

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 20903 OF 2019

ORDER :

Heard learned counsel for the petitioner as well as learned Government Pleader for Irrigation.

The petitioner initially challenged the action of the 3rd respondent in not opening the tender issued *vide* Notification No. 19SE/2018-19 dated 31.01.2019 even after lapse of more than one month from the last date as arbitrary and illegal.

The case of the petitioner is that the works notified in the notification dated 31.01.2019 were specifically reserved for various sections of the society ie. Scheduled Castes / Scheduled Tribes / Waddera/ Sagara (Uppara) communities societies and individuals and the tender also was invited from the said reserved categories. The petitioner was the sole bidder and its offer was within the estimated value. However, for the reasons best known to the respondents, the tender was not finalised even after long lapse of time.

The petitioner thereafter, filed I.A.No. 2 of 2019 seeking to amend the prayer declaring the action of the respondents in cancelling the tender issued *vide* notification dated 31.01.2019 without even opening its tender as illegal and against the principles of natural justice.

Heard learned counsel for the petitioner.

Learned Government Pleader for Irrigation, on instructions, submits that on account of paucity of funds, the respondent Irrigation Department had decided not to proceed with the work for the time being. Even as per the tender notification, the tendering

authority has reserved right to cancel the very tendering process before award of contract, maintains the learned Government Pleader. Emphasizing on Condition No. 3.61 of the tender notice, the learned Government Pleader submits that the respondents for valid reasons had chosen not to proceed with the tender, hence, the same cannot be found fault with.

There is no dispute that in the tender notice, the tendering authority has reserved right not to proceed with the tender. Condition No. 3.61 may be noted in this regard:

“ The tender accepting authority reserves the right to accept or reject any Tender or all tenders and to cancel the Tendering process, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the reasons for such action.”

In view of the above, and as it is well-settled that when the tendering authority has reserved right to withdraw the tendering process, the same is not justiciable, there is no requirement to call for interference with the action of the respondent authorities in cancelling the tender. In this regard, reference may be made to ***Haryana Urban Development Authority v. Orchid Infrastructure Developers P. Ltd.***¹.

The Writ Petition therefore, fails and the same is accordingly, closed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

25th November 2019

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¹ (2017) 4 SCC 243