

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.5303, 5313, 5325, 5368, 5370 and 5395 of 2017

COMMON ORDER:

In all these cases the petitioners claim that they are reputed printers and publishers publishing text books, guides, work books, key books etc., for several decades. They have got complete infrastructure for undertaking printing work of any volume. The Government of Andhra Pradesh issued a tender notice bearing Rc.No.31/T2/2017, dated 02.02.2017, for printing, publishing and distribution of the sale component of Nationalized Text Books from classes I to X in 4 colour format and the last date for sale of the tender schedule was fixed as 17.02.2017. The last date for receipt of the sealed tenders was fixed as 18.02.2017 and on the same day cover-1 would be opened. The petitioners took the tender schedule. But, after perusing the tender schedule, they noticed clause 4(xi) therein, which reads as follows:

“The tenderer or their subsidiaries who are publishing or selling guides/work books/key books (question & answers) based on the syllabus brought out by the Director of School Education, A.P are not eligible to participate in the bidding and should submit an undertaking in this matter.”

Challenging inclusion of the said clause in the tender schedule, the present Writ Petitions are filed.

Learned Senior Counsel Sri Deepak Bhattacharjee appearing for the petitioners submits that the present tender notice is issued to eliminate the tenderers who have the

capacity, and to extend invitation only to small printers who have no capacity. Even otherwise also, the petitioners who are having necessary infrastructure for printing large volume of work are discriminated and they have legitimate expectation, which is violated by imposing the above clause in the tender schedule.

I am not in agreement with the submission made by the learned Senior Counsel for the petitioners, since the employer (the person who issues the tender notice) has full freedom to invite tenders from the parties whom he chooses, unless the notice is a tailor-made to suit only one tenderer. This freedom is available to Government agency also. The doctrine of legitimate expectation, equality and fair play would come into picture only after submission of tender. But, before submission of tender, the tenderers are supposed to be qualified as per the tender conditions, and neither the tenderer nor the Court can say that a particular tender condition should not be there in the tender notice, unless it is patently illegal. Learned Senior Counsel relied on **Food Corporation of India v. M/s.Kamdhenu Cattle Feed Industries**¹ and, more particularly, the following observations made therein:

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art, 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action. Due observance

¹ (1993) 1 SCC 71

of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

The above observations are applicable to the action of the employer only after submission of the tender, but not before submission of tender. Now the issue before this Court is with regard to the imposition of condition in the tender, which the employer thought it fit to include in the tender notice. What circumstances weighed with the employer for imposing such

condition cannot be within the realm of this Court. A perusal of the said condition barring submission of tenders in respect of the publishers who print guides/work books/key books, in my view, has a nexus with the object sought to be achieved for inviting the tenders from the publishers who print the text books only, for which purpose the present tender notice is issued.

I do not see any reason to interfere with the tender notice issued by the respondents, and the Writ Petitions are dismissed at the admission stage. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

15.02.2017

Note: Issue C.C today.

B/o.

vs

(A.RAMALINGESWARA RAO, J)