

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

W.A. No.446 of 2015

PC: *(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)*

Heard Sri S.Ramachandra Rao, learned Senior Counsel for appellant, Sri M.S.Prasad, learned Senior Counsel for respondent No.1, Sri A.Jagan, learned counsel for respondent Nos.3 and 4 and the learned Government Pleader for Civil Supplies.

The 4th respondent in W.P.No.6375 of 2015 is the appellant herein. The appellant challenges the order dated 01.06.2015 in W.P.No.6375 of 2015. The parties are referred to as arrayed in W.P.No.6375 of 2015.

M/s New Hyderabad Medak Transport, Bazarghat, Hyderabad filed W.P.No.6375 of 2015 for Writ of Mandamus declaring the rejection of tender filed by the petitioner in response to tender notification No.PDS 2/Movt/FG 5(1)/Stage I Tenders/ 2015-16/TS dated 28.02.2015, as illegal, arbitrary, unreasonable, and unconstitutional. The petitioner further prayed for a direction to award the contract to petitioner if the petitioner is found to be the lowest tenderer.

The averments, in brief, are that the petitioner is a transport contractor of food grains, other essential commodities, goods etc. The petitioner was the contractor of the 2nd respondent Corporation. The 2nd respondent through tender notification No.PDS 2/Movt/FG 5(1)/Stage I Tenders/ 2015-16/TS dated 28.02.2015 called for tenders for transportation of food grains, pulses or other commodities from various places within and outside the district under Stage-1. The subject tender does not cover transportation of commodities to fair price shop points in the district. The contract period is for the year 2015-16. The tender schedule reads as follows:

S.No.	Item	Description
xxx	Xxxx	xxxxxx
xxx	Xxxx	xxxxxx
xxx	Xxxx	xxxxxx
13.	Bid Document downloading start date	01.03.2015 at 11.30 am onwards
14.	Bid Document downloading end date	10.03.2015 at 12.00 noon
15.	Last date & time for receipt of online bids	10.03.2015 at 12.00 noon
16.	Last date and time for receipt of hard copies of technical bids	10.03.2015 at 1.00 pm

17.	Technical bid opening date and time (qualification and eligibility stage)	10.03.2015 at 2.00 pm
18.	Price Bid opening date and time (financial bid stage)	10.03.2015 at 3.30 pm
19.	Place of tender opening	Andhra Pradesh State Civil Supplies Corporation Ltd., Regd. Office: 6-3-655/1/A, Civil Supplies Bhavan, Somajiguda, Hyderabad – 500 082, Telangana, India If the dates mentioned above are declared as holidays, the Tenders will be received and opened on the next working day at the same time.
xxx	Xxxx	xxxxxx
xxx	Xxxx	xxxxxx

The petitioner claims to be fully compliant of the conditions/ requirements of tender dated 28.02.2015. The petitioner by enclosing all the requisite documents submitted the tender to

2nd respondent. On 10.03.2015, the petitioner's tender was rejected on the ground that the petitioner did not enclose the permit certificate for lorry bearing No. AP 13 X 3012. The petitioner alleges that the rate quoted by the petitioner is the lowest price i.e., -5.03 % on the existing rates. The disqualification of petitioner's tender by the 2nd respondent is not consistent with the past conduct of

2nd respondent and also not conforming to the terms and conditions of the bid document. As a matter of fact, the petitioner possessed valid permit certificate for the

vehicle referred to above up to 23.10.2019 and due to inadvertence, xerox copy of an expired permit certificate was enclosed with the bid document.

It is also the case of writ petitioner that the non-submission of permit certificate cannot be treated as a ground for disqualification and the document can be replenished even after the last date

for submission of tender document. Therefore, the rejection of petitioner's tender on the ground of not filing valid permit is illegal and arbitrary. Hence, the writ petition.

It is a matter of record that on 12.03.2015 in W.P.M.P.No.8478 of 2015, the following direction was issued by the Court:

"Heard learned counsel on either side.

The petitioner is directed to produce permit certificate before the 2nd respondent and on production of such certificate, the 2nd respondent is directed to consider the tender application of the petitioner subject to its fulfilling the requisite conditions".

On 01.04.2015, the 4th respondent/appellant herein was impleaded as party respondent to W.P.No.6375 of 2015. The interim direction dated 12.03.2015 was modified to *status quo* in regard to the tender process be maintained for a period of two weeks and the interim order of *status quo* was extended from time to time till the writ petition was disposed of through the impugned order.

The 2nd respondent/Corporation filed counter affidavit and the reply on the circumstance-in-issue is that the tender of petitioner was rejected on the ground that the permit certificate for vehicle No.AP 13 X 3012 filed with tender document was not valid.

The enclosed certificate covers a period expired long ago.

After disqualifying the writ petitioner's tender, the tender committee after evaluation of valid price bids, noted that the 4th respondent is the lowest tenderer. As already noted, the writ petitioner obtained interim direction to submit permit certificate for vehicle No.AP 13 X 3012 and in compliance thereof, the certificate was produced by the writ petitioner to the 2nd respondent. The 2nd respondent claims to have received the copy of permit produced by the writ petitioner and thereafter requested the

service provider to render technical help to re-stage the tender process to include the tender of writ petitioner for further evaluation. From the stand taken by the 2nd respondent, it is evident that the 2nd respondent desired to re-stage the tender process by including the tender of petitioner as well.

