

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.12845 of 2017

ORDER:

In the present writ petition challenge is to the order of the second respondent passed vide Roc.No.KCCL/System Integrator/2016, dated 31.03.2017.

2. Heard Sri Sridharan, learned Senior Counsel representing the counsel for the petitioners on record Sri Salloori Ramesh, Sri Ch.Samson Babu, learned Standing Counsel for the second respondent Corporation and Sri K.Siddhartha Rao, learned counsel for the impleaded 4th respondent.

3. First petitioner herein is a Company incorporated under the Companies Act, 1956, engaged in the business of construction and infrastructure development. Second Respondent Corporation floated a tender for Selection of System Integrator for development and implementation of Smart Kakinada City Solutions.

4. According to the tender notification, last date for submission of bids was 01.03.2017 at 5-00 P.M. Petitioners state that they started uploading e-procurement tender from 27.02.2017 onwards and uploaded 137 documents by 4-45 P.M on 01.03.2017 on to the server provided by Vupadhi Techno Services (P) Limited, an authorised service provider/agent of the State Government and according to the petitioners the same would be evident from snapshots. It is further stated in the affidavit filed in support of the writ petition that the petitioners could not submit its bid within time due to some technical problem at the fag end of the stipulated time and as per the petitioner the same cannot be attributed to the petitioners at all. It is further pleaded that the petitioners contacted Executive Engineer of the

second respondent on 01.03.2017 and it was informed that the above mentioned issue would be taken up with the concerned authorities for further discussion and the petitioners addressed a e-Mail to the second respondent informing of the difficulty faced by the petitioners. On 02.03.2017, the first petitioner addressed a letter requesting to treat the uploaded e-documents as proof of bid and to consider the same for evaluation.

5. On the ground that there was no response from the respondents, petitioners filed W.P.No.8515 of 2017 for the following relief:

“To declare inaction on the part of the Respondent No. 2 in granting extension of time to the Petitioners for submission of bid for Selection of System Integrator for Development and Implementation of Smart Kakinada City Solutions as being illegal and arbitrary and direct the Respondent No. 2 to consider and comply with the request of the Petitioners contained in communications dated 01.03.2017 and 02.03.2017.”

6. On 22.03.2017, the said W.P.No.8515/2017 was disposed of with a direction to the respondents to pass orders on the representation dated 01.03.2017, within a period of one week from the date of receipt of the said order.

7. Subsequently, by way of an order dated 31.03.2017, the second respondent herein rejected the request of the petitioners. This writ petition challenges the validity and the legal sustainability of the said communication/order dated 31.03.2017.

8. It is contended by the learned Senior Counsel appearing for the petitioner that the impugned communication/order of the second respondent is highly arbitrary, illegal and is in utter violation of the principles of natural justice apart from violative of Article 14 of the Constitution of India. It is further submitted that the impugned communication/order discloses absolute

non-application of mind by the respondents and the order is not supported by any valid reasons. It is further contended that had the opportunity been given to the petitioners herein, the same would have enabled the petitioners to dispel the doubts of the respondents and the petitioners herein would have proved that such purported statements of M/s. Vupadhi Techno Services (P) Limited are clearly false, misleading and incorrect. According to the learned counsel for the petitioners the impugned action is also violative of Article 19 (1) (g) of the Constitution of India.

9. To bolster his submissions and contentions, learned Senior Counsel placed reliance on the judgments of the Apex Court in *RAVI YASHWANT BHOIR v. COLLECTOR*¹, *THE COMPTROLLER & AUDITOR GENERAL v. K.S. JAGANNATHAN*² and *CYRIL LASRADO v. JULIANA MARIA LASRADO*³.

10. Per contra, it is submitted by the learned Standing Counsel for the second respondent that there is absolutely no illegality nor any infirmity in the impugned action and in the absence of the same petitioners herein are not entitled for any relief from this Court. It is also the submission of the learned Standing Counsel that in the absence of any public interest and *mala fides* attributed, the subject matter of the writ petition which emanates out of contract is not amenable for any judicial review under Article 226 of the Constitution of India. According to the learned Standing Counsel, the impugned action is strictly in conformity with the principles of natural justice. To bolster his submissions, learned Standing Counsel for respondent No.2 places reliance on the judgment of the Hon'ble Apex court in *MICHIGAN RUBBER (INDIA) LIMITED v. STATE OF KARNATAKA AND OTHERS*⁴.

