

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs.33076 and 35507 of 2016

Date : 22.11.2016

WP No.33076 of 2016:

Between :

Alakuntla Rajashekar Rao s/o Yellaiah,
Aged about 27 years, H.No.2-381,
Madikonda, Warangal District.

.... Petitioner

And

Greater Warangal Municipal Corporation,
Warangal, Warangal District and another.

.... Respondents



The Court made the following:

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COMMON ORDER:

Petitioners claim to be Class-III Contractors and are executing civil works in Greater Warangal Municipal Corporation. Several tender notifications were issued through e-procurement mode on 05.08.2016, 06.08.2016 and 29.08.2016. Petitioners claimed to have complied with all the conditions and participated in the tender process. The grievance of the petitioners is, though their tender documents were received but they were not opened while opening the tender documents of other participants. Contending that said action of the respondents is illegal, petitioners filed W.P.No.33076 and 35507 of 2016, respectively.

2. Heard Sri Kona Reddy Anji Reddy, learned counsel for the petitioners and Smt. Pingali Lakshmi, learned standing counsel for respondents in both the writ petitions.

3. Learned counsel for petitioners submit that petitioners have been successfully executing the contracts and are fully qualified to participate in the fresh contracts, for which tender notifications were issued and not considering their tender schedules were illegal. By referring to the stand of the respondents in the counter-affidavit, he submitted that merely because petitioners have been executing contracts, their tender documents could not have been rejected. There is no such bar for individuals to participate in the tender process. He submitted that G.O.Ms.No.52, Transport, Roads & Buildings (B.I-I) Department, dated 18.03.2000 is not applicable to the individuals participating in the contracts. Insofar

as the individuals are concerned, there is no financial restriction or restriction on execution of number of works in awarding of contracts. He therefore submitted that not considering the tender documents filed by the petitioners is illegal.

4. Learned standing counsel submitted that the tender notifications issued are exclusively for the persons belonging to Labour Co-operative Contract Societies of SC/ST/Wadderas and individuals belonging to said communities. In view of reserving certain works in favour of these category of persons, certain conditions are imposed to award works. One of the conditions is, at any time the total estimated cost of works entrusted to individuals should not exceed Rs.10.00 lakhs, whereas petitioners belonging to Waddera community and approximately Rs.39.86/46.35 lakhs worth of works are being executed by the petitioners respectively. She therefore submitted that petitioners suffer disqualification on that ground. She further submitted that it is mandatory, according to the tender conditions, that the participants should disclose the works on hand and non-disclosure would earn disqualification. She submitted that the petitioners did not disclose the works being executed by them. Therefore, on this ground also, petitioners are not eligible.

5. The point for consideration is whether petitioners are qualified to be considered for awarding of contracts, for which tender notifications were issued, and not considering the tenders submitted by them vitiates the entire process.

6. It is not in dispute that petitioners belong to Waddera community and works notified are reserved to be allocated to

Labour Co-operative Contract Societies formed by the SC/ST/Wadderas or individuals belonging to those categories. The Government issued orders in G.O.Ms.No.52, dated 18.03.2000 prescribing procedure of awarding of such contracts. Since these works are allocated to the above categories by exclusive preference, exempted from payment of Earnest Money Deposit (EMD) and given certain other concessions, the Government prescribed further conditions to award contracts.

7. To appreciate the rival contentions, it is necessary to consider the relevant clauses of Government orders and tender conditions.

8. The relevant clauses are clause 4(b) (ii) of G.O.Ms.No.52 dated 18.03.2000 and Special conditions 4 and 6(b) of tender notification dated 24.9.2016. They read as under:

(i). “4 (b)(ii) At any time the total estimated cost of works entrusted to individuals of SC/ST/Wadderas should not exceed Rs.10.00 lakhs.

.....

(ii). (4). The **society contractors** should have to declare the works on hand, otherwise their tender will be cancelled.

6(b). If any **labour society** is having more than (2) pending works on hand in this GWMC, their tenders will be rejected as per G.O.Ms.No. 52.”

9. Placing reliance on the above clause/conditions, learned standing counsel contended that petitioners are not entitled to participate in the tenders and to award further contracts since huge quantity of work was already entrusted to them.

10. A bare perusal of terms of tender notification would show that the restrictions imposed in the above paras are only against society contractors but not to the individuals belonging to the respective communities for whom works were earlier entrusted. Though clause 4 (b) (ii) of G.O.Ms.No. 52 prescribes that at any point total estimated cost of work entrusted to individuals should not exceed Rs.10 lakhs, that is not the issue in the present writ petition. Learned standing counsel produced proceedings dated 19.11.2016 informing that the tender of the petitioner was rejected. The rejection of the petitioner is on the ground that already two works were entrusted to them, therefore, they are not entitled to seek further work, obviously by referring to Clause 6 (b) of tender notification. As noted above this clause is not applicable to petitioners. The clause 4 (b) (ii) in G.O.Ms.No.52 on which reliance is placed does not restrict from participating in the tenders subsequently notified. Thus, by placing reliance on this clause, the claim of the petitioners, could not have been rejected.

11. The specific assertion of respondent-Corporation is, petitioners were required to furnish information regarding the works they are executing, whereas the said fact was suppressed while submitting the tender schedules and even in the affidavits filed in support of the writ petitions, they have not mentioned this fact.

12. As noted above, Clause 4 of tender notification is applicable to society contractors and not to individuals. Though para-3 of G.O.52 requires a participant in tenders to mention the number of contracts awarded to him and number of tenders participated, the

terms of tender notification do not prescribe any such requirement. In para-5 of the special conditions of the tender notification, it only refers to G.O.Ms.No.94 and G.O.Ms.No.52. As noticed above, other clauses of tender notification imposes restrictions on society contractors but no such restriction on individuals. Thus, when the tender notification does not indicate requirement of fulfillment of G.O.Ms.No.52 conditions, merely because para-3 of G.O.Ms.No.52, requires disclosure of works entrusted and tenders participated, on that ground tender documents of petitioners cannot be rejected. Moreover, the rejection was not on that ground.

13. Having regard to the above findings, the action of the respondents in not considering the tenders submitted by the petitioners is illegal. It amounts to arbitrary exercise of power. Writ Petitions are allowed. Respondent corporation is directed to open tenders submitted by petitioners, consider the offers given by the petitioners, vis-à-vis the other offers and if the offers given by petitioners are better, contracts should be awarded to them subject of course to petitioners fulfilling all other requirements.

14. Miscellaneous petitions if any pending in these writ petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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