

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No.522 of 2016

Date: 05.07.2016

Between:

M/s G. Nagu Transport Contractors, H.No.2-5-231/A/1
H.T.Road, Khammam, Khammam District, rep.by its
Managing Partner G.Nagu, s/o Kailasham, Aged 44 years,
R/o H.No.2-5-231/A/1, HT Road, Khammam, Khammam Dt.

.....Appellant/
Petitioner

And

The State of Telangana, rep.by its Principal Secretary to
Civil Supplies Department, Secretariat Building, Hyderabad
and others.

.....Respondents/
respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

WRIT APPEAL No.522 of 2016

JUDGMENT : (*Per the Hon'ble Sri Justice P.Naveen Rao*)

Heard Mr. M.Shashi Kumar, learned counsel for the appellant, learned Government Pleader for Civil Supplies (TG), Sri A.Jagan, learned standing counsel for respondent No.2 and Sri T.Mahender Rao, learned counsel for the respondent No.3.

2. Petitioner is the appellant. Parties are referred to as arrayed in the writ petition.

3. The Telangana State Civil Supplies Corporation Limited ('respondent corporation') issued tender notification dated 14.03.2016 calling for tenders for appointment of transport contractor under Stage-I for supply of food grains, pulses, etc. for the year 2016-17 for Khammam District. The petitioner and 3rd respondent had participated in the tender process. In evaluation conducted by the respondent corporation, offer given by the 3rd respondent is found to be the best offer and the offer of the petitioner as second best. Petitioner earlier filed W.P.No.10837 of 2016 challenging the action of the respondent corporation in allowing the 3rd respondent to participate in the financial bid held on 30.03.2016 instead of disqualifying him. At the stage of admission, learned single Judge of this Court, by order dated 01.04.2016, directed not to issue work order in favour of the 3rd respondent with direction to the respondent corporation to produce the records on 06.04.2016. On further consideration, by order dated 07.04.2016, earlier interim order was not extended. Aggrieved thereby, petitioner filed W.A.No.264 of 2016. The said writ appeal was disposed of as not pressed. By order dated 22.04.2016, the transport contract was awarded in favour of 3rd respondent, and on due compliance of the requirements, he was granted work orders.

Challenging the awarding of contract to 3rd respondent, the instant writ petition is filed.

4. The foremost submission of the petitioner was that the bid submitted by the 3rd respondent is invalid as he failed to fulfill condition no.26 of the tender notification. It was contended by the learned counsel for the petitioner that the participant is required to make available 24 goods transport vehicles, out of which at least 12 should be owned by the participant and remaining 12 should be hired. The participant is required to furnish list of vehicles owned by him in Annexure IV (A) and the vehicles hired on lease in Annexure IV(B). The participant is also required to sign on all pages of the relevant documents. However, as noticed from the documents filed by the 3rd respondent, in few pages, the stamp of Sri Jyothi Lorry Transport was put and was signed by Managing Partner of that firm, whereas the bid was submitted on behalf of 'Sri Balaji Road Lines' by its Proprietor. Thus, by relying on these documents, it was contended that the tender forms submitted by the 3rd respondent ought to have been rejected at the stage of scrutiny of technical bids and further processing of tender forms submitted by the 3rd respondent was wholly illegal. Violation of the tender conditions would result in automatic disqualification and merely because the 3rd respondent was lowest tenderer cannot be a ground to accept the tender submitted by him and award the contract.

5. The stout defence of the 3rd respondent was that 3rd respondent owned 18 trucks and the same was shown in Annexure IV (A). In addition, he had obtained lease of 15 trucks and the same was shown in Annexure IV (B). The 3rd respondent has signed all the pages and enclosed all the documents required. However, by oversight in page 2 of Annexure I & II and Annexure IV (A) and annexure IV (B), the rubber stamp of Sri Jyothi Lorry Transport was affixed instead of the rubber stamp of the 3rd respondent firm. It was contended by the learned

counsel for the 3rd respondent that it was purely a mistake and such mistake is too trivial to disqualify the 3rd respondent on that ground. The lease agreements filed along with the tender forms disclose that the 3rd respondent obtained lease of the trucks. The list of which were furnished in Annexure IV (B) and merely because a different rubber stamp was erroneously put on one or two pages, cannot disqualify the tender submitted by the 3rd respondent on that ground.

