

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION Nos. 40138 of 2016 AND 2898 of 2017

COMMON ORDER :

Since these two writ petitions are interrelated, this Court deems it appropriate to dispose of these cases by way of common order.

2. W.P.No.40138 of 2016 is filed under Article 226 of the Constitution of India, seeking following relief:

“...to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in not taking into consideration the petitioner for the purpose of awarding the work relating to Rehabilitation and Modernization of Structures and laying Steel Fibre Reinforced Shotcrete (SFRS) for (a) 26 Structures in Package No.: LC-NLG-2, (b) 48 Structures in Package No.: LC-NLG-KMM-3 of Nagarjunasagar Lal Bahadur Canal and (c) 58 Structures in Package No.: LC-KRI-7 of 21st Mani Branch Canal of Nagarjunasagar Lal Bahadur Canal and issuing two Tender Notification Nos.:1/2016-17, dated 7.11.2016 and 2/2016-17, dated 8.11.2016, as illegal, arbitrary and malafide and set aside the same and further direct the respondents to award the said works which are the subject matter of the aforesaid Tender Notifications to the petitioner and pass such other order or orders as may deem fit and proper in the circumstances of the case.”

3. W.P.No.2898 of 2017 is filed under Article 226 of the Constitution of India, seeking following relief:

“...issue any appropriate Writ, Order or direction, preferably a Writ in the nature of Mandamus declaring

Proceedings bearing No.DB/TO?ATOS/642/ dated 24/12/2016 wherein the Petitioner was asked to stop the works, namely (i) Rehabilitation and Modernisation of Structures and laying Steel Fibre Reinforcement Shortcrete (SFRS) from Km.52.300 to Km.101.358 of 21st Main Branch Canal of Nagarjunasagar Lal Bahadur Canal, T.S. India (Package No:LC - KMM – Structures – 7); and (ii) Rehabilitation and Modernisation of Structures and laying Steel Fibre Reinforcement Shortcrete (SFRS) from Km.29.291 to Km.90.540 of Nagarjunasagar Lal Bahadur Canal, T.S. India (Package No:LC – NLG – Structures – 2 & 3), as being violative of principles of natural justice and in violation of Article 14 of the Constitution of India by setting aside the same and consequent direct the Respondents 1 to 6 herein to permit the Petitioner to execute the Contracts bearing Nos.2 SE(T)/2016-17 dated 22/12/2016 and 3 SE (T)/2016-17 dated 22/12/2016 by completing the works in terms of the contracts and to pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

4. The petitioner in W.P.No.40138 of 2016 is the 7th respondent in W.P.No.2898 of 2017 and the petitioner in W.P.No.2898 of 2017 is the 7th respondent in W.P.No.40138 of 2016.

5. Since the fate of W.P.No.2898 of 2017 depends upon the outcome of W.P.No.40138 of 2016, this Court deems it apt to deal with W.P.No.40138 of 2016.

6. Pursuant to the Tender Notifications issued by the respondent Authorities for the works contracts, pertaining to Packages 2, 3 and 7 of Rehabilitation and Modernisation of Nagarjunasagar Lal Bahadur Canal, the petitioner in W.P.No.40138 of 2016 emerged as the successful bidder and agreements have also been entered into on 30.05.2008. According to the petitioner, it has been executing the works covered by the said agreements and has so far completed 90% of the said works.

7. While the things being so, the Superintending Engineer, NSLBC O & M Circle, Takulapally-4th respondent herein issued Tender Notifications bearing Bid No.1/2016-17 dated 07.11.2016 and Bid No.2/2016-2017 dated 08.11.2016 for the following works in relation to Packages 7, 2 & 3 respectively.

Package No.	Name of Work	Approximate value of work (Rs.lakhs)	Bid security (Rs. Lakhs)	Cost of document (Rs.)	Period of Completion
1	2	3	4	5	6
Package No: LC-KMM-Structures-7	Rehabilitation and Modernization of Structures and laying Steel Fibre Reinforced Shortcrete (SFRS) from km.52.300 to km.101.358 of 21 st Main Branch Canal of Nagarjunasagar Lal Bahadur Canal, T.S., India	3917.13	39.17	5620/- including tax	19 Months (including water regulation period and rainy season etc.)

Package No.	Name of Work	Approximate value of work (Rs.lakhs)	Bid security (Rs. Lakhs)	Cost of document (Rs.)	Period of Completion
1	2	3	4	5	6
LC-NLG-KMM-Structures-2&3	Rehabilitation and Modernization of Structures and laying Steel Fibre Reinforced Shortcrete (SFRS) from km.29.291 to km.90.540 of Nagarjunasagar Lal Bahadur Canal, T.S., India	4737.28	47.37	5620/- including tax	19 Months (including water regulation period and rainy season etc.)

