

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

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL NO.182 OF 2015

DATED:4.3.2015

Between:

M/s. V.K.A. Constructions Engineers & Contractors,
Represented by its Managing Partner
Sri K.R. Anil Karan, 11-13-1-56/2 (Plot No.273)
Road No.9, Vasavi Colony, Saroornagar, Hyderabad

... Appellant

And

The State of Telangana,
Rep. by its Principal Secretary, Transport,
Roads and Buildings Department
Secretariat
Hyderabad
and others

... Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL NO.182 OF 2015

JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is directed against the judgment and order of the learned Trial Judge dated 25.2.2015 by which His Lordship has been pleased to refuse the relief as sought for.

2. The writ petitioner – appellant in response to a tender notice submitted a tender enclosing relevant documents except the requisite experience certificate of executing similar nature of works, because the said certificate was not issued wrongfully by the Roads and Buildings Department though repeatedly the said Department was asked for furnishing the same. There is no dispute that the writ petitioner - appellant could not furnish the certificate along with the tender document as a result whereof, at the threshold, the petitioner's attempt to participate was frustrated. It is asserted by the appellant before the learned Trial Judge as also before us that it is prepared to offer the price for construction of works under tender at much lower than the person whose tender has been accepted. They alleged that in the process unnecessarily the government exchequer has been drained out for extraneous reason. In that connection, the following relief has been asked for in the writ petition:

“...to issue a Writ or order/s more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not considering the bids of the petitioner as responsive in respect of works e-NIT Nos: (1)11/MDK/6/E-IN-C(R&B) SR & CRN/Non-plan/2014-15 dated 24/12/2014 and (2) 11/MDK/7/E-IN/C(R&B) SR & CRN/Non-plan/2014-15 dated 24/12/2014, as being illegal, arbitrary, unconstitutional and violative of Articles 21 of the Constitution of India and consequently direct the respondents to consider the bids of the petitioner in respect of works e-NIT Nos: 1)11/MDK/6/E-IN-C(R&B)

SR & CRN/Non-plan/2014-15 dated 24/12/2014 (Periodical renewals to Sangareddy-Narsapur-Toopran-Gajwel-Jagadevpur road from km 25/0 to 35/6, 36/2 to 45/0 in Medak District and (2) 11/MDK/7/E-IN-C(R&B)SR & CRN/Non-plan/2014-15 dated 24/12/2014, (Heavy periodical renewals to Sangareddy-Narsapur-Toopran-Gajwel-Jagdevpur road from km 45/0 to 73/0, 74/0 to 75/5 & 77/4 to 91/050 in Medak district by taking into consideration the similar works done by the petitioner and also taking into consideration the quantities of items executed in the work "Improvements to Peerazadiguda-Jodimetla road from KM 0/0 to 9/2 in RR Dist" and be pleased to pass such other order/s as this Hon'ble Court may deem fit and proper in the interest of justice."

3. Avoiding all much details, it appears to us that the writ petitioner – appellant wanted to participate in the tender process without the relevant experience certificate as it thought that this document does not stand in the way for consideration of tender by the concerned department as the appellant has admittedly performed work of similar nature in the same department, which is at fault for non-issue of execution certificate. According to the learned Senior Counsel appearing for the appellant before us, in order to render substantial justice the certificate does not matter and what matters is factum of experience. We are unable to accept this contention. As rightly been held by the learned Trial Judge a pre-condition is furnishing of certificate, a document which records the factum of experience. Since this document is an essential part of the tender document, we are unable to interfere with the findings of the learned Trial Judge. But, we find force in the argument of the learned Senior Counsel for the appellant that the respondent concerned is negligent in taking action on the application of the appellant for issuance of experience certificate. From the findings of the learned Trial Judge we note that the request was made by the appellant in writing as far back as on 21.8.2014 for the first time which was long before issuance of tender in December 2014. There may be varieties of reasons for not issuing the certificate by the concerned department, but at least on receipt of the application, the department concerned should have responded.

4. Accordingly, we feel that there has been culpable negligence in not considering the matter of issuance of experience certificate by the concerned respondent authority. We therefore direct the third respondent

– the Engineer-in-Chief (Roads & Buildings) to enquire into this matter as to why the certificate of experience was not issued to the writ petitioner – appellant for performing earlier similar nature of works, as a result whereof it has been precluded unduly from participating in subsequent tender process which is subject matter of the writ petition to execute similar works. After holding the enquiry, if he finds that anyone is responsible for not taking any action, he shall take appropriate action in accordance with law against him. In the mean time, he shall see that the request of the writ petitioner for issuance of certificate is considered, and if it is found that the writ petitioner has performed work for which issuance of certificate is necessary, the certificate must be issued within a period of eight weeks from the date of communication of this order.

5. Save as above, we do not find anything to add or subtract to the order of the learned Trial Judge. The appeal is accordingly disposed of at the admission stage.

Pending miscellaneous petitions, if any, shall stand closed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

4.3.2015

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