would display the latest price only for evaluation/ranking at the time of price bid opening. It is stated that schedules viz. B, B1, B2, B3, B4 are supporting documents. It is further stated that, even though the revised bid comprised of price bid and schedules B, B1 to B4, the information has to be furnished only in the prescribed proforma and accordingly B11 is in proforma of B1. It is also

stated that the petitioner became the lowest tenderer and hence negotiating and awarding contract to the second lowest tenderer is in total violation of the tender conditions.

Sri R.Raghunandan Rao, learned Senior Counsel for the petitioner, submitted that the total value of the work is available after the time of re-quoting the tender and B1 schedule is not material for considering the comparative values. He further submitted that, in fact, the fifth respondent had not given details in B1 schedule but only gave lumpsum figure in B1 schedule. He explained the circumstances under which B11 schedule was uploaded by stating that B1 schedule which was initially prepared for the first quotation could not be modified and hence, in those circumstances only B11 schedule was uploaded with the same proforma of B1 schedule.

Learned Standing Counsel for respondent Nos.1 to 4 brought to the notice of this Court various instructions contained in the tender schedule enabling the tenderers to modify/delete the schedules before the time of closure of the tenders. He further submits that the petitioner, instead of availing that benefit, chose to upload B11 schedule as well as B1 schedule along with schedules B2 to B4.

Sri D.Prakash Reddy, learned Senior Counsel for the fifth respondent, submitted that, in view of the improper uploading of information by the petitioner while revising the price, the re-quoted price was not taken into consideration by respondent Nos.2 to 4 and the petitioner became the lowest tenderer when the original quotation of the petitioner was taken into consideration and, however, since the petitioner did not comply with the requirements of the tender procedure, the bid of the petitioner was not considered at all.

The only point that arises for consideration is whether the price bid of the petitioner with lumpsum figure, at re-quoted price, should be taken into consideration by respondent Nos.1 to 4 along with schedule B1 to B4 and B11.

As stated above, schedule B1 corresponds to the figure originally quoted at 3.43 p.m. which was revised to a lesser price at 3.59 p.m. but B1 schedule remained as it is and a new schedule B11 was uploaded in the proforma of B1 schedule for a lesser price of Rs.188,27,57,544/-. As on the date of opening of

the tenders, respondent Nos.1 to 4 are having the tender of the petitioner with the amount of Rs.188,27,57,544/- with B1 to B4 schedules and B11 schedule. When the price quoted by the petitioner is compared with B1 and B11 schedules, it may create confusion in the minds of the employer, as B1 schedule indicates one figure, whereas B11 schedule indicates another figure. In view of the same, the employer – respondent Nos.1 to 4 took the bid of the petitioner as incomplete and did not consider the same and awarded the work in favour of the fifth respondent.

The work was awarded on 15.04.2015 and the fifth respondent has been undertaking the work for the last 3½ months. In the circumstances, rejection of bid of the petitioner, in view of the existence of B1 to B4, along with B11 schedule, by respondent Nos.1 to 4 cannot be held to be illegal. On the grounds of equity also, no enquiry can be made at this distance of time on the incomplete or improper submission of tender by the petitioner. This Court already held in W.P.No.6375 of 2015 dated 15.07.2015 by relying on **M/s.G.J.Fernandez v. State of Karnataka** that it is for the employer to ignore or waive non-essential condition while awarding contract but this Court cannot issue any mandamus to the employer to exercise that power of waiver.

The Writ Petition fails and is, accordingly, dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed. No order as to costs.

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**A. RAMALINGESWARA RAO,J**

Date:04.08.2015

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