Through the order dated 01.06.2015, the learned Single Judge, after referring to the tender conditions and the ratio of the Hon'ble Supreme Court in **F.C.I v. KAMADENU CATTLE FEED INDUSTRIES (1993) 1 SCC 71**), held as follows:-

18. In the instant case, if the petitioner which by mistake submitted an invalid document is not permitted to correct the mistake by producing the genuine document which it possesses, it would in the considered opinion of this Court, be totally unfair and unreasonable. The judgment relied upon by the implead petitioner- 4th respondent in M/s.

Sri Laxmi Engineering Company v. Government of Andhra Pradesh (2012 (1) ALT 482), which laid down the general principles and rendered with reference to the different set of facts and circumstances is not applicable to the facts of the present case. Since obviously the petitioner is the lowest tenderer disqualifying it on purely technical ground without affording an opportunity to produce the genuine certificate and awarding the contract to the 4th respondent 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 award contract to the petitioner pursuant to the Re-Tender Notice dated 28.02.2015 for the year 2015-16 of Ranga Reddy district in the State of Telangana. This writ petition succeeds and the same is allowed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs

Hence, this writ appeal.

Sri S.Ramachandra Rao, learned Senior Counsel, contends that the order impugned in the writ appeal is *prima facie* illegal and contrary to the settled principles of law in the matters of grant of tenders and judicial review by the Courts. It is contended that through the order impugned in the writ appeal, the learned Single Judge has virtually re-written the conditions of bid document and such discretion is not available in judicial review under Article 226 of the Constitution of

India. The non-compliance by a tenderer of a valid condition attracts the consequences of rejection and the documents which are required to be submitted along with the tender document must be submitted with the tender and within the time. In the case on hand, even on the admission of writ petitioner, the permit certificate of one of the vehicles is not filed along with the tender document. No exception can be taken to the rejection of writ petitioner's tender on technical grounds. The learned Senior Counsel places strong reliance upon the following decisions:

1. **GLODYNE TECHNOSERVE LIMITED v. STATE OF MADHYA PRADESH AND OTHERS ((2011) 5 SCC 103)**
2. **RAM GAJADHAR NISHAD v. STATE OF U.P AND OTHERS ((1990) 2 SCC 486)**
3. **SORATH BUILDERS v. SHREEJIKRUPA BUILDCON LIMITED AND ANOTHER ((2009) 11 SCC 9)**
4. **SIEMENS PUBLIC COMMUNICATION NETWORKS PRIVATE LIMITED AND ANOTHER v. UNION OF INDIA AND OTHERS ((2008) 16 SCC 215)**
5. **W.B. STATE ELECTRICITY BOARD v. PATEL ENGINEERING CO. LTD., AND OTHERS ((2001) 2 SCC 451)**

The learned Senior Counsel would further urge that this Court in exercise of its power of judicial review under Article 226 of the Constitution examines the decision making process and records a finding on the challenge laid to the action of 2nd respondent but will not examine the issue as a Court of appeal. Admittedly, with the filing of permit certificate, pursuant to the interim direction dated 12.03.2015, the tender document of writ petitioner would become compliant and by reference to fulfillment of conditions at a latter stage, allowing the writ prayer and further directing the 2nd respondent to award transportation contract to the writ petitioner for the year 2015-16 for Ranga Reddy District, is illegal and unsustainable. It is contended that the learned Single Judge has passed the impugned order without considering these objections and the order is liable to be set aside and remanded to the learned Single

Judge for fresh consideration of writ prayer.

Sri M.S.Prasad, learned Senior Counsel, joins issue with the submissions made for and on behalf of appellant and submits that the points now argued before this Court were not addressed before the learned Single Judge and no exception can be taken to the broad consideration of issue by the learned Single Judge and allowing the writ petition as already noted. According to

Mr. Prasad, the non-filing of valid permit is not fatal to consideration of petitioner's tender, for this condition is not mandatory. The hard copies cannot be submitted at a later point.

Sri A.Jagan, learned counsel, submits that though all the objections are raised by the parties, the order impugned in the appeal was passed by referring to the interim direction dated 12.03.2015 and according to the 2nd respondent in view of interim direction dated 12.03.2015, the 2nd respondent had to re-stage the tender process.

From the material available on record and having regard to the alternative prayer of learned counsel appearing for the appellant and 2nd respondent, we are satisfied that the following order would meet the ends of justice and provide opportunity to all the parties to canvass their respective contentions before the learned Single Judge.

Prima facie, it appears that the order impugned in the appeal takes note of alleged compliance of tender conditions pursuant to the interim order dated 12.03.2015.

Such acceptance of *ex post facto* compliance is required to be examined from more than one perspective, including the principles on which the

4th respondent is opposing the consideration of any prayer in W.P.No.6375 of 2015.

The direction to award contract to writ petitioner does not appear to be within the scope of judicial review under Article 226 of the Constitution of India. The objection of

4th respondent viz., that *ex post facto* compliance to make the tender valid ought to be examined before taking up the issues between parties.

Therefore, without expressing any view on these issues, but on the short ground that

the order impugned does not advert to all the objections raised by the parties and a finding is recorded, the impugned order is set aside.

Writ Appeal is allowed. The matter is remanded to the learned Single Judge, having the roster, for fresh consideration of all issues of fact and law and dispose of the writ petition. The parties are given liberty to make appropriate request for vacation of interim orders or expeditious hearing of the writ petition and if such a request is made, the learned Single Judge is requested to consider their request favourably and pass appropriate orders.

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

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 10.06.2015

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