

***HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.11990 of 2016

%26.04.2014

M/s. Thirumala Transport, rep. by its Managing Partner, Warangal.
..... Petitioner

And

Telangana State Civil Supplies Corporation Limited and another

.....Respondents

! Counsel for the appellants: M/s. Bharadwaj Associates

^ Counsel for respondents : G.P for Civil Supplies

< Gist:

> Head Note:

? Cases referred: Nil

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.11990 of 2016

ORDER:

This writ petition is filed seeking a direction to declare that the 2nd respondent is ineligible/unqualified for participation in the tender process since he was blacklisted as per the proceedings dated 08.06.2009 of the then Government of Andhra Pradesh and consequently to direct the 1st respondent-Corporation to consider the tender of the petitioner.

It is the case of the petitioner that the 1st respondent-Corporation had issued a tender notification dated 14.03.2016 calling for tenders for transportation of food grains from the godowns of the Corporation to various circles for a period of one year and in response to the same,

the petitioner-firm submitted its tender. It is stated that the 2nd respondent had also submitted his tender as against the above said tender notification. When the tenders were opened, it is identified that the 2nd respondent is a lowest tenderer and the petitioner stood as the 2nd lowest tenderer. At that stage, the petitioner came to know that the 2nd respondent was already blacklisted by the then Government of Andhra Pradesh vide proceedings dated 08.06.2009 and suppressing the same, he had submitted his tender and hence the 2nd respondent is not entitled to participate in the tender and he is liable to be prohibited or disqualified from participating in the tender process. Bringing all these facts to the notice of the 1st respondent-Corporation, the petitioner submitted a representation dated 07.04.2016 and requested the Corporation to disqualify the tender of the 2nd respondent and since there was no action taken so far, the present writ petition is filed by the petitioner. As a matter of fact, pursuant to the tender notice petitioner and the 2nd respondent made their offers and the 2nd respondent emerged as L.1 and the work order has been issued in favour of the petitioner. On account of the disqualification which was attached to the 2nd respondent, 1st respondent corporation shall eschew the offer made by the 2nd respondent and the petitioner's offer being next lowest (L.2) petitioner is entitled to be given the subject work.

Sri Vedula Vekata Ramana, learned senior counsel by making a reference to the terms and conditions of the tender notice would submit that in terms of the Clause 18 of the terms and conditions the 2nd respondent was ineligible to offer his bid to the Corporation and thus the offer made by the 2nd respondent ought to have been rejected.

According to the learned senior counsel for the petitioner, in view of the language of clause 18 if an intending tenderor had incurred disqualification of being blacklisted by the 1st respondent Corporation

or A.P. State Civil Supplies Corporation at any time they are prohibited from participating in the tenders. In the words as per learned senior counsel the taint of blacklisting remains as an indelible mark with the concerned and thereby they are disentitled to participate for all times.

On the other hand, learned counsel appearing for the first respondent, on instructions, submits that as a matter of fact, it was true that the 2nd respondent was initially blacklisted for refusing to carry on the work of transportation for year 2009-2010 after being successful bidder and after being awarded with the contract. However, pursuant to the orders dated 16.02.2012 of this Court in W.P.No.4139 of 2012, the 1st respondent corporation modified the order of back listing only for three years and thus the 2nd respondent was eligible to participate in the tender and having participated became the successful bidder. Petitioner being unsuccessful came out with the present writ petition and the writ petition does not have any merit and prays for dismissal of the same.

Perused the record. In the facts of the present case, this Court is of the opinion that there is no requirement of giving notice to the 2nd respondent. The thrust of the argument of the learned counsel for the petitioner is based on Clause 18 of the terms and conditions of the tender which reads as under:

Clause 18 - Eligibility:

“The individuals/firms/company who are blacklisted by Andhra Pradesh Civil Supplies Corporation Limited or Telanagana State Civil Supplies Corporation Limited **‘at any time’** or prohibited from participating in the tender (Annexure-VIII). Even Contractors who are involved in 6A cases under Essential Commodities Act or in diversion of stocks or prohibited from participating the tenders.”

The great emphasis has been placed by the learned senior counsel on the expression at any time (underlined for emphasis). The Clause 18 as read would not suggest that an individual or an organisation blacklisted at a given point of time would be ineligible to

participate for all times. The Clause reads as the individuals/firms/companies who are blacklisted or..... indicating that the black listing should be current and subsisting. As otherwise, the clause would have been who were blacklisted. Giving any other interpretation or meaning to Clause 18 would be unreasonable and arbitrary thereby violating the rights guaranteed to an individual or entrepreneur under Article 14 and 19(1)(g) of the Constitution of India.

In that view of the matter, once it is not in dispute that as on the date of 2nd respondent participated in the tender, the taint of blacklisting is not present and it cannot be said that allowing the 2nd respondent in any way in violation of the tender conditions. The blacklisting of an individual/contractor being a serious punishment virtually putting an economic embargo on individual or an enterprise, the blacklisting cannot be for eternity and at any rate in the case on hand admittedly the taint of blacklisting which was attached to the 2nd respondent came to be removed by virtue of the decision taken in 175th Board Meeting of the Corporation as communicated to the petitioner through letter No.PDS2/Movt/FG 5(24)/991/2009-2010 dated 4.1.2013.

For the above reasons, the writ petition has no merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

Date:26.04.2016.

Note:

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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