THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No.1437 OF 2017

Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 747 of 2017 dated 1.9.2017.

The appellant herein is the petitioner in the writ petition wherein they sought a mandamus to declare the action of the 2nd respondent, in issuing a Letter of Intent by their letter dated 23.12.2016, in favour of the 3rd respondent, for carrying out operations and maintenance, including watch and ward, housekeeping and gardening pertaining to all 220 KV Sub-stations in Pendurthy Division in OMC Circle, Visakhapatnam, as arbitrary, illegal and in violation of Article 19(1)(g) of the Constitution of India. A consequential direction was sought to the 2nd respondent to award the contract in favour of the appellant-writ petitioner for operation and maintenance of the 220 KV Sub-station in Pendurthy Division in OMC Circle, Visakhapatnam.

The Transmission Corporation of Andhra Pradesh Limited issued a tender inviting bids for execution of the work of carrying on operation and maintenance including watch and ward, housekeeping and gardening, MRT assistance and assistance for Telecom, EHT Sub-stations and lines and CBD & SM Gangs for lines and sub-stations including conveyance with three ton van for CBD gangs on works contract basis pertaining to the 400 KV Kalapaka sub-station and the 220 KV sub-stations in Pendurthy Division in OMC Circle, Visakhapatnam.

Clause-6 of the tender conditions relates to financial turnover of bidders, and reads as under:

> "<u>Financial Turnover of Bidders:</u>
>
> The financial turnover of the bidder should have at least 50% of ECV of Bid for the two years cumulatively out of last 3 years for O&M or construction activity in power sector anywhere in the country. Documentary evidence to be enclosed with the bid duly certified by Chartered Accountant."

The Estimated Contract Value (ECV) of the work was Rs.8.70 crores, and 50% thereof was Rs.4.35 crores. The understanding of the tendering authority, with regards Clause No.6, is that the financial turnover of the bidder should exceed Rs.4.35 crores, for two years cumulatively out of the last three years, with respect either to operation and maintenance, or to construction activity, in the power sector anywhere in the country. While the appellant-writ petitioner submitted a Chartered Accountant certificate to show that they had undertaken electrical works contracts for a sum in excess of Rs.4.35 crores, the respondents rejected the appellant-writ petitioner's bid, though they were the lowest tenderer, and awarded the work to the second lowest tenderer on the ground that the financial turnover of the appellant-writ petitioner related to operation and maintenance works in sectors other than the power sector.

Sri V.V.N. Narayana Rao, learned counsel for the appellant, would submit that the conditions stipulated in Clause-6 is in the alternative; as long as the bidder has a financial turnover in excess of Rs.4.35 crores either in operation and maintenance, or in construction activity in the power sector anywhere in the country, it is sufficient compliance with the tender conditions; the tender conditions do not confine the financial turnover, with respect to operation and maintenance, only to the power sector; it is only construction activity which is confined to the power sector; if the respondents had any doubt regarding the construction to be placed on Clause-6, they ought to have issued a corrigendum or an errata or a clarification in this regard; and the stand now taken by the respondents, in their counter-affidavit, is only to help the 3rd respondent, and deny the appellant-writ petitioner their right to be awarded the contract.

On the other hand Sri N. Siva Reddy, learned Standing Counsel for the A.P. Transmission Corporation, would submit that the alternatives stipulated in Clause-6 is for the bidder to have a financial turnover in excess of Rs.4.35 crores either in operation and maintenance or in construction activity; both operation and maintenance, and construction activity, should relate only to the power sector; the appellant-writ petitioner's experience is in operation and maintenance in sectors other than the power sector; consequently, the authorities had rightly rejected the appellant-writ petitioner's bid; and the learned Single Judge had rightly dismissed the writ petition.

As noted hereinabove, the tender notification has been issued by the Transmission Corporation of Andhra Pradesh Limited, and the work pertains to the 400 KV Kalapaka sub-station and the 220 KV sub-stations in Pendurthy Division in the Operation and Maintenance Circle of Visakhapatnam. The construction placed on Clause-6, by the respondent-Corporation, is that the alternatives provided therein is not for the minimum financial turnover to relate to operations and maintenance in any sector or for the minimum financial turnover to relate only to construction activity in the power sector but requires the minimum financial turnover to relate either to operations and maintenance or to construction provided they are in the power sector. The construction placed on Clause 6 of the tender conditions by the respondents is undoubtedly a possible construction. Even if the construction placed on the said Clause by Sri V.V.N. Narayana Rao, learned counsel for the appellant, is also presumed to be a possible construction, this Court, in proceedings under Article 226 of the Constitution of India, would not interfere with the action taken by the tendering authority as long as their understanding of Clause 6 is based on a reasonable construction thereof. Since the work, for which tenders were invited, relates to the power sector, the respondents cannot be faulted in directing that the financial turnover of the bidder, in excess of Rs.4.35 crores, can either be in operation and maintenance or in construction activity provided both of them are in the power sector alone, and not in any other sector. Admittedly, the Certificate produced by the appellant-writ petitioner relates to their having achieved a financial turnover in excess of Rs.4.35 crores in operations and maintenance in sectors other than the power sector. We find no illegality in the action of the respondents, therefore, in rejecting the appellant-writ petitioner's tender. In any event, in an *intra-Court* appeal under Clause 15 of the Letters Patent, interference is justified only if the order of the learned Single Judge suffers from a patent illegality. We find no such infirmity in the order under appeal.

Sri V.V.N. Narayana Rao, learned counsel for the appellant, seeks a direction to the respondents to return the Earnest Money Deposit (EMD) of the petitioner. Suffice it to observe that, in case the appellant makes an application for refund of the EMD, the respondents shall consider the request in accordance with law.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

22nd September, 2017

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