

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION Nos.13897 and 13926 of 2015

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COMMON ORDER:

These two Writ Petitions are being disposed of by common order with the consent of the parties.

The case of the petitioners is that they are civil contractors. The third respondent issued an e-procurement notice dated 26.02.2015 for restoration of certain tanks under Mission Kakatiya Programme. The petitioner in W.P.No.13897 of 2015 applied for Thallakunta, Konda Cheruvu and Lothukunta tanks, whereas the petitioner in W.P.No.13926 of 2015 applied for Udugulakunta and Errakunta tanks. Later on, they received an intimation that they became successful tenderers at a contract price of Rs.6,05,303.63 and Rs.10,11,665.59 respectively and they were requested to submit original hard copies of uploaded and attached certificates/documents and Demand Drafts/bank guarantees towards the Earnest Money Deposit/Bid Security Fee. Accordingly, a letter of intimation dated 11.03.2015 was uploaded in the website also. It is the case of the petitioners that they have deposited the required amount within the prescribed date, but they were not given the work at the instance of the fourth respondent. Instead of entering into an agreement with the petitioners, a notification was issued on 24.04.2015 by the third respondent, without cancelling the earlier notification. Though the petitioners submitted a representation on 27.04.2015 to the second respondent, when no action was taken, the present Writ Petitions were filed.

Learned Government Pleader, on the basis of the written

instructions, submitted that though the facts with regard to the submission of tender and the petitioners becoming successful tenderers are not in dispute, the petitioners did not submit the Demand Drafts towards Earnest Money Deposit amount within time. In those circumstances, all the five tenders were cancelled on 24.04.2015 and a fresh tender notice was issued on 24.04.2015 with the bid opening date as 02.05.2015.

Though these Writ Petitions were filed well before the opening of tenders pursuant to the notification dated 24.04.2015, the Writ Petitions could not be taken up, and when the Writ Petitions were taken up for consideration, the bids pursuant to the re-notification were opened and the work was awarded to some third parties. The successful tenderers were not made parties to the Writ Petitions at the time of consideration of the present Writ Petitions.

However, the record was called for and it revealed that the Executive Engineer, I & CADD, I.B.Division, Jagtial, addressed a letter to the Superintending Engineer, Irrigation Circle, Karimnagar, and submitted a report that the petitioners in these Writ Petitions were successful bidders in respect of tender notice Nos.47, 48 & 49/2014-15 and 45 & 46/2014-15 respectively, but they did not respond within the stipulated time and hence five tenders were cancelled on 20.04.2015 and called for re-tenders by e-procurements which was published in Eenadu, Karimnagar Edition dated 24.04.2015 and Surya, Karimnagar District Edition dated 26.04.2015.

The file discloses that letter No.EE/IDJ/DB/D1/ 15/SE/IC/KNR, dated 15.04.2015, was addressed to the Superintending Engineer, Irrigation Circle, Karimnagar, cancelling the tenders on the ground that the bidders had not responded within the stipulated time. The letter dated 11.03.2015 addressed to the successful tenderers indicate that they should submit Earnest Money Deposit amount and

Bid Security on or before 13.03.2015. An office note was put up placing the proposal for awarding of the works to L2 or recall of the tenders and it contains the signature of the Executive Engineer with original date of 20.04.2015, corrected as 15.04.2015. The dates of submission of tenders are not indicated in the record. The letter dated 24.04.2015 intimating the Superintending Engineer by the Executive Engineer that the works were cancelled on 20.04.2015 and signing the note by the Executive Engineer with a corrected date on 15/20.04.2015 shows that the Executive Engineer has not acted *bona fide*. In the communication addressed to the learned Government Pleader, he changed date from 24.04.2015 to 01.05.2015 and the following information is furnished, but the same is absent in the rest of the communications addressed to the Superintending Engineer or later on communicated to the learned Government Pleader.

“It is submitted that Sri Kampalli Chandrashaker who participated in Tender Notice No.47, 48 and 49/2014-15 some drawn DD towards EMD Andhra Bank, Dharmaram, for Rs.13,255/- vide D.D.No.721565, dated 17.03.2015 and ASD for Rs.1,25,430/- at Andhra Bank, D.D.No.721566 dated 07.03.2015. The date of DDs are after stipulated time i.e., after 5 days. He has not approached within the time.”

Timely intervention by this Court would have saved the situation, but by virtue of the execution of agreement in favour of some third parties, pending consideration of the Writ Petitions, this Court is not inclined to consider the grievance of the petitioners. However, the Chief Engineer, I & CADD is directed to call for the record in respect of the above tenders and examine the action of the Executive Engineer in cancelling the tenders of the petitioners and re-notifying the same without following due procedure. If any violation is noticed in the action of the Executive Engineer, necessary departmental action be taken against him.

Accordingly, these two Writ Petitions are closed, but giving liberty to the petitioners to pursue their remedies, if any, in accordance with law. The miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

19.06.2015

Note: LR copy to be marked: No

B/o.

vs