

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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**WRIT PETITION Nos.37015, 37061, 37085 of 2015 and
647 of 2016**

Between:

M/s.Manpower Servicing Agencies.

....Petitioner

and

The State of Andhra Pradesh,
Rep.by its Secretary, Ministry of Health Department (M&H),
Secretariat, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 07.04.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
WRIT PETITION Nos.37015, 37061, 37085 of 2015 and
647 of 2016

COMMON ORDER:

Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

These Writ Petitions are being disposed of by this common order as the relief sought for in all the Writ Petitions is interconnected and arise out of the same cause of action.

W.P.No.37015 of 2015 was filed by the Contractor of the Man Power Servicing Agency of Vuyyuru Community Health Centre challenging the proceedings of the third respondent dated 29.10.2015 reducing the contract amount and for consequential payment as per the work order dated 07.04.2015. W.P.No.37061 of 2015 and W.P.37085 of 2015 were filed by the Contractor of the Man Power Servicing Agency of Mylavaram Community Health Centre and DVR Area Hospital, Nandigama respectively, for an identical relief.

W.P.No.647 of 2016 was filed challenging non payment of arrears of monthly contract amount to the petitioner as per the work order dated 23.05.2015 for Rs.1,59,990/- per month.

Thus, the grievance in all these Writ Petitions is with regard to payment of contract amount.

The petitioner is a registered agency and a partnership firm engaged in the business of supply of manpower to the Government Hospitals on yearly contract basis for the purpose of sanitation work. The fourth respondent - Area Hospital/Community Health Centre, issued tender notifications on 01.02.2015, 02.02.2015, 01.04.2015 and 04.05.2015 inviting applications from eligible contractors to supply manpower for sanitation work for a period of one year. The petitioner became the successful tenderer for an amount of Rs.1,38,990/-, 1,39,990/-, 1,69,990/- and Rs.1,59,990/- respectively. Thereafter, work orders were issued on 07.04.2015, 01.04.2015, 18.05.2015 and 23.05.2015 respectively by the third respondent in W.P.Nos.37015 and 37061 of 2015, by the Medical Officer, DVR Area Hospital, Nandigama, in W.P.No.37085 of 2015 and by the fourth respondent in W.P.No.647 of 2016. Pursuant to the said work orders the petitioner supplied the required manpower. During the period of contract the fourth respondent issued communications seeking clarification with regard to payment of the amount. On the instructions of the third respondent, the fourth respondent issued letter to the petitioner to discuss and reduce the contract value of sanitary work and directed the petitioner to submit its letter of acceptance by

reducing the contract value and the petitioner complied with the same. Thereafter, the third respondent issued proceedings dated 29.10.2015 reducing the contract amount of the petitioner in W.P.No.37015 of 2015 to Rs.79,990/- per month instead of Rs.1,38,990/-, by even date proceedings reducing the contract amount of the petitioner in W.P.No.37061 of 2015 to Rs.79,990/- per month instead of Rs.1,39,990/-, and by proceedings dated 13.10.2015 reducing the contract amount of the petitioner in W.P.No.37085 of 2015 to Rs.83,500/- instead of Rs.1,69,900/-. Challenging the same, the present Writ Petitions are filed.

Similar counter affidavits are filed by respondent Nos.2 and 3 separately in these Writ Petitions. For the sake of convenience, the averments in the counter affidavits filed in W.P.No.37015 of 2015, are dealt with, which are to the following effect.

As per the counter affidavit of the second respondent, it was admitted that the fourth respondent issued a public tender notification on 01.02.2015 inviting applications from the eligible contractors for supply of manpower for cleaning/sanitation work. It was also admitted that the petitioner was awarded the contract work with effect from 01.02.2015 to 31.01.2016. The fourth respondent addressed a letter to the third respondent stating that the fourth

respondent passed a resolution recommending the contract for hiring the services of sanitation work for a period of one year in favour of the petitioner for an amount of Rs.1,38,990/- and the same was permitted by the third respondent by issuing proceedings dated 07.04.2015. The third and fourth respondents should have taken prior permission from the second respondent before abnormally increasing the rates from Rs.79,900/- to Rs.1,38,900/-. However the contract of the petitioner was not finalised by the second respondent. The second respondent issued instructions to all the District Coordinators of Health Services in the State vide proceedings dated 07.01.2016 not to enhance sanitation charges of Community Health Centres under their control without obtaining prior permission from the first and second respondents. The petitioner was paid five months contract amount as per the old rates.

The third respondent in the counter affidavit specifically stated that the fourth respondent has no power or authority to issue work order to the petitioner and, as such, the work order is not valid. The agency selected by the hospital development society quoted Rs.1,69,900/- which is grossly higher than the amount paid prior to calling new tenders. The contract amount paid was Rs.83,500/- to the same agency. In view of the same, the issue was referred to the second respondent for clarification regarding admissibility of

such higher rates and a circular Memo dated 28.10.2015 was issued stating that any enhancement of rates should be finally approved by the Government. So far they have not received any clarification. It is also stated that without challenging the circular Memo dated 28.10.2015, the present Writ Petition is not maintainable.

