

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.7359 of 2015

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Date: 01-6-2015

Between

M/s. Sri Balaji Transport,
Rep. by its Managing Partner
K.Venkateshwarlu Gupta,
Proddatur, Kadapa district

... Petitioner

and

The State of A.P.,
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.7359 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 of Kurnool 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 Tender Notification dated 27-02-2015.

The petitioner participated in the tenders and submitted all necessary documents. The tenders were opened on 12-3-2015. It is submitted by the petitioner that the tender of the petitioner was rejected on flimsy ground that it has not filed the Fitness Certificate for lorry bearing registration No.AP04X 9954. As per the Tender Conditions, the tenderer shall have 18 vehicles owned/ hired with R.C. books, latest Form 24-B, Fitness Certificates and valid Permits of the vehicles declared in the tender. The petitioner has 18 own vehicles and all the vehicles have valid Fitness Certificates.

The petitioner submitted Earnest Money Deposit of Rs.12 lakhs by means of a Demand Draft. It is submitted that the financial bid of the petitioner was not opened and therefore, the bid of the petitioner was not evaluated, as such the petitioner is questioning the action of the

2nd respondent-Corporation in rejecting the tender of the petitioner in not opening the financial bid of the petitioner for evaluation of the price quoted by it.

2. According to the petitioner, the 2nd respondent-Corporation with an intention to help other Contractors deliberately rejected the tender of the petitioner by not opening the financial bid of the

petitioner illegally and without informing it about the fact that one of the Fitness Certificates relating to a particular vehicle was not produced. 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 Fitness Certificate of which was found to be not filed, it is said that the said certificate got mixed with other papers and according to the petitioner, the rejection of its tender on the ground that the petitioner did not file Fitness 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 Kurnool district for Stage-I Contract as per the Tender Notification dated 27-02-2015 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. On 23-3-2015, this Court passed an interim order directing the petitioner to submit the Fitness Certificate before the respondent authorities and on production of such Certificate, the respondent authorities were directed to receive the Fitness Certificate and permit it to participate in the tender process.

4. Subsequently, on hearing both sides, on 01-4-2015, this Court passed an interim order to the effect that there shall be *status quo* in regard to the finalization of tender process.

5. The 2nd respondent-Corporation filed a counter affidavit contending, *inter alia*, as follows:

(a) The tender of the petitioner was rejected on the ground that the Fitness Certificate for the vehicle bearing registration No.AP04X 9954 was not filed. The petitioner was therefore disqualified for non-submission of the Fitness Certificate for one lorry.

(b) It is further submitted that by the time of receipt of the interim order dated 23-3-2015 passed by this Court, the tender process was not finalized. Therefore, in obedience to the orders of this Court, the Fitness Certificate of the petitioner was taken into consideration to participate in tender process. Accordingly, the Corporation has sent a fax message to attend for opening of financial bids of both tenderers on 01-4-2015 at 12.30 p.m. at Head Office. The 4th respondent disagreed for receiving the fax message. Finally, the 3rd respondent has pasted the said fax message at the main door of tenderer official address with due witness of VRO and others.

(c) Nextly, it is submitted that earlier, before opening the tender of the petitioner, negotiations were conducted with the 4th respondent and it has reduced the rate from 14.45% to 11.99% over the existing rate. As per Clause 14 of the Tender Conditions, depending on the lowest rates received negotiations will be conducted with L1 Tenderer only and during negotiations, no Tenderer is permitted to quote higher rates i.e. more than the rates quoted in the original tender.

(d) 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.

6. The 4th respondent filed a counter affidavit contending, *inter alia*, that it is pertinent to mention that the bidders whose bids are qualified in technical evaluation alone will be entitled to get their financial bids opened. Since the technical bid of the petitioner was rejected, it is not entitled for opening of the financial bid. It denied the allegation that the 2nd respondent-Corporation with a view to help the other contractors has deliberately rejected the technical bid of the petitioner.

A reading of the tender conditions reveals that the online bids are liable for rejection if any of the conditions are not satisfied. Therefore, it prayed to dismiss the writ petition.

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 Andhra Pradesh appearing for the 1st respondent,

Sri K.Raghu Babu, learned Standing Counsel for the respondents 2 and 3-Corporation and Sri N.Siva Reddy, learned counsel appearing for the 4th respondent.

8. But for the decision of the Tender Committee, disqualifying the petitioner on the ground that the Fitness Certificate was not filed in respect of the vehicle bearing registration No.AP04X 9954, the petitioner is otherwise qualified having fulfilled all other conditions of the tender. The contention of the petitioner is that in fact, the said certificate got mixed up with other papers and out of mistake, the certificate was not furnished and the 2nd respondent-Corporation ought to have informed about the non-submission 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 Fitness Certificate in respect of the

aforesaid vehicle was not filed, 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 the Fitness 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. On the ground that the Fitness Certificate in respect of a vehicle was not filed by the petitioner, the petitioner was disqualified without conveying any information to it. According to the petitioner, the Fitness Certificate in respect of the said vehicle got mixed up with other papers and could not be filed.

11. The issue requires to be addressed in the present writ petition is whether on account of non-submission of the Fitness Certificate in respect of a vehicle, 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 non-submission of Fitness Certificate which is said to be mixed up with other papers. According to the petitioner, it possessed the Fitness Certificate but by mistake, the said certificate was not filed. The crucial question, therefore, would be as to whether the award of tender could be viewed so technically or a tenderer can be afforded an 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 Fitness Certificates to all the vehicles but in respect of one vehicle, it is said that the certificate was mixed up with other papers and it could not be filed. 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 non-filing of the Fitness Certificate.

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 document in case if it was not submitted by mistake.

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17. After passing of the interim order by this Court on 23-3-2015, the petitioner submitted a Fitness Certificate in respect of the vehicle bearing registration No.AP4X 9954 and the 2nd respondent-Corporation on verification found it to be valid. 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 did not submit a document is not permitted to correct the mistake by producing the same which it possesses, it would in the considered opinion of this Court, be totally unfair and unreasonable. Obviously, disqualifying the petitioner on purely technical ground without affording an opportunity to produce the Fitness Certificate 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 receive the Fitness Certificate produced by the petitioner relating to lorry bearing registration No.AP04X 9954, evaluate the tenders and award contract in favour of the petitioner if it is found to be the lowest tenderer after opening the financial bid pursuant to the Tender Notification dated 27-02-2015 for the year 2015-16 of Kurnool district in the State of Andhra Pradesh. 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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