

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 20177 of 2017

Order:

Heard learned counsel for the petitioner, learned Government Pleader for the respondents 1 to 4 and learned counsel for the fifth respondent.

The petitioner along with the fifth respondent filed tenders for the work of formation of BT to the R/F Nallichetlapalle Road to Enugutlapalle HW (Upgradation of NREGS (SCP) 2014-15%2015-16) under tender notice dated 25.03.2017 issued by the fourth respondent. The tenders have to be submitted on or before 02.05.2017. After opening the tenders, the fifth respondent become the first lowest tenderer and the petitioner become the second lowest tenderer. When the tender was not awarded to the petitioner, he filed the present Writ Petition challenging the award of the contract to the fifth respondent on the ground that he did not fulfill the mandatory requirement of possessing Hot Mix Plant within a distance of 70 KMs from the work site, either owned or leased certified by the Executive Engineer, PIU Division, Chittoor.

In the counter affidavit filed by the fourth respondent it is stated that on the request made by the fifth respondent to the Executive Engineer, PIU Division, Chittoor, the fifth respondent uploaded a self declaration on NJ Stamp of Rs.100/- dated 29.04.2017 stating that he is having Hot Mix Plant within 70 KMs distance from the work site to the plant along with Google Map enclosing the letter made to the Executive Engineer, PIU Division, Chittoor. The said letter along with the declaration submitted by the fifth respondent was sent to the fourth respondent and the fourth respondent in turn issued a memo dated 02.06.2017 to the

Executive Engineer, PIU Division, Chittoor for clarification about possessing of Hot Mix Plant by the fifth respondent. The Executive Engineer submitted a report on 06.06.2017 stating that the Hot Mix Plant of the fifth respondent is located within 70 KMs distance to the work site. Based on the report of the Executive Engineer, the tender of the fifth respondent re-evaluated and found qualified as having fulfilled the mandatory condition at Serial No.6.

The tenders were opened on 07.06.2017 and the fifth respondent was declared as first lowest tenderer, whereas the petitioner was declared as second lowest tenderer. The fifth respondent quoted the price with 3.69% with an amount of Rs.42,97,557.34 paisa, whereas the petitioner quoted 0.12% with an amount of Rs.44,56,858.34 paisa and there is difference of Rs.1,59,301/- which is found to be a saving to the Government. The work was allotted to the fifth respondent and he completed 55% of the work.

As per the above averments in the counter affidavit, it is clear that though the fifth respondent did not produce the certificate, but he enclosed a copy of the letter and declaration of having possessed the Hot Mix Plant within the radius of 70 KMs and the same was verified by the fourth respondent through the Executive Engineer concerned and found to be true. After having satisfied with the possession of Hot Mix Plant by the fifth respondent, the tenders were opened and the fifth respondent was found to be the first lowest tenderer. Hence, when the fourth respondent satisfied himself with regard to fulfilment of mandatory condition stipulated in the tender, this Court cannot substitute its opinion and hold it otherwise. The Writ Petition, accordingly, fails as the tender of the fifth respondent was found to be valid by the accepting authority. The Writ

Petition also should be dismissed on the ground that the petitioner is only second lowest tenderer, whereas the fifth respondent is the first lowest tenderer.

The Writ Petition is, accordingly, dismissed. It is needless to observe that the competent authority shall refund the EMD amount, if any, paid by the petitioner as per rules. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

Date: 31.08.2017
Nsr

A. RAMALINGESWARA RAO, J

