

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 37734 OF 2018

ORDER:

1) The present writ petition came to be filed seeking the following reliefs:

- i) to declare the action of the fourth respondent in passing orders dated 03.04.2018 vide R.C.No.74/ 2016-17(EE(WSM-III)/ GVMC disqualifying the petitioner firm from participating any tenders in Greater Visakhapatnam Municipal Corporation (GVMC) and Visakhapatnam Industrial Water Supply Company (VIWSCO) without any notice and without affording any opportunity of hearing as illegal, arbitrary and unconstitutional and set aside the same and;
- ii) Declaring the action of the respondents 1 to 4 in not considering the bid of the 1st petitioner for the tender work in respect of Tender Notice No.1/ 2018-19/ Director(Technical)/ VIWSC, dated 28.04.2018 "Consultancy Services for Preparation of DPR for improving the storage capacity of Kondakarla Awa in Mungapaka Mandal of Visakhapatnam District to 2.00 TMC" as illegal and arbitrary and un-constitutional and violative of principles of natural justice; and

- iii) Declaring the action of respondents 1 to 4 in illegally granting work order for the tender work in respect of Tender Notice No.1/ 2018-19/ Director (Technical)/ VIWSC, dated 28.04.2018 “Consultancy Services for Preparation of DPR for improving the storage capacity of Kondakarla Awa in Mungapaka Mandal of Visakhapatnam District to 2.00 TMC” to fifth respondent in spite of the petitioner’s bid being lower as illegal, arbitrary, unconstitutional and consequently set aside the work order issued in favour of the fifth respondent for the tender work in respect of Tender Notice No.1/ 2018-19, dated 28.04.2018 and further directing the fourth respondent to consider the bid of the petitioner afresh for the above tender work.

2) The first petitioner firm is said to have entered into a Joint Venture Agreement with M/s. ACPE Infrastructure Private Limited on 16.09.2016 for bidding, executing, civil engineering consultancy, third party quality assurance and control and project works with certain general stipulations. One of the clauses of the Joint Agreement was that M/s. ACPE Infrastructure Private Limited would be the Lead Partner. It is further stated that the understanding between the parties was that in furtherance of entering into the Joint Venture Agreement, both the parties would enter into an MOU for each specific work, duly mentioning the particulars of that work,

tender notice number, name of the department and other essential information. It is alleged that without entering into MOU with the first petitioner firm, M/s. ACPE Infrastructure Limited participated in the following tenders.

“(i) Consultancy services for preparation of DPR for improving the storage capacity of Penjeruvu Tank in Yelamanchili Mandal (to 0.25 TMC) and V.K.Sagaram Tank in Rayavaram Mandal (to 0.25 TMC), Visakhapatnam District, vide Tender Notice No.15/ 2016-17/ Director (Technical) VIWSCO, dated 14.09.2016.

(ii) Consultancy services for preparation of DPR for improving the storage capacity of Kondakarla Awa in Munagapaka Mandal of Visakhapatnam District to 2.00 TMC vide Tender Notice No.15/ 2016-17/ Director (Technical) VIWSVO, dated 14.09.2016.”

3) It is said that contrary to G.O.Ms.No.23, dated 05.03.1999, the lead partner participated in the tender notice dated 14.09.2016 for preparation of DPR for improving the storage capacity of Penjeruvu Tank in Yelamanchili Mandal and V.K.Sagaram Tank in Rayavaram Mandal. It is said that the lead partner had managed to secure the said tender and the same was entrusted to the Joint Venture vide Work order P.C.No.72/ 2016-17/ EE-(WSP-II)/ GVMC.

4) It is alleged that though there was no MOU and after coming to know about the participation of M/s. ACPE Infrastructure Private Limited on behalf of the Joint Venture in the tender, the petitioners have submitted a letter dated 19.08.2017 to the Commissioner, GVMC, to examine the issue and take action. It is said in the letter that the lead party is having zero similar work experience and has no sufficient financial capacity to execute the work. It is further pleaded that the other party may invite, who got more similar work experience to act as a lead party of the joint venture, to involve the other party who has got more similar work experience to act as a lead party of the joint venture, to involve atleast 51% of the work to satisfy the condition of G.O.Ms.No.23 and COT guidelines to complete the work with the same tender premium. Thereafter a legal notice was also issued on 26.10.2017. It is stated that pursuant to the legal notice dated 26.10.2017, there was no reply either from the lead partner or from the official respondents. As there was no reply to legal notice, the petitioners were constrained to file a complaint before the Lokayukta requesting to take action against the lead partner for improper work, which will badly affect the image of the petitioners firm. Time and again it is averred in the affidavit that the lead partner had played fraud on the tender officials by submitting the bid documents on

behalf of the joint venture without consent of the first petitioner firm and got entrusted with the works and thereafter did not expedite the survey work due to which notices were issued upon the joint venture. After receiving the complaint, the fourth respondent passed an order dated 03.04.2018 cancelling the work order awarded in favour of the joint venture ie. M/ s. ACPE Infrastructure Private Limited and M/ s. Prasad Irrigation Engineering Consultants, forfeiting the EMD. The order dated 03.04.2018 disqualifies both the agencies from participating in any of the tenders in GVMC and VIWSCO. It is said that after canceling the work order in favour of the joint venture, the third respondent issued another tender notice No.1/ 2018-19/ Director (Technical)/ VIWSC, dated 28.04.2018. Disqualification as well as issuance of second tender, two writ petitions ie. W.P.Nos.17644 and 17645 of 2018 came to be filed by M/ s. ACPE Infrastructure Private Limited, wherein this Court set aside the order dated 03.04.2018 to the extent of blacklisting the petitioner therein to execute further works and participate in further tenders in GVMC and VIWSCO. The writ petition was dismissed insofar as other issue ie. cancellation of subject works contracts and forfeiture of the E.M.Ds. It is stated that the petitioner firm has submitted bid documents on 14.05.2018 for participation in the second tender dated

