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

* * * *

WP No.33695 of 2017

Between:

UNIVERSAL CABLES LIMTED & OTHERS

...Petitioners

AND

STATE OF ANDHRA PRADESH & OTHERS

...Respondents

DATE OF JUDGMENT PRONOUNCED: 25-01-2018

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

*THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

+ WP No.33695 of 2017

%25-01-2018

M/s. Universal Cables Limited & Others

...Petitioners

VERSUS

$ State of Andhra Pradesh & Others

...Respondents

< GIST:

> HEAD NOTE:

! Counsel for Petitioners: Sri S. Niranjan Reddy, Sr. Counsel appeared for Sri Avinash Desai, learned counsel for the petitioners

^Counsel for Respondents: Learned Advocate General for R-2, Sri S. Ravi, Sr. Counsel appeared for Respondents 3 to 5

? Cases referred

1. 2003 (1) ALD 463 (AP)
2. AIR 2005 Delhi 247
3. 2005 (1) CTLJ 353 Delhi
4. AIR 2012 SC 2915
5. 2007 14 SCC 517
6. AIR 2005 SC 469
7. 2009 (6) SCC 171

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.33695 of 2017

ORDER ::

Universal Cables Limited and KET Industries Limited and their respective share holders, petitioners 1 to 4 assail the tender flouted by the 2nd respondent-APTRANSCO announced vide IFB/Tender Notice No.APT-e-05/2017, bearing ID No.119074 through *e*-platform.

2. The nature of work notified in the tender envisage supply, erection, laying, testing and commissioning of 220 KV UG cables for diversion of 220 KV lines passing across the seed capital region involving laying of underground cables for power transmission, on turnkey basis, in Guntur district, Andhra Pradesh. (The tender work relating to laying of 132 KV EHT lines is deleted by way of corrigendum issued on 19-09-2017). The period of completion of work notified is 24 months and the estimated contract value is Rs.670,74,84,205/-. The tender issued is for four routes and the routes are as under:-

i) 220 KV VTS –Podili DC Line (OH-6 KM); UG cable-14 KM);

ii) 220 KV VTS-TallapalliCkts I & II (OH-6KM; UG cable-6KM);

iii) 220 KV VTL-TallapalliCkts III & IV (OH-6 KM; UG cable-6KM);

iv) 220 KV VTS-TadikondaCkts I & II (OH-6 KM; UG cable-9KM)

3. The petitioners claim themselves as dominant market players engaged in manufacture, supply and laying of power cables in power transmission and distribution industry and have been manufacturing and supplying extra high voltage (EHV) cables up to 220 KV for the last seven years including underground cable systems on turnkey basis. Petitioners state that the qualification requirements (QRs) set out in the impugned tender are wholly arbitrary, irrational and more stringent than the actual requirement for execution of the tender.

4. Senior counsel Sri S. Niranjan Reddy, appearing for the petitioners contended that a bidding manufacturer to have execution capability of 245 kms of 220 KV and a copper conductor cable of 1000 Sq.mm or above in one

continues period of 12 months in the last seven years is far higher requirement than the tender work to be executed and prescribing such a far higher standard than the performance required under the contract is wholly irrational and unjustified. It is contended that clubbing of all the four routes into one single tender is a major departure from the past procedure and the QRs set out is tailor made that no Indian manufacturer on its own credentials would be in a position to qualify. Learned senior counsel further contends that the QRs are restrictive, unrealistic and discourages the fair competition. It is stated that a subsidiary of a overseas company is allowed to participate in the tender with a meagre 2 kms of 220 KV experience and the subsidiary is allowed to rely on the experience of the overseas manufacturer for satisfying the QRs. It is contended that inasmuch as the QRs set out are tailor made to eliminate other competitors and facilitate award of tender in favour of 3rd respondent, the tender QRs prescribed are violative of the rights of the petitioners guaranteed under Articles 14, 19 (1) (g) and 301 of the Constitution besides contrary to the principles of fair play and justice and, therefore, liable to be struck down and placed reliance on decisions in ***BHARAT BIOTECH INTERNATIONAL LIMITED vs. AP HEALTH AND MEDICAL HOUSING AND INFRASTRUCTURE DEVELOPMENT CORPORATION***[1], ***DHINGRA CONSTRUCTION COMPANY vs. MUNICIPAL CORPORATION OF DELHI***[2], & ***GHARDA CHEMICALS LIMITED vs. CENTRAL WAREHOUSING CORPORATION***[3].

