

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.42459 of 2015

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed for a writ of *mandamus* declaring the Public Notice No.EOI/NGPL/BID/8/2015-1, dated 20.07.2015, as amended by Addendum in Public Notice No.EOI/NGPL/BID/8/2015-1, dated 20.11.2015, issued by the Petroleum and Natural Gas Regulatory Board (2nd respondent), as illegal and void.

The case of the petitioner is that the petitioner is the Managing Director of the A.P. Gas Distribution Corporation Ltd., which is a joint venture organization of Andhra Pradesh Gas Infrastructure Corporation, a Government of Andhra Pradesh Organization, and GAIL Gas Limited, a Government of India Organization. The objective of the petitioner Corporation is to develop and promote infrastructure to import, sourcing, transmission and distribution of Natural Gas in the State of Andhra Pradesh. It is submitted by the petitioner that the Petroleum and Natural Gas Regulatory Board, New Delhi (2nd respondent) has issued a notification vide Public Notice No.EOI/NGPL/BID/8/2015-1, dated 20.07.2015, for inviting bids from eligible entities for development of Natural Gas Pipeline network along the tentative route of Kakinada-Rajahmundry-Vijayawada-Guntur-Ongole-Kadapa-Nellore in terms of Regulation 5(5) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 (for short, the Regulations), and the 2nd respondent also issued a subsequent notification vide Public Notice No. EOI/NGPL/BID/8/2015-1/Addendum-1, dated 20.11.2015, extending the last date for purchase of bid documents.

It is further submitted that the petitioner has submitted an application to the 2nd respondent Board, dated 08.08.2014, in the prescribed format for Expression of Interest (for short, "EOI") for laying, building and operating Natural Gas Pipe Line from Vijayawada to Nellore. As per Regulation 5(1) of the Regulations, the 2nd respondent shall issue an open advertisement in two daily newspapers publishing the receipt of an Expression of Interest and commencement of public consultation period of 30 days and accordingly, the 2nd respondent has issued a public notice, dated 28.08.2014. Without communicating any decision on the EOI submitted by the petitioner, the 2nd respondent sent a communication, dated 23.06.2015, to the petitioner stating that it has decided to invite bids for Kakinada-Vijayawada-Nellore Natural Gas Pipe Line based upon the views of the stakeholders during the public consultation process initiated on the application/EOI submitted by the petitioner, dated 08.08.2014, and decided to have a joint meeting to firm up final route and length from Kakinada-Vijayawada Section and floor system capacity of the same before initiating the same and requested the petitioner to attend the said meeting. In the meeting which was held on 02.07.2015, the petitioner again submitted presentation reiterating its stand for inviting for bids for Vijayawada-Nellore Natural Gas Pipe Line, but the 2nd respondent responded to the same stating that it has already decided in favour of calling bids for Kakinada-Vijayawada-Nellore Natural Gas Pipeline and the said meeting was called for only to address the specific issues mentioned in the letter, dated 23.06.2015, i.e., to fix up the alignment of the said route, its distance from Kakinada-Vijayawada and its floor system capacity.

It is further submitted by the petitioner that as per Regulation 5(1) of the Regulations, the 2nd respondent Board is required to comply with certain formalities mentioned therein before deciding to call for bids for

grant of authorization to lay a pipeline and that the 2nd respondent Board has no power or jurisdiction to initiate any process for grant of authorization to lay a Natural Gas Pipeline on the basis of the views submitted by the stakeholders in the public consultation process in pursuance to the notice issued under Regulation 5(1) of the Regulations in connection with an application submitted for grant of authorization to a different pipe line and the 2nd respondent Board is authorized to initiate and complete such exercise either on the application of an entity or *suo moto* by the 2nd respondent Board, which has not happened in the case of the petitioner. As the Kakinada-Vijayawada-Nellore Natural Gas Pipe Line is altogether a different Pipe line, the 2nd respondent Board has to comply with the mandatory procedure under Regulation 5(1) of the Regulations before issuing the present impugned notification.