28.04.2018. The first petitioner has quoted less profit margin while submitting the bid document at a rate of 0.29%. Though the petitioner is lowest bidder, the third respondent, without considering the bid documents submitted by the petitioner firm, work was entrusted to the fifth respondent. Challenging the action of the said authorities, the present writ petition came to be filed.

5) The main ground urged by the learned counsel for the petitioners is that the action of the authorities in blacklisting the petitioners without following due process of law is illegal, improper and incorrect. It is said that in view of the orders passed by this Court in setting aside the proceedings dated 03.04.2018, wherein the petitioners and M/s. ACPE Infrastructure Private Limited were blacklisted, the authorities could not have granted the tender to the fifth respondent more so, when the petitioners have quoted less rate of 0.29%. It is further stated that blacklisting of the first petitioner was never brought to the notice of the petitioners and they came to know of it subsequent to the order passed by this Court. Hence, pleads that granting of tender in favour of the fifth respondent is illegal and improper.

6) On the other hand, Sri S.Lakshmi Narayana Reddy, learned Standing Counsel appearing for the second respondent, denies the averments made in the affidavit.

According to him pursuant to the tender notification dated 14.09.2016, the joint venture which is inclusive of the first petitioner, submitted the tender form quoting 0.27% on the cost of DPR and the same has been accepted by the respondent company for preparation of DPR and after tender evaluation, a letter of acceptance has been issued vide proceedings dated 10.12.2016 in respect of Penjeruvu Water Tank and also issued proceedings requesting them to enter into the agreement within seven days from the date of letter of acceptance. It is stated that the first petitioner company herein and M/s. ACPE Infrastructure Private Limited, which is the joint venture company, never come forward to enter into the agreement pursuant to the work order, which lead to issuance of another letter dated 06.01.2017. Despite several reminders, none of them come forward to execute the agreement. At that stage, a letter dated 19.08.2017 was addressed by the first petitioner to the second respondent stating that the first petitioner company does not want to continue with joint venture along with M/s. ACPE Infrastructure Private Limited and also informed that the first petitioner company is not willing to take up the work, which lead to termination of the said work order. Thereafter, M/s. ACPE Infrastructure Private Limited, submitted a letter dated 11.12.2017, expressing its willingness to submit DPR report

individually and requested to proceed with the work. After examining the said letter, the Corporation rejected its request through the letter dated 13.12.2017 stating that the hydrology submitted by M/s. ACPE Infrastructure Private Limited Company should be submitted by the joint venture ie., the first petitioner herein and M/s. ACPE Infrastructure Private Limited, jointly as the work order was issued pursuant to the joint venture partner. As M/s. ACPE infrastructure Private Limited failed to fulfil the same, the work order was cancelled. While things stood thus, the order dated 03.04.2018 came to be issued disqualifying both of them. Thereafter, the respondent company proceeded with fresh tenders on 28.04.2018 for the same work.

7) The tender bids were opened, except that of the first petitioner, as it was disqualified in participating tender as per the orders dated 03.04.2018 and the fifth respondent was declared as successful bidder. Thereafter on 15.09.2018 the fifth respondent entered into an agreement and work was allotted. It is said that the fifth respondent commenced the survey work in the month of September, 2018 itself and the contract work is at final stage since the work is to be completed within three months only. At that point of time the present writ petition came to be filed.

8) It is to be noted here that the writ petition was filed on 11.10.2018 and there is no stay. Today, when the matter is taken up for hearing, it is brought to the notice of the Court that 90% of the work has been completed. It is also to be noted here that on the day when the tenders were finalized, the first petitioner company herein was blacklisted vide proceedings dated 03.04.2018 and the same was in force. In fact the said order is challenged by way of W.P.No.37745 of 2018, which is heard along with the present writ petition. It may be true that subsequent to the order dated 03.04.2018, the first petitioner herein was allotted some work, but that by itself, in my view, cannot be a ground to accept that blacklisting of the first petitioner was not there and even if it is there it is illegal, more so, when the first petitioner filed another W.P.No.37745 of 2018, challenging the order dated 03.04.2018. It may also be true that the petitioners have quoted less rate to an extent of 0.29% compared to the rate quoted by the fifth respondent, but as stated by me earlier on the date of finalization of the tender, the tender of the first petitioner was not accepted as it was ineligible. Pursuant thereto, an agreement was entered into with the fifth respondent, work was entrusted and about 80 to 90% of the work is said to have been completed, in fact the tender

conditions itself show that the work has to be completed within a period of three months.

9) Having regard to the totality of the circumstances, the request of the petitioner to cancel the tender granted in favour of the fifth respondent cannot be accepted.

10) Accordingly, the writ petition is dismissed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

27.12.2018
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JUSTICE C. PRAVEEN KUMAR