This Court, by order dated 18.11.2015 in W.P.Nos.37015, 37061 and 37085 of 2015, directed that whatever amounts are paid to the petitioner may be received by the petitioner subject to further orders in the Writ Petitions.

Now the issue that remains to be considered is with regard to the entitlement of the petitioner to the tender amount quoted by it and the work order issued in its favour.

There is no dispute that the fourth respondent issued a tender notice and the petitioner became the lowest tenderer. The tender of the petitioner was approved by the third respondent also. It is also not in dispute that there was abnormal increase in the amount in the new tender and the same was not approved by the first and second respondents. The period of contract was one year. During the term of the contract, the petitioner was intimated with regard to the decision to adopt previous rates pending further orders from the Government on the revised rates. The petitioner agreed

for the same and continued the work. The said communication was issued in the month of October, 2015, and as per the affidavit of the petitioner, they submitted a reply accepting the same.

The Government issued G.O.Rt.No.2246, Finance (SMPC) Department, dated 07.06.2007, outsourcing certain functions like sweeping and scavenging etc., through Service Provider Agencies in Government Departments, pursuant to the policy issued in G.O.Rt.No.4459, Finance (SMPC) Department, dated 27.12.2006. Thereafter, the Government issued G.O.Rt.No.4271, Finance (SMPC) Department, dated 01.11.2008, outsourcing certain services in Government Departments and issued comprehensive guidelines in respect thereof. G.O.Ms.No.99, Health, Medical and Family Welfare (M2) Department, dated 05.05.2010, deals with sanitation in hospitals and a new sanitation policy was issued thereunder. The sanitation policy was extended initially to all teaching hospitals under the control of Director of Medical Education, the 3 semi-autonomous Rajeev Gandhi Institute of Medical Sciences at Kadapa, Adilabad and Srikakulam, all the 17 District Hospitals and 58 Area Hospitals of Andhra Pradesh Vaidya Vidhana Parishad. The terms and conditions of the model bid document are mentioned in paragraph 4 thereof. As per the same, the District shall be a unit for the purpose of calling tenders. The tender process shall be initiated by the

Managing Director, Andhra Pradesh Health & Medical Housing & Infrastructure Development Corporation, Hyderabad, and selected by a Committee to be constituted for this purpose for providing and supplying the services under the specified terms of contract. The names of the agencies selected for each District shall be communicated by the Managing Director of the Corporation to the Director of Medical Education, Andhra Pradesh, Hyderabad and to the Commissioner, Andhra Pradesh Vaidya Vidhana Parishad for entering into agreements. The agreement in respect of Teaching Hospital shall be signed by the Superintendent of the Teaching Hospital, whereas in respect of Area Hospital, the agreement shall be signed by the District Coordinator, Hospital Services concerned. They are the enforcement authorities on a day to day basis. The payment to the outsourcing agency shall be made by the Superintendent of the Teaching Hospital concerned and the District Coordinator Hospital Services of the District concerned in the case of Hospitals of Andhra Pradesh Vaidya Vidhana Parishad, based on recommendation of the Superintendent of the District/Area Hospital. The tenure of the contract shall be for a period of 3 years which is extendable by one more year. The said policy came into effect with effect from 01.10.2010 and was replaced by the policy issued under G.O.Rt.No.218, Health, Medical & Family Welfare (H2) Department, dated 14.03.2017. Thus, we are concerned with the policy issued in

G.O.Ms.No.99, Health, Medical and Family Welfare (M2) Department, dated 05.05.2010.

In the instant case, the contracts related to Vuyyuru and Mylavaram Community Health Centres, DVR Area Hospital, Nandigama and Area Hospital, Thiruvuru. The tender notices were not issued as per the above Government Order nor the work orders were issued by the competent authorities. However, the third respondent, who is competent with regard to payments of amounts and enforcement of contract on a day to day basis, directed the fourth respondent seeking reduction of the amount, and on acceptance of the reduction of amount by the petitioner, the third respondent issued proceedings reducing the contract amount. However, after accepting the reduction of contract amounts, the present Writ Petitions were filed. There is no basis/evidence for claiming the difference of contract amount and the contract was not entered by the competent authority. Further, the petitioner itself accepted for reduced amount and carried out the work.

In view of the violation of the procedure in awarding work order to the petitioner and the acceptance of reduced amount during the execution of the contract by the petitioner, this Court sees no ground to grant the relief in the Writ Petitions.

Hence, all the Writ Petitions are dismissed. However the dismissal of the Writ Petitions will not prevent respondent Nos.3 and 4 from paying the difference amount to the petitioner if the Government issues an order to that effect, since it was stated that the orders from the Government were awaited. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

A. RAMALINGESWARA RAO, J

07.04.2017
vs