6. According to the learned standing counsel for respondent corporation, the corporation did not find any invalidity in the tender submitted by the 3rd respondent to disqualify him. Furthermore, the tender submitted by the 3rd respondent was more beneficial to the corporation. The tender offered by the 3rd respondent was at the rate of -0.26% over the previous year 2015-16 as compared to the offer given by the petitioner, which was quoted at +17.55%. Both the learned counsels for respondents 2 and 3 justified the awarding of contract in favour of 3rd respondent.

7. Having noted the elaborate submissions made and the precedents cited, learned single Judge held that ultimately it is for the authorities to satisfy with respect to various aspects of the tender conditions and interference of the Court is limited to ensuring the principles of reasonableness. Learned single Judge accepted the defence of the respondents in accepting the tender submitted by the 3rd respondent and awarding of contract. According to the learned single Judge, the affixing of rubber stamp of Sri Jyothi Lorry Transport was inadvertence and when all the original documents are in conformity with the online application, the 3rd respondent bid could not have been declared as invalid and dismissed the writ petition.

8. Learned counsel appearing for the respective parties have

reiterated their submissions as urged before the learned single Judge.

9. The foremost submission of the learned counsel for the petitioner is that 3rd respondent did not sign as per the tender condition and has not signed on all pages of the tender form and, therefore, 3rd respondent did not fulfill the eligibility criteria as per the tender terms and conditions and technical bid ought to have been rejected on the ground of disqualification. The participant in the tender being a firm, on behalf of the firm, an authorized person can only sign the relevant documents and admittedly on some of the pages of the documents the stamp of M/s Sri Jyothi Lorry Transport was affixed, whereas it is not the participant and merely because the 3rd respondent appears to be the Managing Partner of that firm, cannot be a ground to validate the tender form when *ex facie* tender conditions are violated.

10. The tender called is for the purpose of awarding contract for transportation of food grains and pulses on behalf of the Civil Supplies Corporation in Khammam district. According to the estimation of the respondent corporation, the contractor must make available 24 trucks for distribution of food grains, pulses and other items. However, the tender conditions only required ownership of minimum of 12 trucks and the participant to make available remaining 12 trucks by way of lease. It is not in dispute that 3rd respondent owns 18 trucks and has obtained lease of 15 more trucks. In other words, 3rd respondent made available 33 trucks as against the requirement of 24 trucks. It is not in dispute that offer made by the 3rd respondent is more advantageous to the respondent corporation as compared to the petitioner's offer and it appears that the respondent corporation would save more than one crore rupees for one year of contract if contract is awarded to the 3rd respondent as compared to the petitioner. We are informed that the 3rd respondent started operating the transportation services. Contract

involves transportation of essential commodities to civil supplies outlets. Any break in transportation would cause hardship to people dependent on fair price shops.

11. In the above background, the complaint of the petitioner is required to be assessed. According to the petitioner, in page 2 of the technical tender form (Annexure I), the stamp of Sri Jyothi Lorry Transport was put up instead of Sri Balaji Road Lines. Similarly, in Annexure IV (B) the stamp of Sri Jyothi Lorry Transport was put up. However, it is seen that the 3rd respondent has entered into lease agreements with the owners of trucks and all the lease agreements are made part of the record. Thus, the 3rd respondent satisfies the requirement of tender notification. It is also not in dispute that all the pages of the documents are signed by the person, by name, Andem Nagaraju, who happens to be the Proprietor of the 3rd respondent and it appears, he is Managing Partner of another partnership firm by name, 'Sri Jyothi Lorry Transport'. Except on two pages, in all other documents the stamp of Sri Balaji Road Lines are affixed. It is not the case of petitioner that 3rd respondent played fraud by submitting false documents to secure eligibility. In the above analysis, the inadvertent affixation of stamp of another firm in two places is trivial and when the 3rd respondent is otherwise qualified and acceptance of his tender would save huge public money, the awarding of contract to 3rd respondent cannot be nullified on that ground. We, therefore, see no error in the decision arrived at by the learned single Judge warranting interference. The writ appeal is accordingly dismissed.

Miscellaneous petitions, if any, stand dismissed. No costs.

DILIP B. BHOSALE, ACJ

Date: 05.07.2016

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AND
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