

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 11989 of 2019

Date : 8.7.2019

Between:

Kushanpally Srinivas S/o K Anjaiah
Aged about 34 years Occ GHMC Contractor
R/o H No 2-18-151 Indira Nagar
Kalayanpuri Uppal Hyderabad

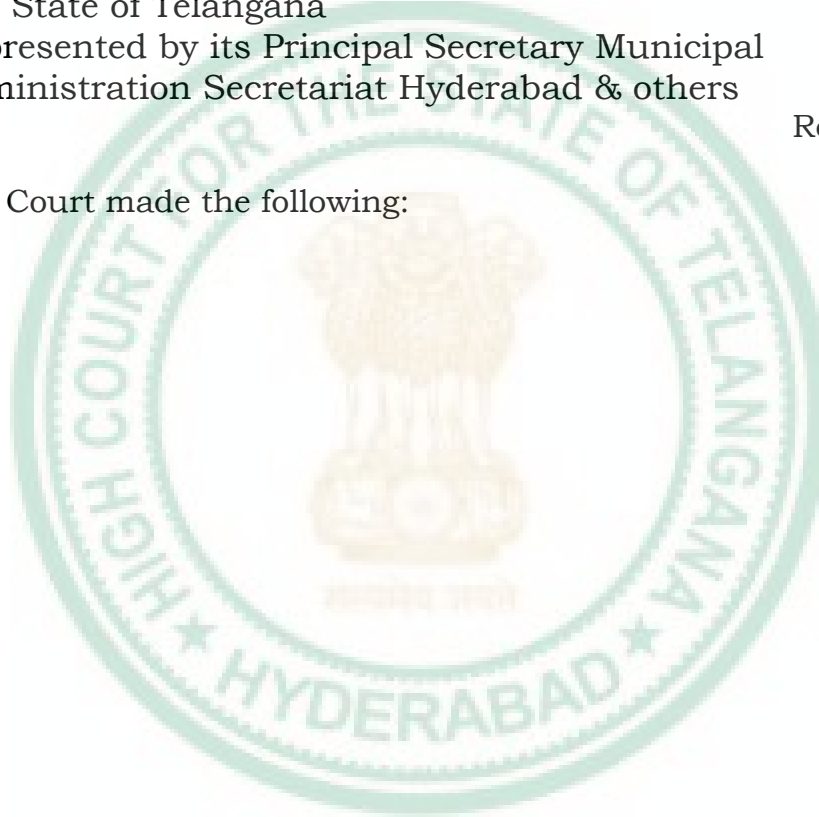
Petitioner

And

The State of Telangana
Represented by its Principal Secretary Municipal
Administration Secretariat Hyderabad & others

Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 11989 of 2019ORAL ORDER:

Heard learned counsel for petitioner, learned Government Pleader for Municipal Administration and Sri L Venkateswar Rao, learned standing counsel for GHMC.

2. The Chief Transport Officer, GHMC office of the Additional Commissioner (Tr.) on behalf of the Commissioner, GHMC/second respondent invited e-procurement tender No. 03/CTO/GHMC/2019-20 dated 7.6.2019 from the reputed, experienced, eligible and interested transport contractors/ individual contractors/ firms/ companies/ agencies registered under relevant act for providing mini tipper vehicles of 6T capacity with four labour along with one driver on hired basis (@ 3 trips /vehicle/day) for collection of Municipal Solid Waste and transportation to the designated transfer station(s) for a period of 180 days in Charminar (24 Nos)— Package II. The second respondent issued total 12 tenders for various works in GHMC limits.

3. The instructions appended to the tender clause D speaks that 'The bidder should have minimum turnover of Rs.109.55 lakhs (approx 50 % of ECV) in any one year during the last (3) consecutive financial years of 2016-17, 2017-18 and 2018-19 and (a) The bidder shall furnish as part of the bid, EMD for an amount of Rs. 2,19,500/- online only (preferably net banking) on e-procurement platform. (b) Any bid not accompanied by an acceptable EMD shall be considered as non responsive and rejected. (c) The EMD shall be refunded for unsuccessful bidders.

4. Learned counsel for petitioner contended that the second respondent is not following the instructions issued in G.O.Ms.No. 59 dated 21.5.2018 granting certain relaxations/ concessions and reservation of works to SC/ST contractors in public works and included the condition of minimum turnover of Rs.109.55 lakhs as qualification to participate in the tender process; Further, similar tender notifications were issued in the years 2017 and 2018 duly incorporating the said instructions and tenders were called at Division level. For no justifiable cause or reason, the second respondent introduced zonal system and included all zones vehicles/ works into one unit and increased the tender value only to avoid the instructions issued in G.O.Ms No. 59. Learned counsel for petitioner contends that petitioner is unable to participate in the tender process even though he is fully eligible to participate in the tender process in view of centralization of contract work and higher turnover.

