

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.6375 of 2015

% 01-6-2015

M/s. New Hyderabad Medak Transport,
Hyderabad,

Rep. by its Managing Partner

Mohd. Jaweed Ahmed

... Petitioner

Vs.

\$ The State of Telangana,

Rep. by its Prl. Secretary to the Consumer

Affairs, Food and Civil Supplies,

Secretariat Building, Hyderabad;

and 3 others

... Respondents

! Counsel for Petitioner: Sri Mummaneni Srinivasa Rao

Counsel for Respondent No.1: Government Pleader

for Civil Supplies

Counsel for Respondents 2&3: Sri A.Ravinder Reddy,

Standing Counsel.

Counsel for Respondent No.4: Sri T.Srikanth Reddy

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> Head Note:

? Cases referred:

1. (1993) 1 SCC 71
2. (1995) 1 SCC 478
3. 2012 (1) ALT 482

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.6375 of 2015

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Date: 01-6-2015

Between

M/s. New Hyderabad Medak Transport,

Hyderabad,

Rep. by its Managing Partner

Mohd. Jaweed Ahmed

... Petitioner

and

The State of Telangana,

Rep. by its Prl. Secretary to the Consumer

Affairs, Food and Civil Supplies,

Secretariat Building, Hyderabad;

and 3 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.6375 of 2015

Order:

The 2nd respondent-Corporation has called for tenders for transportation of food grains, pulses or any other commodities from various places within and outside the district to various places within

and outside the district under Stage-1 excluding the transportation to fair price shop points for the year 2015-16 vide

Re-Tender Notice dated 28-02-2015. The petitioner participated in the tenders and submitted all necessary documents. The tenders were opened on 10-3-2015.

It is submitted by the petitioner that the tender of the petitioner was rejected on flimsy ground that it has not produced the Permit Certificate for lorry bearing registration No.AP13X 3012. As per the Tender Conditions, the tenderer shall have 18 vehicles with Permit Certificates. The petitioner has 12 own vehicles and 6 hired vehicles and all the vehicles have valid Permit Certificates. The petitioner submitted Earnest Money Deposit of Rs.15 lakhs by means of a Demand Draft. On evaluation, the petitioner was found to be the lowest tenderer having quoted -5.03% on the existing rates.

2. According to the petitioner, the 2nd respondent-Corporation with an intention to help another Contractor deliberately rejected the tender of the petitioner without informing it about the fact that one of the Permit Certificates relating to a particular vehicle was expired.

It is the version of the petitioner that it was a long time contractor of the Corporation and on several occasions, the Corporation after verifying the documents gave opportunity to the tenderers to produce the originals

if there is any discrepancy but at no point of time, the tender was rejected except when the Tender Conditions are not fulfilled. It is submitted that in respect of the vehicle the Permit Certificate of which was found to be expired, it is said that the Permit Certificate is valid up to 23-10-2019 and according to the petitioner, the rejection of its tender on the ground that the petitioner does not possess valid Permit Certificate is untenable and illegal. It is under these circumstances, the petitioner filed the present writ petition for a Writ of *mandamus* declaring the action of the respondents-Corporation in rejecting the tender filed by it for Ranga Reddy district for Stage-I Contract as per the Re-Tender Notice dated 28-02-2015 as illegal, arbitrary and violative of Articles 14 and 19 of the Constitution of India

and to award the contract in its favour in case the petitioner is found to be the lowest bidder and pass appropriate orders.

3. In miscellaneous petition W.P.M.P.No.8478 of 2015 filed by the petitioner, on 12-3-2015, this Court passed an interim order directing the petitioner to produce the Permit Certificate before the 2nd respondent and on production of such Certificate, the 2nd respondent was directed to consider the tender application of the petitioner subject to its fulfilling the requisite Tender Conditions.

4. Subsequently, on hearing both sides, on 12-3-2015, this Court passed an interim order to the effect there shall be *status quo* in regard to the tender process.