¹ (2012) 4 SCC 407

² AIR 1987 SC 537

³ (2004) 7 SCC 431

⁴ (2012) 8 SCC 216

11. On behalf of the impleaded fourth respondent it is submitted that in response to the tenders the fourth respondent also submitted its bid within the time and is declared as the successful bidder and it has been awarded contract vide letter of intent dated 12.04.2017.

12. There is absolutely no dispute with regard to the reality that the petitioners herein could not submit tenders within the time stipulated in the tender notification dated 27.02.2017 i.e., by 5.00 P.M on 01.03.2017. The case of the petitioners in the writ petition is that because of technical problem petitioners could not upload the tender documents within the time, as such, no fault can be attributed to the petitioners herein. Earlier petitioners herein approached this Court by way of filing W.P.No.8515 of 2017 after submission of representations dated 01.03.2017 and 02.03.2017. This Court by way of an order dated 22.03.2017, disposed of the said writ petition and the operative portion of the said order reads as under:

“4. In view of the submission made by the learned counsel for the petitioners, without expressing any opinion on the merits of the case, the 2nd respondent is directed to pass appropriate orders on the representation, dated 01-03-2017 said to have been submitted by the petitioners within a period of one week from the date of receipt of a copy of this order.”

13. Pursuant to the said order, the second respondent herein issued the impugned communication/order. A reading of the said communication/order under challenge discloses in clear and equivocal terms that the second respondent addressed a letter bearing Roc.No.KCCL/System Integrator/2016, dated 03.03.2017 requesting M/s. Vupadhi Techno Services (P) Limited to offer their remarks on e-procurement portal during 4-30 P.M to 5-00 P.M on 01.03.2017 i.e, the last date for submission of the tenders and the said

organisation vide their letter dated 06.03.2017 informed that there was no system down during the bid submissions closing hours of the subject tender and all the services were fully functional. The impugned communication/order further discloses submission of the bid document successfully by other tenderers before the due time. The affidavit filed in support of the writ petition does not attribute any mala fides against the respondent authorities nor it discloses any element of public interest in the issue.

14. In *RAVI YASHWANT BHOIR (supra 1)*, the Hon'ble Apex Court held that even in administrative matters the reasons should be recorded and it is incumbent on the part of the authorities to pass a speaking and reasoned order and that the expanding horizon of the principles of natural justice provides for requirement to record the reasons. In the instant case, as evident from the communication/order under challenge, the second respondent assigned valid reasons for rejecting the claim of the petitioners herein. No malice in law can also be attributed to the respondents herein as the respondents did not do anything wrong without lawful excuse. Therefore, the principle laid down in the said judgment, in the facts and circumstances of the case, would not render any assistance to the petitioners herein.

15. The judgment in the case of *THE COMPTROLLER & AUDITOR GENERAL (supra 2)* also would not come to the rescue of the petitioners herein in the absence of any unlawful action on the part of the respondents.

16. The Judgment in *CYRIL LASRADO (supra 3)* also would not render any help to the petitioners in view of the reasons indicated in the impugned communication/order.

17. In the case of *MICHIGAN RUBBER (INDIA) LIMITED (supra 4)* the Hon'ble Apex Court while referring to the earlier judgment reported in *TEJAS CONSTRUCTIONS & INFRASTRUTURE (p) Ltd. v. MUNICIPAL SOUNCIL, SENDHWA*⁵ held that the Government and other undertakings must have a freehand in setting the terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere.

18. In *JOSHI TECHNOLOGIES INTERNATIONAL INC Vs. UNION OF INDIA*⁶, the Hon'ble Apex Court held that the courts may not examine the issue unless the action has some public character attached to it.

19. In the instant case, in the absence of any element of public interest and in the absence of any mala fides attributed to the respondents herein, this Court is not inclined to entertain the writ petition under Article 226 of the Constitution of India.

20. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:25.04.2017

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⁵ (2012) 6 SCC 464

⁶ (2015) 7 SCC 728

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.12845 of 2017

Dated:25 .04.2017

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