5. Learned standing counsel for GHMC submitted that G.O.Ms No. 59 dated 21.5.2018 has no application to the works now intended to be entrusted by GHMC. This Government Order is applicable to civil works, whereas these tenders are called to award contract for hiring of vehicles for a period of 180 days to control the precarious sanitation situation. Further, there is no exemption on turnover in G.O.Ms No. 59 dated 21.5.2018. Reservation and concession are not available if the contract value is more than one crore. In the present case, impugned tender value is more than one crore, except in Serlingampally. Serilingampally zone has only four circles whereas the other zones have five to six circles; the area and density of population covered under the

Serlingampally zone is much less compared to other zones. Therefore, the lesser number of vehicles are required for Serlingampally zone.

6. He would submit earlier tenders were called individually. He denied the allegation of the petitioner as in the present tender system the second respondent introduced zonal system and included all zones vehicles/ works into one zone and increased the tender value to bypass the instructions issued in G.O.Ms No. 59 dated 21.5.2018. He would submit that for better management of sanitation issues it was decided to centralize monitoring of collection of Municipal Solid Waste and transportation. Further, experience would show that calling tenders circle wise would take months to complete the process together and lead to chaos and very purpose of entrusting the work was defeated. Accordingly, subject tenders were called. This would enable the Zonal head to have better control over the work to speed up the sanitation clearance. He would submit that it is a policy decision and policy decisions are not amenable to judicial review. The second respondent had invited the tenders to procure the vehicles on hire basis so that there will not be any disturbances in attending to sanitation work.

7. The Government of Telangana with an intention to encourage the Schedule Caste and Schedule Tribe community to participate in contracts floated by the Government and its instrumentalities issued G.O.Ms.No. 59 dated 21.5.2018. In the said Government order, clauses 5 and 7 read as under:

“5. Exemption of EMD shall be for the works **costing up to Rs.1.00 crore (ECV)** and the same shall be recovered from respective RA bills as stipulated under G O Ms No. 29 I & CAD (Reforms) Department dated 26.5.2017.

....

7. (i) In all public works Departments, the works costing **up to Rupees one crore (ECV)** may be reserved for SC/STs as detailed below.

1. 15 % to SCs and
2. 6 % to STs

Works for SC/STs could be pooled together. This will ensure additional pool of contractors generated enough authentication and it should be reviewed after 6 months from the date of implementation.”

8. Three important aspects to be noticed from G.O.Ms No. 59 Irrigation and CAD (Reforms) Department dated 21.5.2018 are:

(1) It is applicable only to the works whose value is upto rupees one crore (paragraph 7.5); (2) It is applicable to civil works (paragraphs 1 and 7.1); and (3) no restriction is imposed on value of contract. Admittedly, the value of the works notified, except in Serlingampally zone is more than one crore and it is not a civil work but is entrustment of contract to provide new tippers with labourers and drivers for collection of Municipal Solid Waste and transportation.

9. Merely because similar works were entrusted with Division/ Circle as unit earlier is no ground to hold present tender process as illegal. It is a policy decision to centralize collection and transportation of Municipal Solid Waste. As explained by the respondents in their counter affidavit and asserted by the learned standing counsel during the course of hearing, the decision of respondents to centralize the works at zonal level was for effective monitoring of collection of solid waste and transportation in the city.

10. In the averments made in the affidavit filed in support of the writ petition and also fairly submitted by learned counsel for petitioner,

no malafides are attributed to any officer of the municipal corporation to deliberately scale up the value of the contract with an intention to deprive petitioner from participation in the tenders and deprive availing the benefits of reservation provided by the Government in G O Ms No. 59 dated 21.5.2018. As no motive is attributed for taking such decision with intention to deprive the petitioner from participation and it is a policy decision, Court cannot interfere with such policy decision and hold its action as illegal.

11. Further, Government Order does not impose restriction on contract value of any work. It only requires to extend concession if the volume of tender floated is less than one crore rupees. As rightly contended by learned standing counsel, the concessions and reservation provided in G.O.Ms.No. 59 dated 21.5.2018 are applicable only to civil works. This is also clear from paragraph 7.1. It requires preparing a pool of 200 SC/ST contractors to train them in the National Academy of Construction. The present tenders floated are to procure vehicles to collect Municipal Solid Waste and transportation and therefore said Government Order has no application.

12. For the aforesaid reasons writ petition fails and it is accordingly dismissed. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 8.7.2019
TVK

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