

HONB'E SRI JUSTICE CHALLA KODANDARAM

WRIT PETITION No.39745 OF 2015

ORDER:

The writ petition is filed questioning the letter dated 27.08.2015 addressed by the 2nd respondent rejecting the request of the petitioner for upgrading him as a Special Class Contractor in terms of G.O.Ms.No.94 dated 01.07.2003.

The facts are in narrow compass. Admittedly, the petitioner is a Class-I Contractor and he was awarded the work of formation of internal roads at SEZ in Menakur Village of Naidupet Mandal, Nellore District in August, 2010, by the A.P Industrial Infrastructure Corporation Limited (for short, "the APIIC"). Petitioner entered into an agreement on 23.09.2011 with the said APIIC for execution of the said work and furnished Earnest Money Deposit of Rs.18,11,368/- by way of bank guarantee, but the APIIC failed to hand over the site within the stipulated time and as such the petitioner could not execute the work for the agreed rates and requested the APIIC to extend price escalation benefit as there is an abnormal increase in the rates of bitumin and road metal. But, the APIIC has not agreed for the same and the petitioner informed its inability to execute the said work for the agreed rates beyond the agreement period. As such, the APIIC has determined the contract of the petitioner and forfeited its EMD amount by invoking the bank guarantee vide its letter dated 7.2.2011 and kept quiet and the petitioner has also not initiated any proceedings against the forfeiture of its EMD. It is stated that the petitioner's firm was again reconstituted on 01.06.2013 by making some internal changes and the said change in the constitution of the firm was

informed to the Registrar of Firms and accordingly, the firm was reconstituted and it was informed to the 2nd respondent for making necessary amendments. But, the 2nd respondent could not carry out the amendments in the reconstitution of the firm in its registers before the expiry of the validity period of registration of contractor i.e., 18.11.2013. As a result, the petitioner could not apply for renewal within the stipulated time. When the petitioner approached the 2nd respondent and his subordinates before the expiry of the period of registration of the petitioner, they informed that unless the reconstitution of the firm is approved by the department, the petitioner cannot apply for renewal. On account of the delay occurred in approving the reconstitution of the firm by the 2nd respondent, the petitioner is deprived of its right of renewal of registration within the period of limitation. Ultimately, the respondents informed the petitioner that he had to apply for registration afresh. Thereafter, the petitioner applied for registration as Special Class (Civil) Contractor afresh to the 2nd respondent and kept the same pending till 27.08.2015 and finally, passed the impugned order returning the application of the petitioner for registration on the ground that the Chief Engineer of APIIC has informed the 2nd respondent that it has not allowed the petitioner to participate in its tenders for being defaulter in commencing the works after concluding the agreement and requested not to allow the petitioner to upgrade to Special Class Contractor and not to be allowed to participate in the tenders of the Government Departments. Basing on the said intimation, the respondents issued the impugned letter to the petitioner rejecting

his request to upgrade him as a Special Class Contractor. Hence, the present writ petition.

Sri N. Siva Reddy, learned counsel for the petitioner, while making reference to G.O.Ms.No.94 dated 01.07.2003, submits that there is a special provision provided for the methodology to be followed with respect to blacklisting, and at any rate, the A.P.I.I.C Limited did not take any steps for blacklisting the petitioner and thereby there was no impediment with respect to the petitioner's case for being registered as a Special Class Contractor. It is also the contention of the petitioner that the abandonment or non-execution of the work awarded by the A.P.I.I.C Limited was on account of the special reasons, and the circumstances under which the petitioner did not execute the work are only on account of the omissions and commissions of the A.P.I.I.C, and it is only for that reason A.P.I.I.C did not initiate any further action with respect to work which was awarded to the petitioner was not executed.

Learned Assistant Government Pleader for R & B (A.P) opposes the writ petition and raised the objection that the A.P.I.I.C has not been made as party respondent in the writ petition and as such the writ petition itself is not maintainable. He would also submit that a contractor who has abandoned the work with respect to one State organization/State department would not be entitled to be upgraded as a Special Class Contractor, particularly when he has registered as a special class contractor to bid for high value works, it is presumed that he has competence to undertake such works. However, if a contractor who failed to execute the allotted work is upgraded as a Special Class Contractor, the very purpose of establishing the procedure for classifying a particular

contractor as a Special Class Contractor gets defeated. In those circumstances, learned Government Pleader prays for dismissal of the writ petition.