5. Sri Venkatarama Lorry Transport, Nalgonda, represented by its Proprietor K.Balaraju filed an implead petition i.e. W.P.M.P.No.10464 of 2015 contending that the Tender Committee declaring it as L1 Tenderer closed the tender process and that the respondent authorities cannot once again reopen the e-procurement tender. Accordingly, the implead petition was allowed and Sri Venkatarama Lorry Transport was brought on record as respondent No.4. According to the implead petitioner, the technical bids were opened on 10-3-2015 and the technical bid of the writ petitioner was rejected for non-submission of relevant documents i.e. Permit Certificate for the vehicles intended to be used in transportation contract and after finalization of technical bids on the same day, the price bids were opened and the implead petitioner was declared as L1 Tenderer and therefore, the petitioner is not entitled to claim any relief in the writ petition.

6. The respondents 2 and 3-Corporation filed a counter affidavit contending, *inter alia*, as follows:

(a) The tender of the petitioner was rejected on the ground that the Permit Certificate for the vehicle bearing registration No.AP13X

3012 was not valid due to its expiry. The petitioner was therefore disqualified for submitting the expired Permit Certificate for one lorry and the remaining 4 tenders were declared technically qualified and financial bids were opened. The Tender Committee evaluated that Sri Venkatarama Lorry Transport is the L1 Tenderer. While so, pursuant to the direction of this Court, the petitioner submitted the original Permit Certificate along with the orders passed in W.P.M.P.No.8478 of 2015 to the respondent-Corporation. On receipt of the interim orders along with the representation of the petitioner, the Corporation has written a letter to the IT Secretary to provide necessary technical help to open the financial tender and evaluate the tender of the petitioner as directed by this Court.

It is submitted that the IT Secretary has directed the Service Provider to restage the tender of the petitioner in the technical stage for further evaluation process by the Corporation. It is further submitted that the Permit Certificate produced by the petitioner for the vehicle is valid up to 23-10-2019.

(b) Contending as above, the 2nd respondent-Corporation stated that it may be permitted to evaluate and award the contract at the earliest so as not to hamper the distribution of essential commodities under Public Distribution System as the tender called for is for the purpose of transportation of food grains.

7. I have heard Sri Mummaneni Srinivasa Rao, learned counsel appearing for the petitioner, the learned Government Pleader for Civil Supplies for the State of Telangana appearing for the 1st respondent, Sri A.Ravinder Reddy, learned Standing Counsel for the respondents 2 and 3-Corporation and Sri T.Srikanth Reddy, learned counsel appearing for the impleaded party-respondents No.4.

8. But for the decision of the Tender Committee, disqualifying the petitioner on the ground that photocopy of the Permit Certificate produced in respect of the vehicle bearing registration No.AP13X 3012 was not valid due to its expiry, the petitioner is the lowest

tenderer (L1). The contention of the petitioner is that in fact, the aforesaid vehicle has a valid permit till 23-10-2019 and out of mistake, the copy of the certificate which was expired was submitted and the 2nd respondent-Corporation ought to have informed about the invalidity of the certificate before disqualifying it.

9. On the other hand, it is the contention of the respondents 2 and 3-Corporation that as the certificate in respect of the aforesaid vehicle was found to be expired, the Tender Committee rejected the technical bid of the petitioner and therefore, the petitioner cannot agitate in the present writ petition that the 2nd respondent-Corporation ought to have afforded an opportunity to it to produce a valid certificate.

10. The version of the petitioner is that it was a long time contractor of the Corporation and on several occasions, on verifying the documents, the Corporation gave chance to the tenderers to produce the originals if there is any discrepancy in the documents submitted, but, at no point of time, the tender was rejected except where the terms and conditions are not fulfilled. Admittedly, the petitioner fulfilled all the terms and conditions of the tender and it is the L1 Tenderer. On the ground that the Permit Certificate produced by the petitioner in respect of a vehicle was expired, the petitioner was disqualified without conveying any information to it. According to the petitioner, it has a valid Permit Certificate in respect of the said vehicle but by mistake, it submitted a certificate which was expired.

