

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.24210 OF 2015

DATED:27-01-2016

Between:

Y. Balaramaiah

... Petitioner

And

The Executive Engineer

Public Health Division

Rajahmundry

East Godavari District (State of A.P.)

and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. K. Ramakrishna,
for P. Raghavender Reddy

COUNSEL FOR RESPONDENT NO.1: A.G.P. for Public Health (AP)

COUNSEL FOR RESPONDENT NO.3: Mr. Nimmagadda
Venkatewarlu

COUNSEL FOR RESPONDENT NO.4: Mr. S. Subba Reddy

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed to set aside letter No.631M/MC-2/MPT/Mpity/TS-JTO-2/2015. dt.29.07.2015, of respondent No.1, whereby he has given a technical opinion to the effect that tender of respondent No.4 could be accepted, though he is not registered with respondent No.3 – Municipality.

The only point that needs to be decided in this writ petition is whether the opinion expressed by respondent No.1 in the impugned letter is sustainable under the Andhra Pradesh Municipalities Tender Rules, 1967 (for short, the 'Tender Rules'). Rule 5(2) of the Tender Rules reads as under:

"5(2). Tenders from the registered contractors only shall be considered. In the case of contracts the value of which exceeds rupees twenty thousand, tenders from the engineering firms of repute and from contractors registered in or outside the district may be considered, provided that they get themselves registered as contractors of the municipality prior to the submission of the tenders. Tender schedules may be sold to unregistered contractors also ."

At the hearing, learned counsel for the petitioner also brought to the notice of this Court, Rule 6(9) of the Andhra Pradesh Municipalities (Registration of Contractors) Rules, 1978, which reads as follows:

"6(9). A Class IV Contractor could tender only for works of the Municipality where he gets himself registered. The tender schedules shall be sold even to remote and reputed firms provided they get themselves registered in the Municipality before submission of tenders."

Under Rule 5(2) of the Tender Rules, the contractors who are

registered with the municipality concerned in connection with the works for which the municipality issued tenders alone are eligible.

The above mentioned rules are specific and unambiguous to the effect that only the contractors who are registered with the municipality concerned are eligible for filing their tenders, and consideration for award of contract. This view of mine is fortified by the judgment of the Division Bench of this Court in *Labour Contract Society, Jangaon Town, v. Jangaon Municipal Sanitary Works and Labour Contract Cooperative Society Ltd.*^[1]

In the impugned letter, respondent No.1 relied upon G.O. Ms. No.94, Irrigation & CAD (PW-COD) Department dt.01.07.2003. As rightly

submitted by the learned counsel for the petitioner, and not disputed by the learned Standing Counsel for respondent No.3 Municipality as well as Mr. S. Subba Reddy, learned counsel for respondent No.4, G.O. Ms. No.94, dt.01.07.2003 contains executive instructions and they do not have statutory force unlike statutory rules. The learned Standing Counsel has also not disputed the submission of the learned counsel for the petitioner that G.O. Ms. No.94, dt.01.07.2003, has not been specifically adopted by the municipalities. At any rate, executive instructions cannot prevail over statutory rules and when there is a conflict between the two, statutory rules prevail over the executive instructions. In the above view of the matter, respondent No.4 is declared as not eligible for filing his tender, as admittedly he has not registered with respondent No.3

The writ petition is accordingly allowed with a further direction to respondent No.3 to consider the tender of the petitioner and other eligible tenderors, after excluding respondent No.4 from consideration.

As a sequel to disposal of the writ petition, interim order dt.04.08.2015 passed in W.P.M.P. No.31424 of 2015, and extended

from time to time, shall stand vacated and W.P.M.P. No.31424 of 2015 and W.V.M.P. Nos.3382 and 4940 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

27-01-2016

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[\[1\]](#) 2002 (4) ALT 344 (DB)