

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

WRIT PETITION No.33061 OF 2015

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7th DECEMBER, 2015

Between:

M/s.Sujana Constructions,
rep. by its Managing Partner,
R.Ram Mohan Rao.

.. Petitioner

and

The State of Telangana, represented by its
Principal Secretary, Transport, Roads &
Buildings Department,
T-Secretariat Buildings,
Hyderabad, and others. .. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.33061 OF 2015

ORDER

The petitioner and the fourth and fifth respondents herein submitted tenders in response to the Notification dated 03.08.2015 issued by the Roads and Buildings Department of the State of Telangana in relation to the work of periodical renewals

to Jangaon-Suryapet Road from Km 43/0 to 43/6, 59/0 to 61/0, 66/0-4 and 67/0 to 71/0 in Nalgonda District. Upon evaluation of their bids, the petitioner emerged as the third lowest tenderer (L-3), while the fourth and fifth respondents stood at first and second positions (L-1 and L-2) respectively. By way of this writ petition, the petitioner alleged that the bids of the fourth and fifth respondents were liable to be rejected as they were not in compliance with the tender conditions, viz., Condition No.3.1(c) of the 'Instructions to Tenderers' under the heading 'A-General' and Condition No.16.2 under the heading 'D. Submission of Tenders'.

Condition No.3.1(c) falling in the 'Instructions to Tenderers' under the heading 'A-General' reads as under:

'3. Qualification data of the tenderers

3.1 The tenderer shall upload the following particulars in the formats enclosed, supported by documentary evidence as specified in the formats.

a) ...

b) ...

(c) Owning of Hot Mix Plant within 70 Km distance from the work site as per G.O.Rt.No.179, T(R&B) (R-I) Department, dated: 06/02/2014. The bidder shall obtain and upload a certificate signed by concerned Executive Engineer and counter signed by the concerned Superintending Engineer certificate that the bidder is having Hot Mix Plant and it's location from work site.'

Condition No.16.2 relating to 'Submission of Tenders', to the extent relevant, is also extracted hereunder:

'16. Submission of Tenders:

1. ...

2. The tenderer shall invariably ensure that the following documents are uploaded online. The technical bid evaluation of the tenderers will be done on the certificates/documents uploaded through online towards qualification criteria furnished by them.

a. Check slip showing the requisite particulars/certificates that are enclosed under Annexure – I Qualification Information.

(b) (I)

‘Qualification Information’ in Annexure-I, referred to in Condition No.16.2, to the extent relevant, reads as under:

Sl. No.	Description	Remarks
1	...	
2	...	
3	...	
4	...	
5	...	
6	...	
7	...	
8	As per G.O.Rt.No.179, dated: 06/02/2014, the bidder should own the Hot Mix Plant within 70 Kms distance of the site of work for all the road works costing up to Rs.5.00 Crores involving Bituminous items of work.	Yes/No
9	...	
10	...	
11	...	
12	...	
13	...	
14	...	

The petitioner asserts that neither the fourth respondent nor the fifth respondent filed certificates specifying the distance of their hot mix plants from the location of the work site and, therefore, their bids were liable to be excluded from consideration at the outset.

Taking note of this contention, by order dated 07.10.2015, this Court granted interim stay of all further proceedings including concluding of the contract with the fourth respondent or fifth respondent pursuant to the price bids submitted by them in response to the Notification dated 03.08.2015.

The State and the fourth respondent filed petitions to vacate the above order. In response to the counter-affidavit of the fourth respondent, the petitioner filed its reply-affidavit.

Pleadings being complete and comprehensive arguments having been advanced by Sri P.Kamalakar, learned counsel for the petitioner, learned Government Pleader for Roads and Buildings and Sri S.Satyam Reddy, learned senior counsel representing Sri N.Indrasena Reddy, learned counsel for the fourth respondent, the matter is amenable to final disposal though it was listed for hearing on the interlocutory petitions.

It may be noticed that the fifth respondent (L-2), is no longer in the reckoning as the bid of the lowest tenderer (L-1), the fourth respondent herein, was accepted and as per the State and the fourth respondent, the agreement in relation to the subject work was concluded on 06.10.2015, prior to the passing of the interim order.

Sri P.Kamalakar, learned counsel, would point out that G.O.Rt.No.179, Transport, Roads & Buildings (R-I) Department, dated 06.02.2014 was issued by the Government reimposing the condition that contractors who undertook road works costing up to Rs.5.00 Crores, involving bituminous items of work, should own a hot mix plant within 70 Kms. distance of the site of work. Learned counsel would further point out that the condition reimposed under this G.O. was given effect to in the Tender Notification dated 03.08.2015. Reference in this regard was made to Condition No.3.1(c) which specifically referred to this G.O. and required the bidder to obtain and upload a certificate signed by the concerned Executive Engineer and counter-signed by the concerned Superintending Engineer that the bidder had a hot mix plant and indicating its location from work site. This was again reiterated in Condition No. 3.3(D)(b) dealing with qualification criteria for opening of the price bid, whereunder it was stipulated that as per G.O.Rt.No.179 dated 06.02.2014, the bidder should own a hot mix plant within 70 Kms. distance of the site of work for all road works costing up to Rs.5.00 Crores, involving bituminous items of work. Again in Condition No.16.2, reference was made to the check slip showing the requisite particulars/certificates that were to be enclosed under Annexure-I to the tender document. The Annexure again replicates the necessity for the bidder to furnish the requisite information as per G.O.Rt.No.179 dated 06.02.2014.

