

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 23501 OF 2018

ORDER:

Since the matter is heard at length, with the consent of the learned counsel for the respective parties, the main Writ Petition itself is being disposed with this order.

Petitioner challenges the action of Respondents 1 to 3 in qualifying the 4th respondent and opening his price bid in respect of Tender Notice, dated 21.04.2018 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'*.

The petitioner, which claims to be a registered special class contractor, points out that the hot mix plant of the 4th respondent is located beyond the distance of 100 Kms. which is contrary to clause 4.4.B(b) of the bid document, hence, it submitted a complaint on 18.05.2018 to the authorities concerned. Acting on the said complaint, it is stated, the 3rd respondent had also submitted a report through his letter, dated 30.05.2018, stating that the distance is not 99.05 Kms., as certified by the District Roads & Buildings Officers (EE), Mahabubabad, but it is 101.5 Kms. The petitioner complains that the 3rd respondent, without the necessity, claimed to have verified the alternate route on the request of the 4th respondent and stated that through the said route the distance was 99.90 KMs., as per google map.

Elaborating on the same, learned counsel for the petitioner, drawing attention of the Court to the specific

pleadings and the documents filed along with the Writ Petition, submits that every tenderer is required to own 100 Batch type Hot Mix Plant and along with the bid document, an intending bidder shall submit necessary certificates to that effect by the prescribed authority and the Superintending Engineer shall ensure veracity of such certificate / document before finalizing the technical evaluation of the bid and only price bids of such technically-qualified bidders shall be opened. According to him, an objection was raised by the petitioner with respect to the certificate submitted by the 4th respondent in terms of Para 22.6 of the standard bidding document to the Superintending Engineer; on consideration of which, the Superintending Engineer, on 30.05.2018, submitted his report to the Chief Engineer stating that the existence of batch mix plant of the 4th respondent was at the distance of 105.0 K.Ms. as against the certificate filed by the 4th respondent that the batch mix plant was in existence within 99.05 K.Ms. According to the learned counsel, the Chief Engineer, the 2nd respondent herein had no reason to call for the second report from another Superintending Engineer from different division and based on such report directing consideration of the certificate submitted by the 4th respondent as valid is *mala fide* and arbitrary. As the 4th respondent failed to satisfy the essential condition as laid down by the notice inviting tender, acceptance of his price bid is liable to be set aside, emphasizes the learned counsel.

The 3rd respondent filed the counter affidavit denying the allegations of the petitioner, particularly the one that the 4th respondent submitted a false / incorrect document with reference to the location requirement of batch type hot mix

plant within 100 K.M. distance. The allegations of *mala fides* were denied and it is asserted that on account of the complaint of the petitioner, the Chief Engineer sought re-verification from an officer unconnected with the Circle and the same cannot be found fault with. It is further submitted that no *mala fides* can be attributed for relying on the Odometer as it is not practically possible to measure 100 K.Ms. by tape.

Learned Government Pleader for Roads & Buildings submits that at any rate, the tendering authorities, having been satisfied with the certificate furnished by the 4th respondent, had opened his bid and found him to be successful bidder who offered to execute the work at a cost of Rs. 31,31,69,427.04 as against Rs.31,51,27,865.82 ps. offered by the petitioner. He prays therefore, dismissal of the Writ Petition.

The 4th respondent filed the counter-affidavit denying the averments of the writ affidavit. It is stated that the Executive Engineer, who is the competent authority, having verified the distance of the 4th respondent batch mix plant, issued certificate dated 16.05.2018, and it is the same Executive Engineer, who had also issued certificate in favour of the petitioner and the bids were opened on 18.05.2018. The 4th respondent denied the knowledge of complaint having been made against the certificate issued by the Competent Authority and the report said to have been submitted by the 3rd respondent.

Learned counsel for the 4th respondent submits that his client was never issued any notice before undertaking verification. As he had no knowledge about the report alleged to have been submitted by the Chief Engineer, the same cannot be the basis to ignore the certificate issued by the Competent

Authority i.e. the Executive Engineer and there is nothing wrong in taking the Odometer as the basis for measuring the distance. The learned counsel asserts that one cannot find fault with the Chief Engineer in re-verifying and ascertaining the facts. It is submitted that the Writ Petition is liable to be dismissed as the petitioner chose to approach this Court only after opening the price bid and after declaration of the 4th respondent as the successful bidder. The 4th respondent is ready to enter into an agreement and execute the work, but on account of the *ex parte* order obtained by the petitioner, the entire work is in jeopardy and hence, the learned counsel prays for dismissal of the Writ Petition.

