

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.2314 of 2015

in/and

WRIT PETITION No.37923 of 2015

COMMON ORDER:

Heard Sri A.Prabhakar Rao, counsel for petitioner in both cases and Sri A.Jagan, Standing Counsel for Telagana State Civil Supplies Corporation and also for all the respondents in C.C.No.2314 of 2015.

2. It is represented on behalf of Sri P.Radhive Reddy, counsel for 5th respondent that Sri P.Radhive Reddy had given up his vakalat and handed over the file to the party and that he is no longer representing the 5th respondent.

3. The 5th respondent does not appear to have engaged another new counsel in the matter and since notice in the Writ Petition has been served on the 5th respondent and since there is no representation on his behalf, the Writ Petition is being decided ex parte.

4. A tender notification dt.28.02.2015 was issued by 2nd respondent for transportation of essential commodities within the limits of Warangal District and outside the Warangal District. Clause 16(g) of the tender conditions stated that in case tender is submitted by partnership firms, the firms which are having a minimum 1 year of existence prior to the date of tender notification, are only eligible.

5. The petitioner contends that in spite of the fact that 5th respondent did not fulfill this eligibility condition, the 2nd respondent has awarded the tender to 5th respondent by proceedings dt.19-10-2015 for the period from 01-04-2015 to 31-03-2016.

6. Petitioner contends that there was a firm by name M/s.New

Nagendra Lorry Transport constituted under the partnership deed dt.01-09-2011 consisting of two partners J.Narasimha Reddy and Miriyala Rajkumar, that Miriyala Rajkumar expressed his desire to retire from the firm and retired from the partnership on 22-02-2015, and that consequent to the retirement of Miriyala Rajkumar, the firm itself stood dissolved as per the decision in **Erach F.D. Mehta Vs. Minoo F.D. Mehta**^[1]. He contends that on 23-02-2015 Sri J.Narasimha Reddy constituted a new firm with three partners, and this new firm, by the date the tender was issued i.e. 28-02-2015, cannot be said to have minimum of one year of existence as stipulated in Clause 16(g) of the tender notification dt.28-02-2015. He placed reliance on the judgment of the Supreme Court in **Ramana Dayaram Shetty Vs. International Airport Authority of India and others**^[2] wherein the Supreme Court has held that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

7. Sri A. Jagan, learned Standing counsel for 2nd respondent contended that earlier, a tender notice dt.09.02.2015 was issued; that it was later withdrawn and the impugned tender notice dt.28.02.2015 had been issued; this was questioned by a third party in W.P.No.5507 of 2015; the same had been allowed; and that the said order had been suspended in W.A.No.401 of 2015 and a direction was given to the Corporation to proceed further with the tender process pursuant to tender notice dt.28.02.2015; and said order is binding on petitioner and he cannot question the award of contract to 5th respondent.

8. Learned Standing Counsel for 2nd respondent contended that the petitioner himself did not fulfill the eligibility criteria and therefore the Writ Petition itself ought not to have been entertained and relied on the judgment of Supreme Court in **Raunaq International Ltd Vs.**

I.V.R. Construction and others^[3]. He further contended that experience of J.Narasimha Reddy ought to be treated as the experience of the firm and relied upon the judgment in **New Horizons Limited and another Vs. Union of India and others^[4]**.

9. Initially in W.P.MP.No.48789 of 2015, on 20.11.2015 after hearing the counsel for petitioner and Sri A.Jagan, Standing Counsel, this Court had directed the Telangana State Civil Supplies Corporation not to entrust contract work to the 5th respondent in the Writ Petition as a Stage-I Contractor by suspending the operation of the proceedings dt.19.10.2015 issued by the said Corporation pending disposal of the Writ Petition.

10. The 5th respondent as well as the Corporation filed applications to vacate the said order in WV.MP.Nos.4602 and 4627 of 2015.

11. On 05.01.2016, this Court dismissed the said applications and made the interim order dt.19.10.2015 as absolute.

12. This was questioned by the 5th respondent in Writ Appeal No.48 of 2016.

13. The Division Bench has disposed of the said Writ Appeal on 27.01.2016 by passing the following order:

“It is open to the respondent-Corporation to engage the appellant for transportation of food-grains at the rate, which the appellant had quoted in the tender, till 31.03.2016, if they so desire. In other words, pending the hearing and final disposal of the writ petition, the respondent-Corporation shall not be precluded from engaging the appellant's services for transportation of food-grains till the end of 31.03.2016, if they so desire, at the rate quoted by them without prejudice to the rights and contentions of the parties in the writ petition.

The respondent-Corporation shall take steps well in advance for awarding a contract of transportation of food-grains

for the next financial year, commencing from 01.04.2016 by following the due procedure. All contentions of the parties on merits are kept open.”

14. However, since the said order would continue only till the hearing and final disposal of the Writ Petition and since the duration of the period as per the tender is only till 31.03.2016, both the counsel for petitioner and Standing Counsel for Corporation requested to hear and dispose of the writ petition.

