

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

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1133 OF 2015

DATED: 29.12.2015

Between:

M/s.Sri Sai Constructions

... Appellant

and

The State of Telangana and others

... Respondent

**THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT**

WRIT APPEAL No.1133 of 2015

PC: (per the Hon'ble The Acting Chief Justice Dilip B. Bhosale)

This writ appeal is directed against the order dated 19.11.2015 passed in Writ Petition No.17926 of 2015 whereby the Writ Petition filed by the appellant has been dismissed.

The appellant filed Writ Petition for a mandamus to declare the action of the second and third respondents in opening the price bids of the fourth respondent in connection with tender notice, dated 29.01.2015 issued by the second respondent in respect of two works of laying the roads.

The only contention urged by learned counsel for the appellant challenging the order of learned Single Judge is that the fourth respondent did not furnish details relating to the works on hand in order to assess the bid capacity, as provided for under clause 3.1(e) of the tender document/notice dated 29.01.2015. Clause (e) provides that a bidder shall furnish details of existing commitments i.e. works on hand and works for which tenders are submitted in

statement No.IV with the supporting certificate. Learned counsel for the appellant vehemently submitted that the fourth respondent suppressed this information so as to enable the second respondent to assess its bid capacity and since there is a clear violation of the terms and conditions of the tender notice, its bid ought to have been rejected outright without even opening the price bid.

We have perused the impugned order. We have also noticed the 6% difference between the price quoted by the appellant and the fourth respondent. In this backdrop, it is relevant to reproduce the reasons recorded by the learned Judge, while dismissing the Writ Petition. The relevant observations in the impugned order read thus:

“While it is true that respondent No.4 has not furnished the details regarding the works on hand as required by the aforementioned clause, in my opinion, non-compliance of every condition would not vitiate the tender process. If respondent No.4 has not furnished the details of works on hand and its tender was accepted by respondent Nos.1 to 3 without considering those works, the whole tender process would have been vitiated. But, in the instant case, respondent No.3 has called for the details relating to the works on hand and after being satisfied that respondent No.4 has the bid capacity to execute both the tender works, it was entrusted with those works.

It is trite that this Court, while exercising jurisdiction under Article 226 of the Constitution of India will not act as an appellate authority and interfere with every violation of the tender conditions. It only exercises the power of judicial review in order to examine whether the decision taken by the State or its instrumentalities in the matter of award of contract is vitiated by patent illegality or arbitrariness. Evidently, what this Court is concerned with is whether the decision making process is fair or not and it is not concerned with the merits of the decision. (See **Tata Cellular vs.**

Union of India^[1], Asia Foundation & Construction Ltd. vs. Trafalgar House Construction (I) Ltd.,^[2] Raunaq International Ltd. vs. I.V.R.Construction Ltd.^[3] and Air India Ltd. vs. Cochin International Airport Ltd.^[4])

While exercising its power of judicial review, this Court would keep in view the public interest, which is of paramount importance and it will not interfere with the decision of the public authority merely because certain violations have taken place, unless such violations have occurred on account of arbitrary or *mala fide* action on their part. The petitioner has not attributed any *mala fides* to any of the official respondents. Even if at one stage, the tender condition as referred to above was not followed by respondent No.4, the same did not affect either the right of the petitioner or of public interest. Admittedly, there exists huge disparity in the prices quoted by the petitioner and that of respondent No.4. As noted above, the difference of price is as much as more than 6%. If this Court interferes with the decision of entrustment of contract to respondent No.4, that would deny the State saving of substantial amount in getting the works executed.”

From bare perusal of the reasons recorded by learned Single Judge, we do not find any reason to interfere with the impugned order. Hence, the appeal is dismissed.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

29th DECEMBER, 2015.

S.V. BHATT, J

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[\[1\]](#) (1994) 6 SCC 651

[\[2\]](#) (1997) 1 SCC 738

[\[3\]](#) (1999) 1 SCC 492

[\[4\]](#) (2000) 2 SCC 617