Having considered the respective submissions, the question that falls for consideration is '*whether there is any illegality in permitting the 4th respondent to submit the price bid*'. There is no dispute that the 4th respondent owns / has, at his disposal, a batch mix plant of required capacity. There is also no dispute that the Competent Authority certified the same being within the stipulated distance of 100 K.Ms. The Superintending Engineer, in the letter dated 30.05.2018 submitted to the Chief Engineer, had set out that by one method, the distance is 101.50 K.Ms., while the Competent Authority certified the same to be 99.05 K.Ms. and Google map suggests it as 102 K.Ms. from plant to end point of working reach. The Superintending Engineer, in his report, stated that on his inspection of the alternate route i.e. via Mahabubabad – Kesamudram Road, Naikpally, Gudur, Bhupathipeta, the distance arrived at 99.90 K.Ms. On receipt of this report, the Chief Engineer appears to have sought re-verification of the

distance from the Superintending Engineer, R&B Circle, Karimnagar, who, *vide* report dated 04.07.2018, based on the Trip Meter of the vehicle had categorically opined that the batch mix plant of the 4th respondent was located within 100 K.Ms. which was, obviously, accepted by the 2nd respondent, as is evident from opening of the price bid of the 4th respondent. There being no specific *mala fides* against any individual, the question to be decided is '*whether the re-verification undertaken by the Chief Engineer through the Superintending Engineer, Karimnagar can be said to be unauthorized*'. It may be noted, the fact that a tenderer was permitted to make objection, which obviously, require consideration, by necessary implication, permits the tendering authority also to re-verify and reconsider the material submitted before him. In the case on hand, since the petitioner has raised an objection against the certificate issued in favour of the 4th respondent, and since there is no stipulation that such authority is required to rely only on the opinion / information provided by the Superintending Engineer concerned, no fault can be attributed to the 2nd respondent in getting the re-verification done and obtaining a report from an independent authority, as long as the said Authority entrusted with the job is competent. Once it is conceded that there is discretion vested with the 2nd respondent, in the absence of any specific *mala fides*, either alleged or established or proved even remotely, the discretion exercised by the said authority before coming to the conclusion with regard to the responsiveness of the 4th respondent bid, cannot be found fault and interfered with.

In this context, it is apt to note that in ***Central Coalfields Ltd. V. SLL-SML (Joint Venture Consortium)***¹ and ***Consortium of Titagarh Firema Adler S.P.A. Titagarh Wagons Ltd. V. Nagpur Metro Rail Corporation Ltd.***², the Hon'ble Supreme Court had categorically held that once it is conceded that the tendering authority had a discretion even to relax a particular condition, the discretion having not been exercised in an arbitrary and capricious manner, the same cannot be interfered by the Courts.

In the case on hand, the facts disclose that the variation found by different authorities in the distance is between a maximum of 1.00 to 1.50 K.M. (99.50 as taken by the Executive Engineer, 99.90 K.Ms. by the Superintending Engineer and 101.50 K.Ms. following NH chainage, as per the report dated 30.05.2018 and the alternate route available vide report dated 04.07.2018 of the Superintending Engineer, Karimnagar as 98.1 K.Ms.). This Court cannot ignore the caution administered by the Supreme Court in a catena of judgments to the effect that the High Court, in exercise of jurisdiction under Article 226 of the Constitution, does not sit in Appeal over the decision of the Authorities, but is only concerned with the decision-making process and even in such cases, unless the Court finds gross violation of the settled principles of law and the established procedure, it is not required to exercise the discretionary / supervisory jurisdiction. In view of the same and also in the facts of the present case, the petitioner has not made out a case calling for such interference.

¹ (2016) 8 SCC 622

² (2017) 7 SCC 486

The Writ Petition is therefore, devoid of merit and the same is hereby dismissed. No costs.

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

CHALLA KODANDA RAM, J

25th February 2019

Issue CC in two days
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