The crucial issue that falls for consideration before this Court is whether the certificate furnished by the fourth respondent was in compliance with the tender conditions.

The fourth respondent filed a copy of the certificate furnished by him along with his counter-affidavit and relying thereupon, Sri P. Kamalakar, learned counsel, would assert that it did not meet the requirement as stipulated under the tender conditions. The certificate submitted by the fourth respondent is extracted hereunder in its entirety:

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CERTIFICATE

This is to certify that to Sri Devaram Srinivas Reddy, Contractor Suryapet in Nalgonda District is having their own Hot-Mix Plant of capacity 60-80 (Model No: DM-50 & WMM – 80/100) TPH. The plant is in good working Condition and located at Jangoan-Suryapet road from km 71/4-6 R/S + 1.60 Kms away on cart track.

SD/-

23/5/15

Executive Engineer,
(R&B) Division, Nalgonda.

'Counter Signed'

Sd/-

17/6/15

Superintending Engineer
(R&B) Division, Nalgonda.

It may be noted that neither G.O.Rt.No.179 dated 06.02.2014 nor the tender conditions in the Notification dated 03.08.2015 prescribed a proforma for submission of the certificate by a bidding contractor as to the hot mix plant owned by him within the stipulated distance from the work site. The G.O. merely states that such hot mix plant should be within 70 Kms. distance from the work site, while the tender conditions mandate furnishing of a certificate from the Executive Engineer and counter-signed by the concerned Superintending Engineer confirming that the bidder has a hot mix plant and indicating its location from the work site. In essence, all that was required from the contractor was that he should obtain the aforesaid certification from the authorities concerned stating to the effect that he has his own hot mix plant and indicating its location. Unless such location fell within the distance of 70 Kms. from the work site, the tenderer would not be within the zone of reckoning.

Viewed in this context, the certificate furnished by the fourth respondent, in the considered opinion of this Court, fulfilled the tender requirement. The Executive Engineer, (R & B) Division, Nalgonda, certified thereunder that the fourth respondent

had his own hot mix plant of a particular capacity which was in a good working condition and was located at Jangaon-Suryapet Road from km 71/4-6 R/S + 1.60 Kms. away on cart track. This certificate was counter-signed by the Superintending Engineer, R & B Circle, Nalgonda. This certificate therefore made it clear that the fourth respondent owned a hot mix plant and also indicated its location. In his counter affidavit, the fourth respondent stated that his hot mix plant would be within a distance of two kilometres from the work site. This factual aspect is not disputed by Sri P.Kamalakar, learned counsel.

Further, the learned counsel is not able to demonstrate before this Court as to how this certificate falls short of the requirement as posited under the G.O. and the tender conditions. In the absence of a specific format being prescribed, requiring the actual distance to be indicated therein, the certificate furnished by the fourth respondent clearly demonstrating the location of his hot mix plant cannot be said to be deficient merely because the distance from the work site was not indicated therein. The distance was a verifiable fact in terms of the location of the fourth respondent's hot mix plant being spelt out clearly in the certificate and the authorities would be in a position to verify as to whether it was within the stipulated distance of 70 Kms. In fact, the fourth respondent's hot mix plant is situated within the distance of a mere two kilometres from the work site.

Sri P.Kamalakar, learned counsel, would place reliance on ***PLR PROJECTS PVT. LTD., REP. BY ITS MANAGING DIRECTOR, SRI P.LAKSHMU REDDY V/s. GOVERNMENT OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, IRRIGATION & COMMAND AREA DEVELOPMENT***, wherein a Division Bench of this Court held to the effect that if the tenderer failed to upload a document which was mandatory as per the tender conditions, his bid would be ineligible for consideration. However, the failure in the case before the Division Bench was patently manifest whereas the petitioner is presently unable to demonstrate before this Court as to how the certificate furnished by the fourth respondent did not meet the requirement, be it under the G.O. or the tender conditions.

The petitioner therefore failed to make out a case warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. The writ petition is devoid of merit and is accordingly dismissed. Interim order dated 07.10.2015 shall stand vacated. Pending miscellaneous petitions shall

also stand dismissed. No order as to costs.

SANJAY KUMAR, J

7th DECEMBER, 2015

PGS