

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.43869 OF 2017

Dated:12.03.2018

Between:

M/s. Srinivasa Poultry Farm,
Damara Cheruvu, Ramayanpet,
Medak District, rep., by its
Managing Partner Smt. P. Lingavva,
Aged about 48 years and others

.. Petitioners

And

The State of Telangana, rep., by its
Principal Secretary, Women, Children,
Disabled and Senior Citizens Department,
Telangana Secretariat, Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.43869 OF 2017****ORDER:**

Heard learned counsel for the petitioners, learned Government Pleader for Women Development and Child Welfare appearing for respondents 1 to 4 and Smt. K. Annapurna Reddy, learned counsel appearing for the impleaded respondents 5 to 7.

2. Tender notification was issued on 14.12.2017 on e-procurement platform calling for tenders to supply eggs to Anganwadi centers prescribing last date as 28.12.2017. Alleging that the tenders presented by the petitioners were not accepted on the ground that their poultry farms are not located in ICDS project area this Writ Petition is filed challenging the said restriction.

3. This Court by order dated 22.12.2017 directed the respondent authorities to permit the petitioners to participate in the tender process and consider their offer in accordance with the tender notification except the restriction relating to the project area. It appears, pursuant to the interim order, the petitioners were permitted to participate in the tender process, but so far tenders are not finalized citing that this Writ Petition is pending.

4. The State filed I.A.No.4 of 2018 praying to vacate the said interim order.

5. I.A.No.1 of 2018 is filed to implead the petitioners therein as respondents 5 to 7 in the Writ Petition.

6. I.A.No.3 of 2018 is filed by the impleaded petitioners, respondents 5 to 7 herein, praying to vacate the interim order, dated 22.12.2017.

7. Issue for consideration is, in terms of tender notification, dated 14.12.2017, and the proceedings/Memo No.3462/Schemes.A1/2014, dated 09.12.2014, whether it is necessary for the tenderer to have his poultry farm located within the ICDS projects.

8. While learned counsel for petitioners contended that imposing such restriction is illegal and unconstitutional learned counsel for respondents submitted that such restriction is necessary to protect the local farmers and to ensure that eggs are delivered on time. The bone of contention is Clause II 3 (e) of the Memo dated 09.12.2014. By relying on this clause it is contended by learned counsel for respondents that unless poultry farm is located within the ICDS project area, the person is not entitled to participate in the tender process. In support of his contention learned counsel for petitioners placed reliance on the decision of this Court in ***Government of Andhra Pradesh, Revenue (Excise.II) Department v. A. Hanumantha Rao***¹.

9. The tender notification published in Telugu requires that a person must be NECC registered farmer. If the person is not within the ICDS project area, he cannot be awarded contract to supply eggs for more than two projects. This tender notification is governed by the guidelines formulated by the Government in

¹ 2005 (2) ALT 653 (D.B.)

Memo, dated 09.12.2014. To appreciate respective contentions, it is necessary to consider Clause II 3 (e) of the proceedings/Memo, dated 09.12.2014. It reads as under:

“The tenders shall be called in such a way that no poultry farmer shall supply to more than two projects only. The farmer shall be located close to one of the project.”

10. This Clause contains two conditions, namely, (i) no poultry farmer should supply to more than two projects and (ii) the poultry farm shall be located close to one of the projects. The respondent authorities understood these clauses to mean that unless poultry farm is located within the ICDS project area, the poultry farmer is not entitled to participate in the tender process. On a bare reading of extracted paragraph and Telugu tender notification, no such restriction can be inferred. Every eligible person has right to participate in tenders called by public authority. When such right is sought to be denied, the restriction must be clear and should be in public interest. The two restrictions imposed are, a farmer cannot be awarded contract to more than two projects and if a farmer is selected to supply eggs to two projects, his poultry farm should be close to at least one center. These two conditions are not attracted to the case on hand as that stage has not reached.

11. Learned counsel for the impleaded respondents 5 to 7 sought to contend that the Court should be slow in interfering in policy matters and policy matters should be left to the Government to decide. There is no quarrel with the proposition. But, a bare reading of the guidelines notified in Memo, dated 09.12.2014, the assessment of the respondent authorities that unless poultry farmer is located within the ICDS projects, he is not eligible to

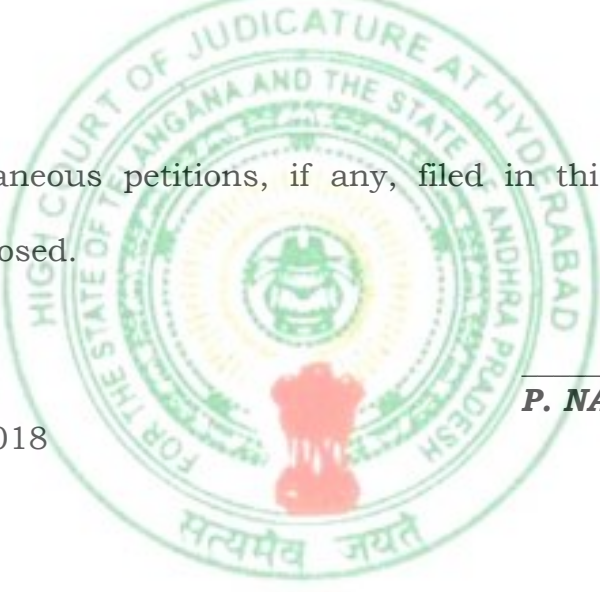
participate in the tender process is not valid and therefore not considering the tenders of the poultry farmers on the ground that their poultry farm is not located in concerned ICDS projects areas is erroneous and contrary to the policy decision.

12. The Writ Petition is accordingly disposed of directing the respondent authorities to treat the petitioners as eligible to participate in the tender process pursuant to the tender notification dated 14.12.2017 without insisting that they should be located within the ICDS project and subject to fulfillment of other requirements finalize the tenders. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in this Writ Petition shall stand closed.

Date:12.03.2018

KH



P. NAVEEN RAO, J