

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.35771 OF 2016

ORDER:

Heard Sri S.Ramachandra Rao, learned senior counsel for petitioners and Sri A.Jagan for respondents 2 to 4.

The petitioners pray for Mandamus declaring the action of the respondents in not extending the contract period of petitioners/existing transport contractors of paddy in Khammam district, while extending the contract in respect of all other districts of Telangana and declaring the selection of new transport contractors for Khammam district pursuant to tender notice No.Mktg.3(1)/MSP/2016-17 dated 10.09.2016, as illegal, arbitrary, discriminatory and unconstitutional.

The circumstances relevant for disposal of the writ petition are as follows:

The 4th respondent through proceedings Mktg.M3(1)/MSP/2015-16 dated 12.11.2015 issued work order to 2nd petitioner as paddy transport contractor for Kothagudem Division to transport the paddy purchased under MSP for KMS 2015-16. The work order is for the year 2015-16 and ended by 30.09.2016. In the present writ petition, the grievance is not related to or concerned with the discharge of obligations under work order dated 12.11.2015, but is against tender notice No.Mktg.3(1)/MSP/2016-17 dated 10.09.2016 calling for tenders from eligible transport contractors for transporting paddy for the year 2016-17 together with the non-extension of contract beyond 30.09.2016. The complaint of petitioners is that the 1st respondent/State Government contemplated to divide the

then existing 10 districts of Telangana State into 31 districts, and pending formation of 31 districts in the first week of September, 2016, a policy decision was taken to extend the contract period of all existing paddy contractors up to 31.03.2017. But respondents 3 and 4 contrary to the policy decision have issued tender notice dated 10.09.2016 for awarding contract to successful bidder. According to petitioners, at the first instance, the tender notice ought not to have been issued and secondly non-consideration of extension of the contract of petitioners up to 31.03.2017 is illegal, erroneous and discriminatory. The allegation in writ affidavit on which particular reference was made by the petitioners reads thus:

“.....Then the 3rd respondent informed the petitioners that the petitioners' contract period will be extended in terms of the policy of the 2nd respondent Corporation and the impugned tender notice was issued in routine course and in view of the policy of the Corporation, they will not act upon the tender notice.....”

The petitioners to complain discrimination of treatment of similarly situated persons rely upon letter No.Mktg/M2/Kharif 2016-17 dated 07.10.2016 issued by the District Manager, TSCSCL, Mahabubnagar and the operative portion reads thus:

Lr.No.Mktg/M2/Kharif 2016-17 Dt:-7.10.2016

To

The Vice Chairman &
Managing Director,
TSCSCLtd.,
HYDERABAD

Sir,

Sub:- TSCSCL - Mahabubnagar District – Mktg -
Kharif 2016-17 – Extension of Paddy
transport contract – Information submitted –
Regarding.

Ref: 1) Instructions of the Vice Chairman & Managing Director, TSCSCL, Hyderabad on 01.10.2016.

2) Representation of Sri G.Shyam Sundar, Transport Contractor, Mahabubnagar & Nagarkurnool division, dt.29.09.2016.

3) Note orders of the Joint Collector & EOED, TSCSCLtd, Mahabubnagar, dt: 03.10.16.

4) Representation of Sri J.Prabhu Lingam, dt:05.10.2016.

5) Note orders of the J.C & EOED, dt 06.10.2016.

6) Representation of Sri G.Syam Sundar, dt: 07.10.2016.

It is to submit through the reference 1st cited, the Vice Chairman & Managing Director, TSCSCL, Mahabubnagar has issued instructions to extend the contract period of the existing transport contractor for Kharif 2016-17 for the further period of (06) months (i.e. 01.10.2016 to 31.03.2017) as per the agreement clause No. 3(i) or till the new contractor is appointed whichever is earlier due to formation of New districts."

Hence, the writ petition.

The 3rd respondent filed counter affidavit substantially denying the right claimed for extension of contract as well as grievance of discrimination to petitioners and states that the transport season starts on or before 01.10.2016 for purchase of paddy directly from the farmers. Therefore, the tender notice dated 10.09.2016 was issued well in advance to finalize the transport contract for continuation of transportation of paddy. According to 3rd respondent, the participants are very much aware of the changes proposed to the districts and have accordingly participated in the tenders. The policy decision referred by petitioners is inapplicable and untenable and the petitioners do not

have right with the expiry of contract on 30.09.2016 in the fact situation of the case for enforcement of any right. The consideration of petitioners' case for extension does not arise and pray for dismissing the writ petition.