It is further submitted by the petitioner that after the impugned public notice, dated 20.07.2015, the Government of Andhra Pradesh has taken up the issue with the 2nd respondent Board and the Union of India opposing the same, as laying of pipeline from Vijayawada-Nellore instead of Kakinada-Vijayawada-Nellore would save both time and cost and would also avoid acquisition of fertile agricultural lands from Kakinada to Vijayawada, which would be passing through agriculture coconut garden and damage to land would be to an extent of about Ac. 1450.00 guntas. The Hon'ble Chief Minister of Andhra Pradesh also addressed a letter, dated 28.09.2015, to the Hon'ble Minister for Petroleum and Natural Gas Government of India opposing the proposed plan of laying pipe line from Kakinada-Vijayawada-Nellore instead of Vijayawada-Nellore and requested to instruct the concerned to take steps for laying Gas Pipe Line from Vijayawada-Nellore only. It is further submitted that the Chief Secretary to the Government of Andhra Pradesh held a review meeting on 10.11.2015 in which directions were issued to take all steps including

legal measures for laying of pipe line from Vijayawada-Nellore instead of Kakinada-Vijayawada-Nellore.

It is further submitted that in the Review Meeting held by the Hon'ble Chief Minister of Andhra Pradesh on 04.12.2015 also, it was reiterated that steps should be taken to take up Vijayawada-Nellore pipe line work instead of Kakinada-Vijayawada-Nellore pipe line work. The representations of the Andhra Pradesh State Government are receiving consideration at the hands of the Ministry of Petroleum and Natural Gas. Even before a final decision is taken by the Union of India on the proposal of the State of Andhra Pradesh, if the bids are received on 31.12.2015 and finalised, the third parties rights would set in, which will complicate the matter.

The grievance of the petitioner is that the impugned notification passed by the 2nd respondent Board is contrary to the stand taken by the petitioner i.e., for laying of pipe line from Vijayawada-Nellore, but the impugned notification is for inviting tenders for laying the pipeline from Kakinada-Vijayawada-Nellore, which is against the stand taken by the petitioner. The Government of Andhra Pradesh has also expressed its view to lay pipeline from Vijayawada-Nellore in view of the availability of earlier pipeline in the earlier route by two other companies and also in the interest of the State Government and the agriculturists. The grievance of the petitioner is that when no final order of rejection was communicated to the petitioner, the 2nd respondent Board has no power or jurisdiction to proceed with the impugned proposal. Challenging the same, the present writ petition is filed.

Heard both sides and perused the material available on record.

Learned counsel for the petitioner submitted that the 2nd respondent Board has not issued any public notice under Regulation 5(1) of the Regulations before unilaterally deciding to call for bids for

Kakinada-Vijayawada-Nellore Natural Gas Pipe Line and that the action of the 2nd respondent Board is *ultra vires* for statutory non-compliance and that the impugned notice is invalid. Learned counsel further submitted that till today, the 2nd respondent Board has not communicated its decision either rejecting or accepting the petitioner's application i.e., EOI for laying pipe line from Vijayawada to Nellore as required under the Petroleum and Natural Gas Regulatory Board Act, 2006 and the regulations framed thereunder and that without passing any final orders on the application of the petitioner, the 2nd respondent Board published the impugned public notice, dated 20.07.2015, inviting bids for development of Kakinada-Vijayawada-Nellore natural gas pipe line and that the 2nd respondent Board, without any response to the concern shown by the State Government as well as Central Government, issued a subsequent addendum public notice, dated 20.11.2015, extending the last date for purchase of bid documents, bid submission date and technical bid opening date.

Learned Assistant Solicitor General for respondents 1 & 2 contended that the present writ petition is not maintainable since any order or decision taken by the 2nd respondent Board is liable to be challenged by way of an appeal as per the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006.

After hearing the learned counsel for both sides and perusal of the record, this Court, without expressing any opinion regarding the rival contention, is of the view that the writ petition can be disposed of with the following direction:

Since the 2nd respondent is intending to serve the public by forming a Regulatory Board in the Petroleum and Natural Gas, the petitioner is directed to submit a written representation to the 2nd respondent expressing its views based on the contentions raised in the

writ petition for alternative route to lay pipe line from Vijayawada-Nellore instead of Kakinada-Vijayawada-Nellore. The petitioner is directed to submit its representation to the 2nd respondent Board on or before 25.11.2016. On such representation, the 2nd respondent Board, after issuance of notice to the petitioner, shall conduct an enquiry in order to decide the feasibility of the suggestions made by the petitioner in his representation and shall dispose of the said representation within a period of three (3) months from the date of receipt of the said representation and the petitioner is also directed to appear before the 2nd respondent for personal enquiry and also to place all the relevant material and arguments, in order to enable the 2nd respondent to take a decision. Till the disposal of the said representation, the 2nd respondent Board is directed not to proceed further with the impugned notification vide Public Notice No.EOI/NGPL/BID/8/2015-1, dated 20.07.2015.

Accordingly, the Writ Petition is disposed of. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

RAJA ELANGO,J

Date: 27th October, 2016

Note: Issue C.C. on 04.11.2016.

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