

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.39376 OF 2018

Date:01.11.2018

Between:

M/s. Ramk Projects, a registered
Partnership firm, having its registered
Office at 8-2-293/K/72-A, Phase-III,
Kamalapuri Colony, Hyderabad,
Rep., by its Managing Partner
Sri N. Kameshwara Rao,
S/o. Late Mallaiah, Aged 54 years

.. Petitioner

And

Singareni Collieries Company Limited,
Rep., by its Managing Director,
Kothagudem, Bhadradi Kothagudem
District and another

.. Respondents



The Court made the following:

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ORDER:

Heard learned counsel for petitioner and learned Standing Counsel for Singareni Collieries Company Limited appearing for the respondents.

2. On 01.09.2018 tender notification was issued by the respondent – Company. Thereafter, a corrigendum/addendum was issued on 26.09.2018. The last date for submission of bids was 08.10.2018. Petitioner – partnership firm submitted its bids. On 30.10.2018 commercial bids were opened. This Writ Petition is moved as Lunch Motion contending that bids are to be opened on 01.11.2018.

3. In this Writ Petition, petitioner challenges the amended Clause No.1.14 of the tender notification as originally notified. It reads as under:

10	Clause No.1.14 Experience	The bidder shall have a minimum experience of 3 years in carrying out the works of similar nature like excavation, loading, transportation of broken rock/earth etc. and dumping by contracting works by bidder himself or works executed as sub-contractor to others or member of joint venture formed for execution of similar works. Documentary proof issued by the agency originally awarded the contract should be submitted. (Bidders are requested to furnish details as per Annexure-A1 with necessary enclosures, such as order copies, work completion reports etc).	The bidder shall have excavated a total of 300 LBCM in the preceding 5 years and out of above mentioned 5 years shall have excavated a total of 150 LBCM in any 12 consecutive months. The experience means carrying out the works of similar nature like excavation, loading, transportation of broken rock/earth etc. and dumping by contracting works by bidder himself or works executed as sub-contractor to others or member of joint venture formed for execution of similar works. Documentary proof issued by the agency originally awarded the contract should be submitted. (Bidders are requested to furnish details as per Annexure-A1 with necessary enclosures, such as order copies, work completion reports etc.).
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4. According to learned counsel for petitioner, the amended Clause increases the eligibility criteria and the higher eligibility is introduced only to favour few of the contractors, who may have the requirements as now prescribed.

5. When the matter is taken up, learned Standing Counsel, on instructions, submits that on opening the commercial bids, petitioner's joint venture was disqualified on two grounds, firstly, non-compliance of Clause 1.14 of the tender notification and secondly, non-submission of last three years ITRS of one of the joint venture partners i.e., M/s.BSCPL.

6. Since petitioner's joint venture was disqualified not on account of non-compliance of Clause 1.14 of the tender notification alone, but for one other reason also, the Court is not inclined to go into the validity of Clause 1.14 of the tender notification. It is suffice to note that the amended Clause was introduced much prior to the last date of submission of bids. It is submitted by learned Standing Counsel that there were negotiations with the prospective bidders and after due deliberations and with their consent only, the amended Clause was introduced. However, this Court is not expressing any opinion on the said submission. The petitioner has already disqualified for one other reason in addition to non-fulfillment of Clause 1.14. Though learned counsel for the petitioner sought to contend that the issue of Clause 1.14 is not in public interest, the Court is not inclined to go into that aspect as petitioner was disqualified for some other reason in addition to non-fulfillment of Clause 1.14.

7. The Writ Petition is accordingly dismissed. It is always open to the petitioner to work out its remedies as and when the reasons for disqualification are communicated to petitioner. Pending Miscellaneous Petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:01.11.2018

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