15. Clause 16(g) of the tender notification dt.28-02-2015 states that in case of partnership firm, the firms which are having a minimum one year of existence prior to the date of tender notification are only eligible. There is no dispute that the firm M/s.Nagendra Lorry Transport had been constituted with two partners only and that one of the partners by name Miriyala Rajkumar retired on 22-02-2015. Once he retired, the firm itself would stand dissolved. In **Erach F.D. Mehta** (1 supra), the Supreme Court held that when the partnership consisted of only two partners and one partner agreed to retire, there can be no doubt that the agreement that one of the partners will retire amounts to dissolution of the partnership. Therefore, the firm M/s.New Nagendra Lorry Transport itself stood dissolved on that day.

16. It may be that other partner of the erstwhile firm M/s.New Nagendra Lorry Transport joined three others and formed a new partnership with the same name under partnership deed executed on 22-03-2015. This new firm with the same name M/s.New Nagendra Lorry Transport would certainly not have minimum one year of existence prior to the tender notification as stipulated under clause 16(g) of the tender notice.

17. It is admitted by 2nd respondent that it was under an impression that the 5th respondent as constituted on 23.2.2015 is the same firm which was constituted on 1.9.2011 and that it fulfilled the requirement

of experience. It thus clearly failed to take note that the firm constituted on 1.9.2011 stood dissolved on 22.2.2015 and that a new firm with the same name was constituted, and such new firm would not have requisite experience. It's stand in para 4 of counter in defence of it's action by seeking to draw a distinction between dissolution of partnership *and* dissolution of firm, is absurd and unknown to law.

18. In **Ramana Dayaram Shetty**(2 supra) , the Supreme Court observed :

“10. Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. ...”

This principle of law has not been deviated by the Supreme Court in any case.

19. No doubt in **Raunaq International Ltd** (3 supra), the Supreme Court had held that if a person who challenged the tender notification did not possess the prescribed experience, the Court held that the relief cannot be granted to him. But there is no such plea raised by respondent no.s 2 and 5 in the vacate stay petitions. Therefore, the said decision is inapplicable. Also in that case there was a power of

relaxation in the terms of the tender, and the court held that such relaxation can be made on valid principles. But in the present case, there is no such power of relaxation at all conferred on 2nd respondent under the terms of the tender.

20. In my opinion, the 2nd respondent clearly acted arbitrarily and contrary to law in accepting the bid of 5th respondent even though he did not have the requisite experience and was not qualified for award of tender. Public interest is not served by 2nd respondent allowing the 5th respondent to perform the contract without having requisite experience. The 2nd respondent has not explained how public interest is subserved by award of contract to 5th respondent.

21. I am also of the opinion that the order dt.30.09.2015 in Writ Appeal No.401 of 2015 would not come in the way of this Court in entertaining the Writ Petition for the reason that the point involved in W.P.No.5507 of 2015 and the point involved in this Writ Petition are different. In that case, the contention of the petitioner therein was that even though he is the lowest tenderer as per the tender notice dt.9.2.2015 and his technical and financial bids were opened and found to be in order, not awarding contract in his favour by canceling the tender notice dt.09-02-2015 and issuing the tender notice dt.28-02-2015, is arbitrary and illegal. The Division Bench was *prima facie* of the view that the authority calling for tender can always cancel the tenders and call for fresh tenders and that a mandamus cannot be issued to award contract to the Writ Petitioner therein. The Division Bench has not expressed any opinion on the question as to whether there could be an award of contract by 2nd respondent in favour of a tenderer who did not qualify the eligibility requirements mentioned in the tender.

22. The decision in **New Horizons Limited** (4 supra), in my

considered opinion also would not apply because that case dealt with Joint Venture Corporations and the method of assessing the experience of a joint venture keeping in view the experience of one of the members of the joint venture. In the present case, there is no joint venture tenderer.

23. In this view of the matter, I am of the opinion that the award of tender pursuant to the tender notification dt.28.02.2015 vide proceedings dt.19.10.2015 to 5th respondent is arbitrary and violative of Article 14 of the Constitution of India.

24. Therefore, the Writ Petition is allowed. There shall be no order as to costs.

25. However, since the interim order dt.20.11.2015 in WP.MP.NO.48789 of 2015 has been modified in W.A.NO.48 of 2016, it cannot be held that there is willful and deliberate disobedience of the order passed by the Court by the Corporation. Therefore, the Contempt Case is closed.

26. Consequently, miscellaneous petitions pending, if any, in both the cases shall stand dismissed.

M.S.RAMACHANDRA RAO, J

16th February, 2016.

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Note: Issue C.C. in two weeks.

B/o

Kvr/gra

[1] Air 1971 SC 1653

[2] AIR 1979 SC 1628

[3] 1999(1) SCC 492

[4] 1995(1) SCC 478