

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.18635, 18870 AND 20291 OF 2017

COMMON ORDER:

These three writ petitions are being disposed of by this common order as they relate to the orders passed by the Chief General Manager/Projects of the Southern Power Distribution Company of Telangana Limited., (TSSPDCL) on 03.05.2017 blacklisting the petitioners and consequently cancelling the Letter of Intent issued in favour of the petitioner in W.P.No.18635 of 2017.

The TSSPDCL invited tenders by issuing a Notice for implementation of IPDS Works in Bhongir Town and Jadcherla Town of Nalgonda District. The period of completion of works was eight months. The tender process was undertaken through e-tender method. The bids were invited till 19.09.2016 and the technical bids were opened on 20.09.2016. The price bids were opened on 27.09.2016. As per the tender conditions, the bidder is supposed to submit Turnover Certificate and other documents relating to turnover, copy of Demand Draft/Bank Guarantee towards Bid Security, Technical Eligibility Certificate, Satisfactory Performance Certificate etc. It is stated that if any of the documents/certificates etc., furnished by the bidder are found to be false/fabricated/bogus, the bidder will be disqualified, blacklisted and action will be initiated against the bidder as deemed fit and the Bid Security will be forfeited. The petitioners submitted Bank Guarantees issued by the Syndicate Bank, Hyderabad, bearing B.G.No.SYNO11289/16.for an amount of Rs.787,500/- dated 04.11.2016 and B.G.No.Nil, dated 03.11.2016, for an amount of Rs.26,84,000/- issued by the Punjab National Bank, Miyapur Branch, Hyderabad, respectively. When the above Bank Guarantees were got confirmed through the Bank, it was noticed that the Bank Guarantees were fabricated and after coming to know of the said fact, the impugned proceedings were issued on

03.05.2017. Challenging the same, the petitioners filed W.P.No.18635 of 2017 and 18870 of 2017. Since the Letter of Intent was already issued in favour of the petitioner in W.P.No.18635 of 2017 in respect of IPDS works for erection of Distribution Transformers, enhancement of DRTs, Stringing of 11 KV & LT line Installation and Replacement of Energy Meters, etc., in Barkathpura Sub Division of Azamabad Division, Hyderabad, the same was cancelled. Challenging the same, W.P.No.20291 of 2017 was filed.

The only point raised by the learned counsel for the petitioners is that blacklisting has serious consequences and the same cannot be resorted to without issuing any notice to the petitioners and hearing the petitioners. He relied on a decision of the Supreme Court in **E.E.& C Limited vs. State of West Bengal**¹.

A counter affidavit is filed on behalf of respondents stating that in view of the tender conditions, the petitioners were blacklisted after coming to know of the fraud played by them and in those circumstances, no notice is required to be issued to them. As a consequence to the blacklisting, the earlier Letter of Intent issued in favour of the petitioner in W.P.No.18635 of 2017 is cancelled and as such blacklisted contractor cannot execute any works for a period of two years.

The non-award of tender and cancellation of tender is one thing and blacklisting the contractor is another thing. When a particular contractor might have committed fraud or irregularity, the tender of the respective contractor can be withdrawn, but since blacklisting will have serious consequences, he should be heard before taking the said action. The said ratio is laid down in the decision of the Supreme Court. Since there is violation of principles of natural justice in the instant cases, these writ petitions are allowed by setting aside the impugned orders. The respondents are directed to issue notices to the petitioners clearly indicating the alleged

¹ AIR 1975 SC 266

irregularity/fraud detected after submission of the bids by them along with material available with the respondents in support of the charges, by giving them some time to submit their explanations. After considering the explanations, it is open to the respondents to take appropriate action in accordance with law. The respondents are given one week time from the date of receipt of a copy of this order and the petitioners shall submit their explanations within one week from the date of receipt of notices. After receipt of the explanations, the respondents shall pass an order in accordance with law.

The writ petitions are accordingly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

08.08.2017

Note: Issue CC by 10.08.2017
(By order)
pln

A.RAMALINGESWARA RAO, J