5. Learned Advocate General appearing for the 2nd respondent-AP Transco, on the other hand, contended that laying 220 KV underground cable lines which pass through seed capital region is correlated to the execution of the construction of capital complex of the State of Andhra Pradesh and as such all the four route works made into one lot for better space management and to attend

[1] 2003 (1) ALD 463 (AP)

[2] AIR 2005 Delhi 247

[3] 2005 (1) CTLJ 353 Delhi

complaints in case of failure of any of the four lines by the single manufacturer and if four different routes are awarded to 4 different bidders, blending of cable accessories would not be technically feasible. Learned Advocate General states that all reasonable precautions were taken while formulating the tender QRs including the factor of time constraint for effective and early completion of work. It is stated that 18 prospective bidders including the representatives of 1st and 3rd petitioners have participated in the pre-bid meeting held on 18–05–2017 and the prospective bidders have sought clarifications and the clarifications were also placed in *e*-platform by the 2nd respondent. It is submitted that in matters of tenders and award of contract, the scope of judicial review is limited and such review power cannot be invoked to protect private interest at the cost of public interest. Decision in ***MICHIGAN RUBBER (INDIA) LIMITED vs. THE STATE OF KARNATAKA***[4] is relied on.

[4] AIR 2012 SC 2915

6. Senior counsel Sri S. Ravi, appearing for respondents 3 to 5 submitted that 2nd respondent-AP Transco has been awarding similar nature of works as a single lot and one such work is 182 kms of 220 KV lines and in the instant case the object sought to be achieved in imposing such QRs is obviously for early completion of the tender work so as to co-relate with the construction work of the capital complex of the State of Andhra Pradesh, and therefore no motives or discrimination can be attributed in insisting such QRs by the 2nd respondent. That the petitioners even without participating in the bid cannot interdict the process which is time bound. That the petitioners having not participated in the tender process cannot espouse the cause of public interest in this writ petition and their non-participation does not render the tender non-competitive as there are three bidders in the fray as joint venture partners. Relied on decisions in ***JAGDISH MANDAL vs. STATE OF***

ORISSA,[5] & ASSOCIATION OF REGISTRATION OF PLATES vs. UNION OF INDIA (UOI).[6]

7. Admittedly the tender flouted by the 2nd respondent is a global tender and the nature of work involves sophistication methods with technical know-how with speedy execution of work. The question that would arise for consideration in the writ petition is whether the tender QRs formulated is tailor made to chose a particular bidder of the choice of the 2nd respondent, as alleged by the petitioners.

8. The objections raised by the petitioners is two fold, *firstly* that four separate works have been clubbed together to create a single large tender without any reason or justification, *secondly* that the bidder must have past experience of manufacturing and supply of cable of 220 KV to 245 km in 12 months, when the tender itself is for 245 km in 24 months and the subsidiary of overseas manufacturer has to have the experience of only 2 km and

---

[5] 2007 14 SCC 517

[6] AIR 2005 SC 469

this low limit is fixed, as the Indian subsidiary of LS Cable, 5th respondent has experience of 2 km.

9. In the light of the fact that the matter relates to tender and its QRs this Court would not probe into the issue whether four separate works were clubbed together to create a single large lot is technically correct or not. It would suffice if a reference to the reasons given by the 2nd respondent in consolidating all the four routes, as one lot. It is stated in the counter affidavit of the 2nd respondent that laying of 220 KV underground cable lines passing through seed capital area is correlated to the execution of the construction work of the capital complex of the Sunrise State of Andhra Pradesh and choosing single joint venture of companies is aimed at better management of space, time, blending of cable accessories, rectification of complaints in case of failure of any of the four lines. From technical point of view, it is stated that if the four routes are awarded to four different bidders, blending of cable accessories would not be technically feasible and a decision to club all

the four routes each containing seven numbers of phase lines into a single lot is taken for effective execution of the work so as to have an option to divert the cable from one lot to other for timely completion of the work. It was also stated that as under ground cabling is susceptible for failures and if the work is awarded to more than one bidder, the respondent has to depend upon several agencies for timely rectification of such failures. Hence, such consolidation of the four routes into one lot for effective execution of the work and reach timely targets cannot be found fault as no arbitrariness or motive is either visible or latently are patently discernable.

10. In ***JAGDISH MANDAL's*** case, (5 supra), the Supreme Court ruled that in matters of tender and award of contract if decision relating to award of contract is bona fide and is in public interest, Courts will not, in exercise of power of judicial review interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out.

11. In ***MEERUT DEVELOPMENT AUTHORITY vs. ASSOCAITION OF MANAGEMENT*[7]*,*** the Supreme Court explained what is a tender and the scope of judicial review in such matters. At para 17 it was mentioned as under:-

> "17. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the biding process. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and

[7] 2009 (6) SCC 171

conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

12. The next question whether the project requirement which is only for supply and laying of 245 kms of cable in 24 months, the QRs insisting for past experience of at least 245 kms with copper conductor of 1000 Sq.mm in one continuous period of 12 months, such eligibility criteria is arbitrary and in violation of rights of the petitioners guaranteed under Articles 14, 19 (1) (g) of the Constitution is the core issue.

