

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.828 of 2019

Date : 19.12.2019

Between:

M/s KMV Projects Limited

..Appellant

and

M/s Sabhari Electricals and KCP Engineers Pvt. Ltd.,
Joint Venture No.5, Karthiresan Street,
Gnanamoorthy Nagar, Ambattur,
Chennai 600053,
Rep. by its Authorized Signatory
A.Shanmuga Sundaram.
and others

...Respondents

Counsel for the appellant : Sri D.Prakash Reddy,
Learned Senior Advocate,
for Sri Harija Akkineni

Counsel for the respondents : Sri V.V.Giri,
Learned Senior Advocate,
for Sri V.V.Satish
Sri Y.Rama Rao, SC for HMDA,
GP for Municipal Administration
& Urban Development

The Court made the following:

JUDGMENT: (per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the order of the learned Single Judge, dated 21.10.2019, whereby the tender issued in favour of the appellant was cancelled, the present Writ Appeal is filed

2. The brief fact of the case are that the respondent No.2 herein had issued a notification, dated 31.01.2018, calling for Design, Supply, Installation, Testing, Commissioning of illumination of the Outer Ring Road, Hyderabad, for the Main Carriage Way/Interchanges/Junctions/Service Roads at junctions and Under Pass areas from Kokapet to Shamshabad (0.00 km to 136 km), total 136 Km length, and Operation & Maintenance of illumination with connected switch gear for a period of five years from the date of Operational Acceptance Certificate being taken up with HGCL funds. Pursuant to the said notification, three bids were received from Bajaj Electricals, HPL Electricals and Power Ltd. and Sabhari Electrical, out of which, the bids of Bajaj Electricals and Sabhari Electricals were declared as technically qualified, whereas the bid of HPL Electricals and Power Ltd. was disqualified as it was blacklisted. Thereafter, vide communication Letter No.CGM(T)/HGCL/DGM(Ele)/8036/2015-16 dated 16.04.2018, the respondent No.2 herein cancelled the offline tenders and decided to notify the same through e-procurement platform. Accordingly, a notification was issued on 17.04.2018. To the said notification, Bajaj Electricals, Sabhari Electricals and KMV Projects Limited had responded; Bajaj Electricals Limited was declared as technically unqualified and unsuitable. Even though Sabhari Electricals met all the parameters, they were not selected.

Thereafter, KMV Projects Limited was awarded the contract based on the Mockup tests and evaluation of financial bid. Questioning the award of contract to M/s.KMV Projects Limited, W.P.No.34231 of 2018 was filed by M/s.Sabhari Electricals and KCP Engineers Private Limited (Joint Venture), whereas challenging the tender notification, dated 17.04.2018, W.P.No.35812 of 2018 was filed by Bajaj Electricals. After going through the entire record and the submissions made by the parties, the learned Single Judge had found that the procedure adopted by the official respondents was not correct. For, the Company which had initially failed in the mockup tests and the laboratory tests was declared as technically qualified. The conditions of the bid documents were relaxed to suit individual tenderer after the bid submission period. Thus, the learned Single Judge declared that all the three bidders were unqualified; the Court further directed the respondent No.4 herein to go for fresh bids as the technology was changing rapidly, and there may be better lightening system as a period of almost 1 ½ years had elapsed from the date of initial notification.

3. M/s.KMV Projects Limited, which was the successful bidder in the tender called for illumination of the Outer Ring Road, has filed the present writ appeal on various grounds.

4. When the matter came up for admission on 20.11.2019, it was stated by the Counsel for the official respondents that they have issued another tender notification on 31.10.2019, and the total contract amount was also less compared to the previous contract amount. In view of the said submission, this Court has

directed the respondent Nos.3 and 4 herein not to finalize the tender process during the pendency of this writ appeal.

5. Though the present writ appeal is filed assailing the correctness of the order of the learned Single Judge on various grounds, Sri D.Prakash Reddy, the learned Senior Counsel appearing on behalf of the appellant, has fairly conceded that after the order of the learned Single Judge, the official respondents have issued another tender notification, dated 31.10.2019; the appellant had also participated in the said tender. The learned Senior Counsel has also fairly conceded that the amount for which the present tender is floated is less than what was notified in the earlier tender and the parameters of the tender notification and requirements have also been changed.

6. In this particular case, though the appellant was successful in the earlier bid both in technical and financial bids, due to the interim order granted by the learned Single Judge on 03.10.2018 the contract could not be concluded. Subsequently, at the time of final hearing, the learned Single Judge found that all the three bidders, who participated in the tender process, did not qualify and as such directed the respondent No.4 to go for fresh bids. Accordingly, the respondent No.4 had issued a fresh tender canceling the earlier tender notification issued by it. It is a well settled principle of law that the authority, which is calling for any tender, can cancel the tender before the contract is awarded to an agency which has qualified both in technical as well as financial bids.

7. The learned Senior Counsel has fairly submitted that the appellant had not challenged the cancellation of the earlier tender, and are only assailing the correctness of the order passed by the learned Single Judge as the cancellation is consequent to the orders of the learned Single Judge passed in W.P.No.34231 of 2018, but the same is denied by the official respondents. It is the case of the official respondents that though the direction of the learned Single Judge had weighed on them to take a decision, they have independently taken a decision to cancel the earlier tender and to issue a fresh tender.

8. Admittedly, the appellant has not challenged the cancellation of the earlier tender; even the process initiated for the new tender had not been stayed by this Court. In fact, the appellant has also participated in the second tender issued by the authorities. The appellant will not have any vested right to get the work order in his favour merely because he was the successful bidder in the earlier tender in both technical as well as financial bid. The authorities who have issued the tender are well within their power to cancel the tender, at any time, and to issue a fresh tender notification based on their requirements/exigencies with different tender conditions.

9. In view of the above mentioned facts and circumstances, we do not find any merit in the writ appeal. Hence, the appeal fails. The same is, accordingly, dismissed. Consequently, the interim order granted by this Court on 20.11.2019 stands vacated.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

19th December, 2019
smr

