

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

* * * *

Writ Petition No. 10443 of 2016

Between

M/s NRI Academy of Sciences,
Chinakakani, Mangalagiri Mandal,
Guntur district, rep. by its
Chief Operating Officer Dr. Koneru Sridhar.

.... Petitioner

And

The State of Andhra Pradesh,
rep. by its Principal Secretary,
Health, Family Welfare Department,
Secretariat, Saifabad, Hyderabad and another

... Respondents

JUDGMENT PRONOUNCED ON

25.04.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 10443 of 2016

Order:

The second respondent issued a tender notice on 23.02.2016 inviting sealed tenders from eligible service provider for supply of Tele Ultra Sonography Services for a period of five (5) years. A Corrigendum was issued on 29.02.2016 making some minor changes. The petitioner attended the pre-bid meeting on 29.02.2016 and submitted its bid on 11.03.2016. The technical and financial bids were opened on 12.03.2016 and 14.03.2016 respectively. The petitioner also paid Rs.2.00 lakhs towards EMD. The petitioner was found to be lowest tenderer and accordingly a letter of intent was issued accepting the rate quoted by the petitioner as Rs.535/- per report by proceedings dated 14.03.2016. However, when the second respondent issued notice on 16.03.2016, cancelling the tender notice dated 23.02.2016, the present Writ Petition was filed.

The petitioner states that he arranged for bank guarantee of Rs.2,10,00,000/- (Rupees Two Crores Ten Lakhs only) valid up to 17.06.2017 from Dhanalakshmi Bank, Vijayawada, pursuant to the letter of intent and the respondents are estopped from cancelling the tender notice.

This Court, by order dated 30.03.2016, ordered that *status quo* to be maintained and later on Writ Petition was admitted on 04.04.2016 and the said order of *status quo* was extended until further orders.

Seeking vacation of the said order, W.V.M.P.No.1327 of 2017 is filed by the second respondent admitting the issuance of letter of intent in favour of the petitioner pursuant to the tender notice dated 23.02.2016.

However, it is stated that during the review meeting with Head of Departments held by the Principal Secretary to Government the implementation of Tele Ultra Sonology Programme was reviewed and it was held that certain changes in the scope of the service like transmitting only image instead of video was found to be more cost effective and reduces the cost to tender and more competitive price could be obtained. The tender was cancelled on administrative grounds and cancellation was uploaded in CFW Website on 16.03.2016.

Learned Senior Counsel appearing for the petitioner submitted that the cancellation of the tender on the next day of issuance of letter of intent is *mala fide* and the respondents are estopped from cancelling the tender notice.

Learned Government Pleader appearing on behalf of the learned Advocate-General was asked to produce record of the case along with the file maintained by the Principal Secretary to Government. He categorically stated that there is no file maintained by the Principal Secretary to Government in the present issue and in view of the said categorical statement, the averments made in the counter affidavit filed by the Special Commissioner of Health and Family Welfare, Gollapudi, Vijayawada are not supported by the record and an adverse inference has to be drawn since the statement made in the counter affidavit is not supported by the record. It is not known whether the decision was taken by the second respondent himself or by the Principal Secretary to Government as stated in the counter affidavit. There cannot be oral orders in the running of the Government that too at the Principal Secretary level and in the absence of the written orders the second respondent should not have acted upon.

The reasons stated by the second respondent in the counter affidavit for cancellation of the tender are not supported by proper material.

A perusal of the file of the second respondent also does not disclose whether the tender committee met after issuance of letter of intent and took a decision for cancellation of the tender. The tender committee which was constituted for the purpose of finalization of the tender was also not consulted. The note file of seven pages available in the record contained a note dated 17.03.2016 signed by the Commissioner of Health and Family Welfare only on 21.03.2016. Though the Government has got power to cancel the tender, such power can be exercised before issuing letter of intent. When a letter of intent was issued to the successful party, the successful party gets a right to expect that the contract would be carried out. When the successful party comes to this Court, this Court has got a duty to review the decision of the authority and it has to be seen whether the decision is arbitrary or not. Though, it is stated that the tender was cancelled on administrative grounds, no reasons were assigned while uploading the cancellation order and it is sought to be supported by the alleged instructions of the Principal Secretary to Government and no file is produced in support of the said instructions. In the absence of any reasons and the reason stated not being supported by the connected record, it has to be held that the cancellation of tender is arbitrary. However, allowing of the Writ Petition does not automatically revive the letter of intent issued in favour of the petitioner in view of the long gap and scope for the Government to take a policy decision in the matter. This Court does not appreciate the action of the second respondent in taking such a policy decision without informing the Head of the Department, the Principal Secretary to Government.

In view of the same, the Writ Petition is allowed by setting aside the impugned order of cancellation of the tender dated 23.02.2016, but in view of the long gap of time, it is left open to the Government to take a policy decision with regard to invitation of bids for the proposed services and liberty is given to the petitioner to seek appropriate damages for unlawful cancellation of the tender.

The Writ Petition is, accordingly, allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) payable by the second respondent to the petitioner.

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

Date: 25th April, 2017
Nsr

A. RAMALINGESWARA RAO, J

