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.2721 of 2015

Between:
K.V.V.S.N.Associates.

....Petitioner

and

The State of Telangana,
Rep.by its Principal Secretary, Mines and Geology Dept.,
Secretariat, Hyderabad, and others.

....Respondents

DATE OF JUDGMENT PRONOUNCED:05.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	**Yes**/No
2.	Whether the copies of judgment may be Marked to Law Reporters/Journals?	Yes/**No**
3.	Whether His Lordship wishes to see the fair copy of the Judgment?	Yes/**No**

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.2721 of 2015

ORDER:

The petitioner is a firm registered on 18.03.2006. The second respondent issued a tender notification on 30.01.2015 inviting tenders from eligible individuals/companies for the following work:

> "**Name of the work:** Excavation of Sand from Submergence areas of Manair River of LMP Project and transport same quantity of sand to nearby Stockyard (specified by TSMDC i.e., not more than 1km from river bank) and again loading of sand into the Lorries at Stockyard at Kazipur Village, Karimnagar Dist., Telangana State."

The period of contract mentioned was 36 months. The petitioner purchased the application for tender by paying requisite fee and filed the same. The tender application consists of two parts. Part-1 is technical bid and Part-2 is price bid. Both the parts have to be placed in a sealed cover including EMD amount. The last date for receipt of tender applications is 07.02.2015 at 2:00 pm and the tenders were to be opened on 07.02.2015 at 3.00 pm. On 06.02.2015, a pre-bid meeting was held in the office of the second respondent and all the tenderers attended the said meeting. In the presence of the representatives of the tenderers, the bids were opened on 07.02.2015. The technical bid of the petitioner was opened and the petitioner was found to be not qualified as the bid was filed on behalf of the firm. The rejection of the bid is challenged in the present Writ Petition.

The second respondent filed a counter affidavit stating that the petitioner did not fulfill the qualifying requirements as one of the eligibility criteria for participation in the tender is that the tenderer must be an individual or a company. Since the petitioner is a firm, the petitioner was found to be ineligible to participate in the tender. The Technical Committee of the second respondent Corporation scrutinized the documents of the petitioner firm and found that the petitioner is not qualified to participate in the tender. The price bids of the other three tenderers were opened and the third respondent became the lowest bidder.

The third respondent also filed a separate counter affidavit stating that without questioning the “qualifying requirements” of the tender, the present Writ Petition filed by the petitioner is not maintainable.

Learned Senior Counsel, Sri M.S.Prasad, appearing for the petitioner submitted that having issued the tender schedule, the tender of the petitioner should have been considered by the second respondent. He further submitted that when tenders of the individual or a company are accepted, there is no rationale in rejecting the tender of a firm. He stated that the requirement of tender from an individual or a company is vague as it was not mentioned that it should be registered under the Companies Act. He relied on **Food Corporation of India v. M/s.Kamdhenu Cattle Feed Industries**[1], **New Horizons Limited v. Union of India**[2], the decision of this Court in W.P.No.7359 of 2015, dated 01.06.2015, confirmed in W.A.No.443 of 2015, dated 05.06.2015, and also another order of this Court in W.P.No.6375 of 2015, dated 15.07.2015, confirmed in W.A.No.705 of 2015, dated 22.07.2015.

Learned Advocate General for the State of Telangana appearing for the second respondent, submitted that it is for the employer to prescribe the tender conditions and in the absence of challenge to the said tender conditions, this Writ Petition is not maintainable. He further submitted that since the petitioner was not eligible to submit the tender, the tender of the third respondent was accepted and he was awarded the work. Learned Advocate General relied on **Michigan Rubber (India) Limited v. State of Karnataka**[3]**.**

The only point that arises for consideration in the present Writ Petition is whether the tender of the petitioner, which is a firm, can be considered along with other tenders, which were filed on behalf of individuals/companies.