11. The issue requires to be addressed in the present writ petition is whether on account of submission of an invalid certificate, the tender of the petitioner can be liable to be rejected automatically

without notice to it or whether the relief prayed for by the petitioner can be granted to it having regard to the facts and circumstances of the present case.

12. In **F.C.I v. KAMDHENU CATTLE FEED INDUSTRIES**, the Supreme Court took the view that a public authority possesses powers only to use them for public good, which imposes a duty to act fairly and to adopt a procedure which is 'fairplay in action'.

13. In **NEW HORIZONS LTD. V. UNION OF INDIA**, the Supreme Court took the view that the State action should be in consonance with standards or norms which should not be arbitrary, irrational or irrelevant. Terms and conditions of the tender should be construed from the standpoint of a prudent businessman.

14. In the instant case, the petitioner has not questioned the evaluation of tenders by the 2nd respondent-Corporation. It only questioned the procedure adopted by the 2nd respondent-Corporation in disqualifying it. The grievance of the petitioner is that before disqualifying it, the 2nd respondent-Corporation ought to have afforded an opportunity to explain about the production of Permit Certificate which is said to be invalid. According to the petitioner, he possessed a Permit Certificate which is valid up to 23-10-2019 but by mistake, he produced the certificate which was expired. The crucial question, therefore, would be as to whether the award of tender could be viewed so technically or a tenderer can be afforded opportunity to remove the ambiguity in any of the documents submitted by him.

15. In **KAMDHENU CATTLE FEED INDUSTRIES**

(1 *supra*), the Supreme Court pointed out that every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Therefore, this Court if it arrives at a conclusion that the decision making process is not fair, it can certainly interfere with the decision of the 2nd respondent-Corporation in disqualifying the petitioner and can grant the relief to the petitioner. The petitioner produced Permit Certificates to all the vehicles but in respect of one vehicle, the certificate was found to be expired.

This Court is in acceptance with the submission made by the petitioner that the 2nd respondent-Corporation before disqualifying the petitioner ought to have afforded an opportunity to it to explain the circumstances relating to filing of the Permit Certificate which was expired.

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16. Condition No.23(4) relating to procedure for bid submission enables the tenderer to submit hard copies of the documents. Therefore, apart from submitting the bid electronically, the petitioner is also permitted to submit hard copies of the documents. From this, it can be understood clearly that the 2nd respondent-Corporation intends to verify the documents thoroughly and a tender will be liable for rejection only after proper verification of all the documents. Therefore, it cannot be said that the tender conditions do not permit the petitioner to explain the ambiguity in any document or to furnish a correct document in case if a wrong document was submitted by mistake.

17. After passing of the interim order by this Court in W.P.M.P.No.8478 of 2015, dated 12-3-2015, the petitioner submitted a Permit Certificate in respect of the vehicle bearing registration No.AP13X 3012 and the

2nd respondent-Corporation on verification found it to be valid up to 23-10-2019. In Government contracts, interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India would be justified when not only it is arbitrary and *mala fide* but also

when the procedure is unfair, unreasonable and irrational.

18. In the instant case, if the petitioner which by mistake submitted an invalid document is not permitted to correct the mistake by producing the genuine document which it possesses, it would in the considered opinion of this Court, be totally unfair and unreasonable. The judgment relied upon by the implead petitioner-4th respondent in **M/s. Sri Laxmi Engineering Company v. Government of Andhra Pradesh**, which laid down the general principles and rendered with reference to the different set of facts and circumstances is not applicable to the facts of the present case. Since obviously the petitioner is the lowest tenderer disqualifying it on purely technical ground without affording an opportunity to produce the genuine certificate and awarding the contract to the 4th respondent cannot be said to be the result of a fair decision making process nor is it in the interest of the 2nd respondent-Corporation.

19. For the foregoing reasons, the 2nd respondent-Corporation is directed to award contract to the petitioner pursuant to the Re-Tender Notice dated 28-02-2015 for the year 2015-16 of Ranga Reddy district in the State of Telangana. This writ petition succeeds and the same is allowed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

01st June, 2015.

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Note:-

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HON'BLE SRI JUSTICE R.KANTHA RAO

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01st June, 2015.

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