The 4th respondent filed counter affidavit and submitted that pursuant to tender notice dated 10.09.2016 tenders have been finalized and contracts were awarded to following persons:

S.No.	Name of the tenderer	Division
1	Sri Laxmi Surya Narayana Lorry Transport, Khammam	Khammam
2	Akula Naveen Kumar, Suryapet	Palvancha
3	Bhadrachalam Division Lorry Owners Association, Bhadrachalam	Bhadrachalam
4	Akula Naveen Kumar, Suryapet	Kothagudem

The respondent prays for dismissal of the writ petition.

The petitioners relied upon letter No.Mktg.M2/3638/PTC/KMS 2016-17 dated 17.10.2016 to contend that contrary to the instructions dated 01.10.2016, the rates proposed by the District Tender Committee, Khammam are accepted by 2nd respondent. The 2nd respondent has filed counter affidavit explaining the circumstances under which the communication dated 17.10.2016 has been issued.

Sri SRamachandra Rao, learned senior counsel, submits that the failure of respondents 3 and 4 to reply to the allegations in para 11 of affidavit would establish the discrimination complained by the petitioners. According to him, on 01.10.2016, the 2nd respondent issued instructions to extend the contract period of existing transport

contractor for kharif 2016-17 for further period of six months. Therefore, in obedience to the instructions issued by the 2nd respondent, all the districts have granted extension of transport contract up to 31.03.2017, but respondents 3 and 4 firstly have disobeyed the instructions and on the contrary going for tender and finalization is illegal, arbitrary and unconstitutional. The approach of respondents 3 and 4 amounts to disregarding the general policy of 2nd respondent Corporation to extend the contract for a further period of six months; amounts to discrimination; and the 2nd respondent cannot and could not approve the recommendations of respondents 3 and 4 contrary to the policy instructions issued on 01.10.2016.

Mr.Jagan for respondents 2 to 4 submits that the petitioners are not one of the tenderers in tender notice dated 10.09.2016 and they cannot complain against the decision making process of respondents 2 to 4 in awarding the contract. The respondents with a view to completing the spade work required for commencing the work from 01.10.2016 have issued tender notice dated 10.09.2016 and no exception can be taken to the steps initiated before hand by respondents 2 to 4. The instructions are applicable only if tender is not finalized or any administrative exigency is experienced by Corporation with the creation of more districts in the State of Telangana, but not when things are in place. In the case on hand, according to him, the tenderers had participated keeping in view the changes on the anvil and after seeing the competitive rights given by the tenderers, the District Level Committee has recommended the proposal and the

2nd respondent accepted the recommendation and accordingly new transport contract for paddy transportation has been awarded. He prays for dismissal of the writ petition.

I have perused the material available on record, taken note of submissions of learned counsel for the parties and the short point for decision is as follows:

“Whether the right claimed by the petitioners pursuant to communication dated 01.10.2016 is legal, factually tenable and non-consideration for extension resulted in discrimination or not?”

I have, to the extent required, already referred to the case of the parties and for brevity, I am not proposing to refer to the averments and contentions of parties in this behalf. The petitioners contend that they ought to have been granted extension of transport contract till 31.03.2017, as has been done in the case of other districts pursuant to instructions dated 01.10.2016. The admitted case is that the contract of petitioners came to end by 30.09.2016. The respondents are required to put in place functional contracts for transport of paddy by 01.10.2016. On 10.09.2016, tender notice was issued. On 20.09.2016, tenders were opened by the District Level Committee and recommendations were forwarded on 21.09.2016 for approval by 2nd respondent. On 01.10.2016, instructions to extend existing transport contract in terms of clause 3(i) for six months period was permitted or till the new contractor is appointed, whichever is earlier, due to formation of new districts was envisaged. Therefore, by the time the instructions have been issued, finalization of tender by Khammam District was completed and was pending

for approval of the 2nd respondent. Having regard to the advanced stage of finalization of transport contract for the period commencing from 01.10.2016, respondents 3 and 4 have preferred to award new transport contract to the successful tenderers instead of extending the contract of petitioners. In my considered view, the instructions dated 01.10.2016 cannot and could not be read to shelve the process initiated by districts for awarding paddy transport contract for the period 2016-17. The instructions dated 01.10.2016 give both the options viz., to extend the contract up to 31.03.2017 or till a new contractor is appointed, whichever is earlier. Since the recommendations for entrustment of new contract have already been finalized and forwarded to respondent No.2 for approval, this Court is of the view that the petitioners since have not participated in the tender notice dated 10.09.2016, cannot and could not by reference to a decision even assuming to be a policy decision taken on 01.10.2016, complain discrimination and pray for extension of contract up to 31.03.2017. Further, the policy decision is not attracted to the fact situation of the case and the prayer is misconceived.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

04th January, 2017

Lrkm

S.V.BHATT, J