8. The validity of the said Tender Notifications is under challenge in the present writ petition.

9. Heard Sri C.Raghu, learned counsel for the petitioner in W.P.No.40138 of 2016 and for the 7th respondent in W.P.No.2898 of 2017 and learned Government Pleader and learned Senior Counsel Sri P. Venugopal for the 7th respondent in W.P.No.2898 of 2017, apart from perusing the material available on record.

10. The submissions/contentions of Sri C.Raghu, learned counsel for the petitioner are that:

1. The impugned action of issuing Tender Notifications instead of entrusting the works covered by the said Notifications by treating them as deviations to the initial works already entrusted to the petitioner is highly illegal, arbitrary, unreasonable and discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution of India.

2. Similar incidental works in Packages 1 and 6 have been entrusted to the 7th respondent without issuing Tender Notifications by treating them as deviations.
 3. Conditions, pertaining to qualifications are incorporated only to favour the 7th respondent.
 4. The respondents cannot deny the works solely based on a letter/mail addressed by the World Bank, which contains only proposal and that such objection was not raised by the Bank while awarding works to the 7th respondent in relation to Package No.1.
 5. The petitioner has got right to execute the additional works as per Para 63 of the A.P. Standard Specifications.
 6. The impugned action suffers from malice in law.
11. In support of his submissions, the learned counsel places reliance on the following decisions:
1. **Ramana Dayaram Shetty v. The International Airport Authority of India and others¹.**
 2. **Michigan Rubber (India) Limited v. State of Karnataka and others².**
 3. **State of A.P. and others v. Goverdhanlal Pitti³.**
 4. **Noble Resources Ltd., v. State of Orissa and another⁴.**
12. The submissions and contentions of the learned Government Pleader are that:
1. Since the Tender notice is issued inviting open tenders there exists no infirmity in the impugned action and in

¹ AIR 1979 SC 1628(1)

² (2012) 8 SCC 216

³ (2003) 4 SCC 739

⁴ (2006) 10 SCC 236

the absence of the same, the present writ petition filed under Article 226 of the Constitution of India is not maintainable and the petitioner herein is not entitled to any relief from this Court.

2. There is no arbitrariness nor illegality in the impugned action as the respondent Authorities called for open tenders.
3. The Committee never recommended for grant of work in favour of the petitioner herein. On the other hand, recommended only for revision of the estimates. In view of the opinion expressed by the World Bank, the present impugned action has been resorted to and it is obligatory to adhere to the instructions of the World Bank.

In support of his submissions, the learned Government Pleader placed reliance on the judgment of the Hon'ble Apex Court in **Asia Foundation & Construction Ltd., v. Trafalgar House Construction (I) Ltd. And another**⁵.

13. The submissions/contentions of Sri P.Venu Gopal, learned Senior Counsel are that:

1. Since the petitioner herein did not participate in the tenders, he has no locus to maintain the present writ petition filed under Article 226 of the Constitution of India.
2. In the absence of any illegality or arbitrariness, the impugned action cannot be meddled with under Article 226 of the Constitution of India.
3. In the absence of any discrimination on the part of the respondents as they have issued tenders inviting from

⁵ (1997) 1 SCC 738

all eligible persons, the present writ petition cannot be maintained.

14. Learned counsel, in support of his submissions, places reliance on the following decisions.

1. **B.S.N. Joshi & Sons Ltd. V. Nair Coal Services Ltd. And others⁶.**
2. **Nizam Sugar Factor v. Collector of Central Excise, A.P.,⁷.**
3. **Jagdish Mandal v. State of Orissa and others⁸.**

15. In the above background, now the point that arises for consideration of this Court is:

Whether the petitioner is successful in making out a case, warranting any interference of this Court under Article 226 of the Constitution of India and whether the petitioner is entitled for any relief from this Court?

16. There is absolutely no controversy on the reality that the Government of Telangana has taken up the instant project with the financial aid of the World Bank for construction and development. Pursuant to a meeting of the Committee of Chief Engineers in the Chambers of Engineer-in-Chief (I.W.) on 25.06.2016, recommending to the World Bank for Revised Administrative Sanction for Rs.85,73,45,000/- for Package No.3, Rs.1,01,27,02,000/- for Package No.2 and vide letters dated 13.07.2016, the Chief Engineer, Nagarajuna Sagar Project, requested the Project Director to PPMU-

⁶ (2006) 11 SCC 548

⁷ (2006) 11 SCC 573

⁸ (2007) 14 SCC 517

WSIP, Telangana State, Hyderabad, to seek no objection of the World Bank for increase in the contractual value by 15%. Thus, the matter was referred to the World Bank on 14.10.2016. The World Bank opined as follows:

“The new work proposed by the Government of Telangana of repairs and rehabilitation of 26 structures adopting Steel Fibre Reinforced Shot Concrete (SFRS) estimated to cost Rs.2,169.20 lakhs is a specialized job requiring skill and expertise to execute, that the present contractor is not equipped with. Therefore, the Bank proposes that this may be taken up under a fresh contract duly following bidding process. The Bank also recommends that this work is subject to TPQA and the Government of Telangana hires a consultant for this assignment with TORs duly cleared by the Bank.”

