HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

Writ Appeal No.153 of 2019

Date: 13.03.2019

Between:

M/s. Sujana Constructions.

...Appellant

And

The State of Telangana and others

...Respondents

Counsel for the appellant : Mr. M. Sudheer Kumar

Counsel for the respondent Nos.1 to 3 : GP for Roads and Buildings

Counsel for the respondent No.4 : Mr. N. Praveen Reddy for Mr. N. Vasudeva Reddy

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

The appellant, M/s. Sujana Constructions, has challenged the legality of the order dated 25.02.2019, whereby the learned single Judge has dismissed the Writ Petition, namely W.P.No.23501 of 2018, filed by it.

Briefly, the facts of the case are that the appellant is a special class contractor having vast experience in construction of BT roads, buildings *etc.* The respondent No.2, the Chief Engineer (R&B), had issued a tender notice on 21-04-2018 calling for online tenders/bids from the eligible contractors for the work of *"construction of BT Road from Gujed to Buddaguda (Kothaguda to Dubbaguda km 0/0 to 40/0 via Ladaigadda, Musmi, Karnagandi, Kamaram, Ponugondla, Ramaram, Lingala and Mamidigudem) in Mahabubabad District"* through e-procurement system for a total estimated value of Rs.30,12,98,275/-. According to the tender notice, the bid submission was to commence on 04.05.2018 at 3.00 PM, and to close on 18.05.2018 at 3.30 PM. The technical bid was to be opened on 18.05.2018 at 4:00 PM, and with regard to those bidders, who had qualified the technical bid, opening of Part-II of bid *i.e.,* price bid was to be held on 31.05.2018 at 3:00 PM.

According to the appellant, in response to the said tender notice, the respondent No.4, M/s. N. Ramachandra Reddy, submitted their tenders in Part-I and Part-II i.e technical bid and price bid respectively. On 18.05.2018, the technical bids of both the appellant and the respondent No.4 were opened. The appellant was found to be qualified in Part-I bid. However, with regard to the bid submitted by the respondent No.4, it was

discovered that an incorrect information with regard to the distance was given. According to the tender notice, the distance between the TPH batch type hot mix plant and the last point of working reach had to be within 100 kilometers. This was clearly stated in Clause 4.4 B (b) of the bid document. Although the hot mix plant belonging to the respondent No.4 was beyond a distance of 100 kilometers, the Executive Engineer, District Roads and Buildings Officer, Mahabubabad, had issued a Distance Certificate in favour of respondent No.4, wherein he had certified that the hot mix plant was located 99.05 kilometers away from the last point of working reach.

Immediately upon noticing the fact that an incorrect information had been furnished by the respondent No.4, on 18.05.2018 itself, the appellant filed a complaint before the concerned authority bringing the said fact to its notice. Therefore, the respondent No.2, the Chief Engineer, called for a verification report from the Superintending Engineer, R & B Circle, Warangal, the respondent No.3 herein. According to the report dated 30.05.2018 submitted by the respondent No.3, the actual distance between the hot mix plant and the last point of working reach was 101.50 kilometers. The said report clearly stated that the distance that was measured was in respect of the route map submitted by the respondent No.4 itself. Therefore, respondent No.3 concluded that, in fact, the information submitted by the respondent No.4 was an incorrect one.

Subsequently, the respondent No.4 requested the respondent No.3 to measure the distance of the alternate route and to submit his report. Consequently, the Superintending Engineer,

Warangal, measured the alternate route, and concluded that the alternate route has a distance of 99.90 kilometers from the hot mix plant to the last point of working reach. On 30.05.2018, the Superintending Engineer, Warangal, the respondent No.3, submitted his report before the Chief Engineer, wherein he mentioned both the facts, namely that with regard to the route given by the respondent No.4 in his tender, the distance happens to be 101.50 kilometers, and the distance of the alternate route happens to be 99.90 kilometers.

Dissatisfied by the said report given by the Superintending Engineer, Warangal, on 11.06.2018, the Chief Engineer requested the Superintending Engineer, Karimnagar, to verify the distance between M/s N. Rama Chandra Reddy, Batch Type Hot Mix Plant 100-120 TPH situated at KM 92/2 on Nakhrekal – Mallampally Road (Chinthapalle village, Kuravi Mandal) in Mahabubabad District to Dubbaguda Raod (Kothaguda to Dubbaguda) from km 0/0 to 40/0 in Mahabubabad District.

Consequently, by report dated 04.07.2018, the Superintending Engineer, Karimnagar informed the Chief Engineer that the distance between the hot mix plant and the last point of working reach was 98.1 kilometers. Taking the said report into consideration, the tender was finalised in favour of the respondent No.4. Since the appellant-petitioner was aggrieved by the finalisation of the tender in favour of the respondent No.4, he has filed a Petition before this Court. However, by the impugned order dated 25.02.2019, the learned Single Judge has dismissed the writ petition. Hence, this appeal before this Court.