Having considered the respective submissions, the question which falls for consideration is as to whether the rejection of the request of the petitioner through the impugned letter for classifying him as a Special Class Contractor is justifiable, legal and valid.

G.O.Ms.No.94 dated 01.07.2003, was issued by the 1st respondent for the purpose of streamlining of tender procedures and registration of contractors rules with the following objectives:

- i) Simplification of procurement procedures
- ii) Achieving greater transparency in procurement
- iii) Reducing delay in procurement
- iv) Improving quality of construction
- v) Ensuring timely completion of projects.

The said G.O deals with various aspects with respect to tenders, procedures in relation to preparation of realistic estimates to train the personnel covering overall as many as 26 subtopics. Rules for registration of contractors are contained in Annexure-II and particularly procedure for registration of contractor is governed by para 1(e) which requires clarification of credentials and antecedents of the contractor who seeks to get himself as a registered contractor and there are six classes of contractors viz., 1) Special Class, 2) Class-I, 3) Class-II, 4) Class-III, 5) Class-IV, 6) Class-V. The contractor who seeks to get himself as a registered contractor is required to make an application in Annexure-IV enclosing the solvency certificate, a list of works executed by the contractor during the past five years duly certified by the

concerned departmental engineer of the rank of Executive Engineer or equivalent officer, the latest income tax and sales tax clearance certificates, copy of the document evidencing the constitution of the entity applying for registration and in case of companies, certificate evidencing registration with Registrar of Companies and in case of firms, with Registrar of Firms. The necessary documents would be scrutinized by a committee of the engineers; in the cases of Special Class Contractors, the committee consisting of Engineer-in-Chief, Commissioner and Commissionerate of Tenders. The said G.O also contemplated the procedure with respect to blacklisting and demotion of contractors.

In the case on hand, the only reason stated was the abandonment of work awarded to the petitioner. The procedure governed for granting of the registration with respect to a particular contractor to be classified as an eligible contractor to be classified as a particular class and the proforma of application does not provide for any information which is required to be furnished in relation to the works awarded, were not executed. In the case on hand, it is an admitted fact that the petitioner had not executed the work awarded to him and the petitioner was also not blacklisted. A contractor, not executing the work, may be on account of various reasons. That by itself cannot be construed as a disqualification for being considered to be registered. In the present case, the only reason stated is that the petitioner had abandoned to work awarded to him by the A.P.I.I.C. There are no reasons as to under what circumstances the petitioner abandoned the work. In those circumstances, merely on account of the

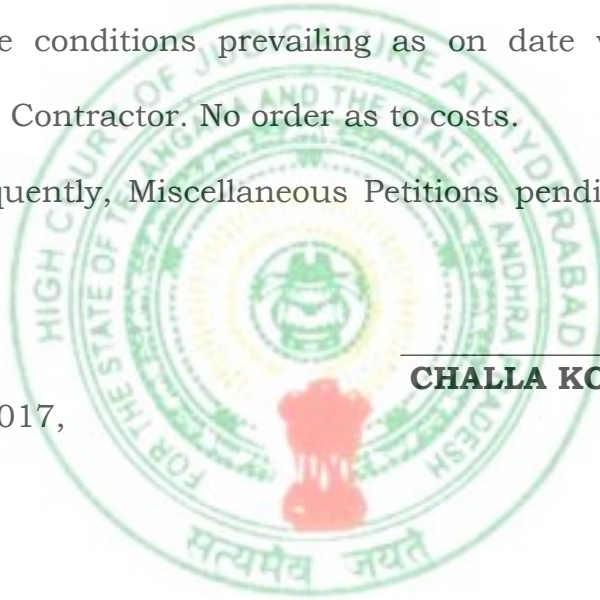
intimation being received from the A.P.I.I.C, the petitioner's application was rejected, cannot be considered to be reasonable.

In those circumstances, the writ petition is allowed setting aside the letter dated 27.08.2015, addressed by the 2nd respondent rejecting the application of the petitioner. As the abandoning of the work by the petitioner was in the year 2011 and there being no action taken by the A.P.I.I.C, the respondents shall consider the application of the petitioner afresh taking other merits into consideration and if the petitioner is otherwise eligible, he shall be declared as a Special Class Contractor, subject to petitioner satisfying the conditions prevailing as on date with respect to Special Class Contractor. No order as to costs.

Consequently, Miscellaneous Petitions pending if any, shall stand closed.

Date:18.04.2017,
Gk.

CHALLA KODANDA RAM,J



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