

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos. 45819 and 45821 of 2018

ORDER:

Since the parties and subject matter involved in both the writ petitions are one and the same, they are being heard together and disposed of by this common order.

These writ petitions are filed challenging the action of the respondents in issuing fresh tender notifications dt.04.12.2018 vide Notice No.SE/TW/WGL/NIT/393/2018-19, Tender Id:92077 and SE/TW/WGL/NIT/392/2018-19, Tender Id:92076, respectively, for construction of road from Bareguda to Kukuda and Gudem to Shivapalli, respectively, in Komarambheem District, and consequently to set aside the aforesaid tender notifications by directing the respondents to forthwith issue work order in favour of the petitioner firm which is declared as successful bidder in the earlier tender notifications vide notice No. SE/TW/WGL/NIT/133/2018-19, dt.18.08.2018, Tender Id:79339 and SE/TW/WGL/NIT/132/2018-19, Tender Id:79338, respectively.

It is the case of 1st petitioner-M/s.Real Constructions, that it was established at Hyderabad in the year 2001 and duly registered by the Registrar of Firms, Hyderabad and having PAN No.AAGFR1298H and engaged in the business of construction and infrastructure development and other allied activities; that the 2nd petitioner is the

Managing Partner of the 1st petitioner firm; and that the petitioner firm has also been accorded the status of Special Class/Class-1 contractor vide order dt.31.08.2017. While so, the 2nd respondent issued tender notifications vide notice No. SE/TW/WGL/NIT/133/2018-19 and SE/TW/WGL/NIT/132/2018-19, dt.18.08.2018, respectively, for construction of road from Bareguda to Kukuda and Gudem to Shivapalli, respectively, in Komarambheem District by quoting the estimated contract value at Rs.3,37,50,685/- and 1,27,08,581/-, respectively. In response to the said tender notifications, 1st petitioner firm submitted bids valuing the bids at 7.2% less than the estimated contract value of the tenders and his bids were also accepted. It is also stated that the petitioner is the sole bidder to the tender notifications. While the petitioner was waiting for execution of agreement/ issuance of work order, the respondents issued impugned fresh tender notifications dt.04.12.2018 vide notice No. SE/TW/WGL/NIT/393/2018-19, Tender Id:92077 and SE/TW/WGL/NIT/392/2018-19, Tender Id:92076, respectively, cancelling the earlier tender notifications, without any intimation to the petitioner and without assigning any reason as to what is the reasons for not considering the petitioner's bid. Aggrieved by the same present writ petitions are filed.

Respondents filed counter affidavit admitting the facts that the petitioner firm was the sole bidder and valued the bid at 7.2% less than the estimated contract value of the tender; and that the bid of the

petitioner firm was confirmed. The respondents contend that after confirmation of the petitioner's bid, some of the registered contractors complained against the petitioner firm through letter dt.17.09.2018, alleging that the Hot Mix Plant of the petitioner's firm is not in working condition and that the same is not situated within 70 kms. distance from the work place. Basing on the said complaint the 3rd respondent issued Memo dt.17.09.2018 to the Executive Engineer, Tribal Welfare, Utnoor, Adilabad district, requesting to inspect the petitioner's work place and report whether the Hot Mix Plant of the petitioner firm is situated within 70 kms. distance from the work place and the same is in working condition. Basing on the said memo the Assistant Engineer, Tribal Welfare, TWSD Rajampet, Komaram Bheem, Asifabad District, submitted his report dt.22.09.2018 alleging that the Hot Mix Plant of the petitioner firm is beyond 70 kms. from the work place and that the same is dumped at work place without erecting. Basing on the said report the 3rd respondent addressed letter dt.24.09.2018 to the 2nd respondent requesting to cancel the tenders and also seeking permission to re-call fresh tenders at an early date. Thereafter, the 2nd respondent issued a memo dt.25.09.2018 cancelling the earlier tender notifications and also directed the 3rd respondent to recall fresh tenders. Basing on the said memo the 3rd respondent issued the impugned tender notifications dt.04.12.2018 by cancelling the earlier tender notifications dt.18.08.2018.

Heard learned counsel for the petitioners who submits that after accepting the bid of the petitioner firm, without notice, the tender notifications were cancelled only on the ground that the Hot Mix Plant of the petitioner's firm was not situated within 70 K.ms from the work place.

On the other hand learned Government Pleader for Tribal Welfare submits that the Hot Mix Plant of the petitioner firm is not in working condition and that the said fact was found only after conducting enquiry, as such, by disqualifying the petitioner firm fresh tender notification was issued. He also submits that the petitioner firm can also participate in the fresh tenders; and that no rights of the petitioner are being affected.

In this case it is to be seen that the petitioner firm was the sole tenderer and its bids were also confirmed by the respondents and the said fact was also admitted by the respondents in their counter affidavit. The respondents basing on the complaint of the third parties have conducted exparte enquiry behind the back of the petitioner even without issuing any notice to the petitioner, which is on the face of it discloses that the same is in violation of principles of natural justice. On that sole ground itself, the impugned action of respondents rejecting bid of the petitioner and issuance of fresh tender notifications are liable to be set aside and accordingly the impugned tender notifications are set aside.

Since there is an allegation that the Hot Mix Plant of the petitioner firm is situated beyond 70 Kilometers distance from the work site and that the same is not in working condition, the competent authority is directed to issue notice to the petitioner-firm regarding the same and on such notice it is open for the petitioner to submit explanation. On such explanation being filed by the petitioner, if the respondents are satisfied that the petitioner has met with the tender conditions, they may take action for awarding contract to the petitioner, otherwise, it is open for them to go for fresh tenders.

Accordingly, these writ petitions are disposed of. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

05.08.2019
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