17. As a consequence of the above opinion expressed by the World Bank, the Superintendent Engineer issued the Tender Notifications, which are subject matter of the present writ petition. Admittedly, these are the works undertaken by the State of Telangana with the financial assistance of the World Bank. It is also significant to note that there is no such recommendation or opinion of the World Bank so far as the incidental works entrusted to the 7th respondent in respect of Packages 1 and 6. While referring to the said opinion expressed by the World Bank, it is the submission of the learned Government Pleader that it is obligatory on the part of the State of Telangana to adhere to the said opinion expressed by the World Bank and the same cannot be subject to judicial review under Article 226 of the

Constitution of India. In this context it may be appropriate to refer to the judgment of the Hon'ble Apex Court in Asia Foundation & Construction Ltd (supra). In the said judgment, the Hon'ble Apex Court while dealing with an identical issue at paragraph 9 held as under:

“The Asian Development Bank came into existence under an Act called the Asian Development Act, 1966, in pursuance of an International agreement to which India was a signatory. This new financial institution was established for acceleration the economic development of Asia and the Fast East. Under the Act the Bank and its officers have been granted certain immunities, exemption and privileges. It is well known that it is difficult for the country to go ahead with such high cost projects unless the financial institutions like World Bank or the Asian Development Banks grant loan or subsidy, as the case may be. When such financial institutions grant such huge loan they always insist that any project for which loan has been sanctioned must be carried out in accordance with the specification and within the scheduled time and the procedure for granting the award must be duly adhered to. In the aforesaid premises on getting the evaluation bids of the appellant and respondent no. 1 together with the consultant's opinion after the so-called corrections made the conclusion of the bank to the effect "the lowest evaluated substantially responsive bidder is consequently AFCONS" cannot be said to be either arbitrary or capricious or illegal requiring court's interference in the matter of an award of contract. There was some dispute between the Bank on one hand and the consultant who was called upon to evaluate on the other on the question whether there is any power of making any correction to the bid documents after a specified period. The High Court in construing certain clauses of the bid documents has come to the conclusion that such a

correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouratism in the grant of contract in favour of the appellant. In *Tata Cellular vs. Union of India* (1994) 6 SCC 651 this Court has held that :

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers.
2. Committed an error of law.
3. Committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :-

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to its;
- (ii) Irrationality, namely, *Wednesbury* unreasonableness.
- (iii) Procedural impropriety. The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

18. In view of the principle laid down in the above cited judgment, the present writ petition filed under Article 226 is not maintainable

and no judicial review can be undertaken on such aspects and no malafides can also be attributed.

19. Coming to the judgment cited by the learned counsel for the petitioner reported in Ramana Dayaram Shetty (1 supra), in the said judgment the Hon'ble Apex Court held that "the Government when it acts in the matter of granting largess cannot act arbitrarily, it does not stand in the same position as a private individual". In the considered opinion of this Court, the said judgment would not render any assistance to the petitioner, in the facts and circumstances of the case, as the respondent authorities called for open tenders, but not restricted the so-called consideration to a limited group of persons.

20. Another decision relied upon by the learned counsel for the petitioner is in the case of Michigan Rubber (India) Ltd (2 supra) and the same also would not be helpful to the petitioner since the respondents herein invited the open tenders and did not show any deviation.

21. In the judgment reported in State of A.P. and others (3 supra), the Hon'ble Apex Court held that if the action is malice in legal sense, it can be described as an act, which is taken with an oblique or indirect object. In the instant case, since the respondent Authorities have taken the impugned decision for inviting the open tenders, the said judgment is also no way helpful to the petitioner.

22. The judgment reported in Noble Resources Ltd (4 supra) is also not helpful to the petitioner in view of the lack of arbitrariness and favouritism on the part of the respondent.

23. Coming to the judgments cited by the learned counsel for the 7th respondent in W.P.No.40138 of 2016. In Jagdish Mandal (8 supra), the Hon'ble Apex Court at paragraph 22 held that "the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderor or contractor with a grievance can always seek damages in a civil court and attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, and persuade courts to interfere by exercising power of judicial review should be resisted." The Hon'ble Apex Court further held that 'such interferences, either interim or final, may hold up public works for years, or delay relief and succor to thousands and millions and may increase the project cost manifold".

24. The above judgment is squarely applicable to the facts and circumstances of the case. Therefore, this Court has absolutely no hesitation nor any traces of doubt to hold that the petitioner herein has failed in making out a case, warranting any interference under Article 226 of the Constitution of India.

25. For the aforesaid reasons, W.P.No.40138 of 2016 is dismissed. Consequently, W.P.No.2898 of 2017 is allowed. No order as to costs in both the writ petitions.

26. Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

A.V. SESA SAI, J

16th March 2017

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