One of the qualifying requirements mentioned in the tender schedule is indicated as follows:

> "The tenderer must be a individual/a company who has executed in the last 3 (three years) at least 1 (one) work of value not less than Rs.5.00 crores (Rupees Five Crores) involving excavation and removal of any mineral including sand in State/Central Government Undertaking or large Public Limited Companies/and (or) Mines of any Company."

After issuance of the tender schedule, the manner of preparation of tender was indicated in paragraph 7 of the schedule. 7.1 deals with the authority to sign the tender and it reads as follows:

"**7.1 AUTHORITY TO SIGN THE TENDER**

7.1.1 In case of a individuals, the tenders may be signed only by individuals tenderers. Tenders of a Company shall be signed, on behalf of the Company, by a person authorized to do so and an appropriate Board Resolution showing the authority of the person to sign the tender on behalf of the Company shall accompany the tender. The Board Resolution for signing the documents shall be annexed to the tenders. The TSMDC may reject outright any tender unsupported by the adequate proof of the signatory's authority.

7.1.2 All signatures shall be dated and the Company's seal shall be placed below it.

7.1.3 All corrections are to be attested.

7.1.4 The rates quoted by the TENDERER shall be free from corrections/cutting and overwriting. Corrections, if any, shall be attested by the person signing the tender. Tenders containing overwriting, erased rate(s) or corrections without attestation shall be liable for rejection."

In Form 'C' of Part II, the full information about the tenderer was required and it makes provision for individuals and companies only. Thus, there was no ambiguity with regard to the limitation of the tender to the individuals and companies. The non-mentioning of a company registered under the Companies Act, 1956, in the qualifying requirements is not material in view of the required information that is sought in Form 'C' of Part II and paragraph 7.1 of the tender conditions. In the absence of any ambiguity and in view of the absence of eligibility to the firms to file the tenders, the tender of the petitioner's firm cannot be considered and it was rightly rejected.

M/s.Kamdhenu Cattle Feed Industries's case (supra) is an authority for the proposition that the inadequacy of the price officered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The said case is not applicable to the facts of the present case.

New Horizons Limited's case (supra) held that the State action should be in consonance with the standards or norms which should not be arbitrary, irrational or irrelevant. In the said case, the experience of constituents of the joint venture company to be treated as its own experience was the issue that arose and was considered. The said point also does not arise in the instant case.

This Court elaborately considered the case law on award of tenders in W.P.No.6375 of 2015 dated 15.07.2015, and the said decision was upheld by the Division Bench in W.A.No.705 of 2015, dated 22.07.2015, but the reliance on that decision is also of no avail to the petitioner.

The other decision in W.P.No.7359 of 2015, dated 01.06.2015, confirmed in W.A.No.443 of 2015, dated 05.06.2015, on which reliance was placed by the learned Senior Counsel for the petitioner, is also not applicable to the facts of this case.

In **Michigan Rubber (India) Limited**'s case (supra), the Supreme Court was considering the scope of judicial review in the case of Government contracts. In that case, the power of employer to tender conditions was discussed, and the learned Advocate General relied on the following observations made in the said decision:

> "As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to

> participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, the CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

This is not a case of mala fide action of the tendering authority or a misuse of statutory powers.

In view of the ineligibility of the petitioner, being a firm, for submitting the tender, this Court sees no ground to interfere with the award of the contract in favour of the third respondent by disqualifying the tender of the petitioner. It is for the employer to prescribe conditions in the tender and in that process it can limit the tender to certain categories also. This Court, while exercising the power of judicial review, cannot examine the rationale behind such limitation. This Court has to examine, when all conditions are satisfied by the tenderers, whether the action of the employer is arbitrary or actuated by malafides. This Court cannot rewrite the conditions of tender.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

05.08.2015

Note: Issue C.C by 10.08.2015.

B/o.
vs

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[1] (1993) 1 SCC 71

[2] (1995) 1 SCC 478

[3] (2012) 8 SCC 216