13. It is allegation of the petitioners that with the QRs prescribed, no Indian manufacturer in its own credentials would be in a position to qualify as in the last seven years there has been no tender for supply of 245 kms of power transmission cable in a period of 12 continuous months. It

is to be seen that the project is a large and key project in power sector. There is no dispute with the proposition that the tenderer can choose the best market players to get its work done. When once it is a global invitation, it is no surprise to have participation in such tender process by the overseas cable manufacturing industries. The purpose would be better served if the participating cable manufacturing market players are also large and repute in the industry to commensurate with the nature and quantum of work notified in the tender. Further selection of a Contractor, whether indigenous or overseas, when being done through a process of open competition by way of inviting global tenders, there could be little scope for favouritism. In the counter affidavit, the 2nd respondent has categorically stated that there are more than four manufacturers who have the required experience to meet the eligibility criteria specified in the QRs *viz.,* i) M/s.lljin Cables Limited, South Korea, ii) M/s.Taihan Cables Limited, South Korea, iii) M/s.Shenyong Furukawa Cables

Limited, China, and iv) M/s.J. Power, Japan; and the companies at ii) & iii) have earlier entered into joint venture agreements with Indian companies and executed approximately similar nature and quantum of work of AP Transco; during the year 2010, the AP Transco has awarded similar nature of work involving 182 kms of 220 KV lines in addition to supply of 72.5 kms of 132 KV lines as a single lot to M/s.Indu Projects Limited, Hyderabad, with joint venture partner M/s.LS Cables & systems limited, South Korea-3rd respondent. It is true that though the Indian manufacturers (Make in India) are well experienced and have individually more than the required manufacturing capacity with contemporary technology, that itself does not create a right to claim that the QRs should match their manufacturing and execution capabilities. Make in India concept is to promote innovation and a spirit of the industry Circle, but is not a norm or a right. Even otherwise, it is stated that three bids have been received including the 3rd and 5th respondents combine joint venture partners, and the following manufacturers are stated to have submitted bids.

Sl. No.	Name of the bidder/ Lead Partner	Name of the JV partner
1.	M/s.GVPR Engineers Ltd., Hyderabad	M/s.LS Cables & Systems Limited
2.	M/s.Megha Engineering Infrastructures Ltd., Hyd	M/s.Taihan Elec. Wire Company Limited
3.	M/s.L & T Ltd., Chennai	M/s.Sudkabel Gmbh,Germany

14. It is stated that out of the three bids stated above, two bidders which include the 3 and 5th respondent combine joint venture partners and the joint venture partners at serial no.2 qualify the QR requirements and specifications of the tender. Therefore the contention of the petitioners that no Indian company could qualify the QRs set out in the tender, is without any substance.

15. In ***MICHIGAN RUBBER (INDIA) LIMITED's*** case (4 supra), the Supreme Court has observed that interference with policy decisions and in matters challenging the award of contracts by the State or public authorities may not be resorted

to unless it is contrary to the public interest, discriminatory or unreasonable. In the said decision it was mentioned thus:-

> "The basic requirement of Article 14 of the Constitution is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the state acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities."

16. The Supreme Court while upholding the pre-qualification criteria for award of tenders prescribed by the Karnataka State Road Transport Corporation, it was observed that "a Court cannot interfere with the terms of the tender prescribed by the government because it feels that some other terms would have been fair, wiser or logical. If the government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited." The Bench further observed that "a Court before interfering in tender or contractual matters, in exercise of the power of judicial review,

should pose to itself the following questions: (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone, or so arbitrary and irrational that the court can say 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached and (ii) Whether the public interest is affected. If the answers are in the negative, then there should be no interference under Article 226." The decision of this Court in ***BHARAT BIOTECT INTERNATIONAL LIMITED's*** case (1 supra) is not applicable to the facts of this case. In that case this Court found that there was only one manufacturer of vaccine supply with WHO pre-qualification and the State had definite information that only one such manufacturer exists, yet for mysterious reasons the State chose to call for tenders, which was held to be tailor-made to suit only one person. The context in which that decision is rendered is different as imposing the stipulation of WHO pre-qualification certificate for participating in the tender was challenged, but in the present case challenge is on a different ground. The decisions of the Delhi High Court in

DHINGRA CONSTRUCTION COMPANY's case (2 supra) and in ***GHARDA CHEMICALS LIMITED's*** case (3 supra) are also not applicable to the facts of the instant case. Admittedly, there are more than one bidders in the fray in this case and it is not the case of monopoly and the concept of fair competition is not subverted.

17. It is also to be seen that the petitioners though participated in the pre-bid meeting held on 18-05-2017, but did not participate in bid for the tender work. The ruling of the Supreme Court in ***JAGDISH MANDAL's*** case (5 supra) is to the same effect that 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. Merely because petitioners did not qualify to submit tender, being not in a position to satisfy the QRs laid down therein, it is not permissible to contend that the QRs are tailor made, discriminatory, arbitrary and promote parties with overseas collaborations and exclude Indian manufacturers,

though the petitioners could be market players, in their own field.

18. On the above analysis, the challenge made to the QRs of the impugned tender fail and the writ petition being devoid of merits is accordingly dismissed. Miscellaneous petitions, if any pending in this case shall also stand disposed of. There shall be no order as to costs.

A.RAJASHEKER REDDY,J

Dated: 25-01-2018
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.33695 of 2017

//WEB//

Dated: 25-01-2018