Mr. M. Sudheer Kumar, the learned counsel for the appellant, submits that according to the tender notice, the distance between the hot mix plant and the last point working reach has to be within 100 kilometers. However, according to the report submitted by the Superintending Engineer, the distance of the route shown by the respondent No.4 was 101.50 kilometers. In fact, the respondent No.4 should have been disqualified for having submitted a false certificate.

Secondly, in case the Chief Engineer wanted to have a report from a Superintending Engineer, only the Superintending Engineer, Warangal, could have submitted the report. However, the Chief Engineer has sought the report from the Superintending Engineer, Karimnagar. Therefore, the Superintending Engineer, Karimnagar is not the appropriate authority for submitting the report. Therefore, the decision based on the report of the Superintending Engineer, Karimnagar is legally unjustified.

Thirdly, only on a oral request of the respondent No.4, the Superintending Engineer, Warangal, could not have given his report with regard to the alternate route. For, the said request was orally made by the respondent No.4 without any authorisation or without any direction issued by the Chief Engineer. Hence, the Superintending Engineer, Warangal was not authorised to submit a report with regard to the distance covered by the alternate route.

Lastly, since different reports have been given by different Superintending Engineers, one from Warangal and the other from Karimnagar, the respondent Nos.1 to 3 were not justified in finalising the tender in favour of the respondent No.4. These glaring facts have been ignored by the learned single Judge.

Therefore, the order passed by the learned single Judge deserves to be set aside by this Court.

On the other hand, Mr. B. Jayakar, the learned Government Pleader for Roads and Buildings appearing on behalf of the respondent Nos.1 to 3, has pleaded that since the Superintending Engineer, Warangal, the respondent No.3, had given a contradictory report, one with regard to the route mentioned by the respondent No.4, and the other with regard to an alternate route, the Chief Engineer, the respondent No.2, had no other option but to seek an independent report from the Superintending Engineer, Karimnagar. Having received the said report, which clearly indicated that the distance between the hot mix plant and the last point of working reach was 98.1 kilometers, therefore, the respondent Nos.1 to 3 were justified in finalising the tender in favour of the respondent No.4.

Mr. N. Praveen Reddy, the learned counsel representing Mr. N. Vasudeva Reddy, the learned counsel for the respondent No.4, submits that the respondent No.4 had never requested the Superintending Engineer to measure the distance for the alternate route. Therefore, the Superintending Engineer *suo motu* has taken the decision for measuring the alternate route, and for submitting the same before the Chief Engineer. In fact, since the report submitted by the Superintending Engineer to the Chief Engineer was a confidential one, the learned counsel pleads that the respondent No.4 is not even aware of the intra-department correspondence.

Heard the learned counsel for the parties and perused the record.

It is indeed trite to state that once a procedure has been established by law, the same has to be necessarily followed by the concerned authority. According to the tender conditions, the distance between the hot mix plant and the last point working reach has to be within 100 kilometers. Although the Executive Engineer had given a certificate in favour of the respondent No.4, clearly stating that the distance was within 100 kilometers, once the complaint was made by the appellant, the Chief Engineer was duty bound to examine the complaint. The Chief Engineer was certainly justified in seeking a report from the Superintending Engineer, Warangal. However, the Superintending Engineer, Warangal, should not have given the distance covered by the alternate route. For, no such information was sought from him by the Chief Engineer with regard to the alternate route. Therefore, the Superintending Engineer, Warangal had overstepped his jurisdiction.

Even if dissatisfied with the contradictory report of the Superintending Engineer, Warangal, in fact the Chief Engineer should not have sought a second report from the Superintending Engineer, Karimangar. For, according to the procedure, the report could be sought only from the Superintending Engineer, Warangal and not from the Superintending Engineer, Karimnagar. Hence, even the Chief Engineer had stepped out of his jurisdiction, when he requested for a report from the Superintending Engineer, Karimangar. Since the report submitted by the Superintending Engineer, Karimnagar was not legally justified, obviously it could not form the basis of the decision to finalise the tender in favour of

the respondent No.4. This Court is informed that, so far, the work order has not been issued to the respondent No.4.

These facts were not noticed by the learned single Judge. Therefore, this Court has no other option but to set aside the order dated 25.02.2019 in W.P.No.23501 of 2018 and to direct the Chief Engineer, the respondent No.2, to take a decision with regard to the awarding of the work order, on the basis of the report submitted by the Superintending Engineer, Warangal, with regard to the route mentioned by the respondent No.4 itself. The decision shall be taken by the Chief Engineer on or before 28.03.2019.

The Writ Appeal is hereby allowed. There shall be no order as to costs.

The Miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T. AMARNATH GOUD, J)

13th March, 2019
Note: Issue C.C by 25.03.2019.
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