

THE HON'BLE SRI JUSTICE A. RAJASEKHAR REDDY

WRIT PETITION No.626 of 2015

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Between:

P. Jaipal Reddy

PETITIONER

AND

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

RESPONDENTS

ORDER:

This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the 3rd respondent in not accepting the tender of the petitioner and accepting the bid of the 4th respondent for the work, viz., “the Construction of Gram Panchayat Building of Mukhtapur, Manoor Mandal of Medak District” under Tender Notice No.HD/172/2014-15 dated 18.09.2014, as illegal and arbitrary.

The case of the petitioner is that he registered as a Class IV Civil Contractor vide proceedings No.Estt/E1/23/Registration, Class IV/2011-2012, dated 13.01.2012, issued by the Superintending Engineer (R & B), Medak Circle, to execute civil works under various departments of Government and its undertakings. The 3rd respondent issued tender notice dated 18.09.2014 of SE PR Circle, Medak for construction of Gram Panchayat Building at Mukhtapur Village, Manoor Mandal of Medak District with an estimated cost of Rs.11,05,231/-. The tenders were called for under e-procurement. The petitioner, 4th respondent and some other contractors participated in the tender. It is stated that the petitioner quoted 7.77% less, 4th respondent quoted 6.50% less and other contractors quoted 4.67% less to the estimated cost. As the 3rd respondent is not finalising the bids though the petitioner is a lowest bidder, he made a representation dated 31.10.2014 to the 3rd respondent to allot the work. Then the 3rd respondent addressed a letter to the 2nd respondent entertaining a doubt over the registration as Class IV civil contractor under R&B Department, but the 2nd respondent instead of giving clarification to the said letter, through memo No.AEE/DEE (T)/Medak – tender/2014,

dated 22.12.2014 informed the 3rd respondent that he being the member of District Level Committee for registrations, he should not have such a doubt seeking clarification. Aggrieved by the same, the present writ petition is filed.

This Court granted interim order on 21.01.2015. A counter affidavit has been filed by the 3rd respondent admitting issuance of tender and participation by the petitioner as well as the 4th respondent by quoting lowest rate. The 3rd respondent took an objection that since the petitioner is registered as a Class-IV Civil Contractor under the Superintending Engineer, R & B Circle Medak, he can tender for the works only within the circle where registration is done. It is also stated in the counter that the petitioner registered under R & B circle, which means he has to tender for R & B circle only but not in Panchayat Raj Department Circle. The 4th respondent filed counter to the same effect stating that the 3rd respondent has issued work order to the 4th respondent vide Memo dated 2.01.2015, an agreement has been executed on 2.01.2015 and the construction activity is also commenced.

Learned counsel for the petitioner submitted that since the petitioner registered as Class-IV Civil Contractor by virtue of G.O.Ms.No.94 I & CAD (PW-COD) dated 01.07.2003, he has to be treated as contractor for all the departments in Medak Circle. The learned counsel also submitted that even as per Clause (d) of annexure-II to G.O.Ms.No.94, dated 01.07.2003, the contractors of Class-IV and V can tender for works only within the circle where registration is done.

Learned Government Pleader for Panchayat Raj reiterated the contentions in the counter affidavit. Sri V. Ravi Kiran Rao appearing for the 4th respondent also reiterated the submissions made in the counter

affidavit.

Now the issue that falls for consideration of this Court is whether the petitioner can participate in the tenders issued by the 3rd respondent for construction of Gram Panchayat Building, in Medak Circle.

As can be seen from the tender issued by the 3rd respondent, the construction of Panchayat Raj Building is in Medak Circle where the petitioner was registered as Class-IV Civil Contractor. Clause (a) to (d) of Annexure-II to G.O.Ms.No.94, dated 01.07.2003, reads as under.

“Clause (a): The contractors registered will be called as contractors of all Engineering Departments of A.P. State Government.

Clause (b): The registration of the contractors will be done in the following categories:

- (i) Civil contractors (of all public works department)
- (ii) Public Health Engineering
- (iii) Furniture
- (iv) Electrical
- (v) Transport
- (vi) Fabrication and Erection of structural steel.

Clause (c): Registration of contractors in each category will be done in the following classes separately under each one or more of the classes as they may desire.

- (i) Special Class
- (ii) Class.I
- (iii) Class.II
- (iv) Class.III
- (v) Class.IV
- (vi) Class.V

Clause (d): The contractors of Special Class, Class-I, Class-II and Class-III are eligible to take up the works throughout the state. The contractors of Class-IV and Class-V can tender for works only within the circle where registration is done.”

Admittedly, the petitioner is registered as Class-IV Civil

Contractor vide proceedings No.Estt/E1/23/Registration Class-IV/2011-2012, dated 13.01.2012 issued by the Superintending Engineer, R & B Medak Circle. As per Clause (a) the contractors registered will be called as contractors of all Engineering Departments of A.P. State Government. As per Clause (d) of Annexure-II to G.O.Ms.No.94, dated 01.07.2003, the petitioner is very much eligible for participating tenders within the Medak Circle since the tender document shows that the Superintending Engineer, Panchayat Raj, Medak Circle, issued the tender notification.

There is no dispute that as per Clause (d) the contractors of Class-IV and Class-V can tender for works only within the circle where registration is done. Admittedly, the petitioner was registered as Class-IV contractor within the Medak Circle and the present tender notification issued for construction of Panchayat Raj Building is also in Medak Circle. A reading of Clause (a) to (d) are very specific and clear. Therefore, I do not see any reason why the 3rd respondent sought for clarification from the 2nd respondent and the 2nd respondent also clearly stated that why the 3rd respondent got such a doubt. Since the petitioner is lowest bidder the 3rd respondent wants to eliminate the petitioner from the tender notice without any justifiable reason instead of following the G.O. It is very much clear that the 3rd respondent wants to wriggle out of the situation and award the work in favour of the 4th respondent against the interests of public exchequer, as such he sought clarification from the 2nd respondent and the 2nd respondent has not entertained the same, and in spite of the same, the 3rd respondent invented a new story and delayed grant of contract in favour of the petitioner, which is totally untenable and the same is deprecated. Since the 3rd respondent acted against the interests of the public exchequer, the writ petition is liable to be allowed with costs.

In view of the same, award of contract in favour of the 4th

respondent is set aside and the writ petition is allowed with costs of Rs.20,000/-, to be recovered by the Government from the salary of the 3rd respondent payable to the petitioner. The third respondent is directed to take action for award of the work to the petitioner. As a sequel, miscellaneous petitions, if any, shall stand closed.

A. RAJASEKHAR REDDY, J.

9th February, 2015
Js.