

(2009) 11 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21333 of 2009

A. Sudhaker Reddy

APPELLANT

Vs

Jawaharlal Nehru Technological University, K.M.V. Projects
Limited and A.P. Health, Medical, Housing Infrastructure,
Development Corporation, A Enterprise of Government of A.P.

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Citation : (2010) 1 ALD 463

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S.R. Ashok and S. Chakrapani, for the Appellant; K. Rathanga Pani Reddy, for Respondent No. 1, V.S.R. Anjaneyulu and P.V.A. Padmanabham, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—A tender notice, dated 07.08.2009, was issued by the first respondent-University in relation to the infrastructure development works for 2nd Phase at its College of Engineering, Nachupally, Karimnagar District. The work was estimated at Rs. 21,77,77,568/- and it was required to be completed within 21 months. The award of contract involved the process of technical bid and price bid. Previous experience of execution of works of similar nature is one of the important conditions. The petitioner, the second respondent-Company, and certain others submitted their tenders.

2. The petitioner submitted a representation, dated 26.08.2009, to the first respondent stating that the tender submitted by the second respondent-Company cannot be acted upon at all. It was stated that the Managing Director of the second respondent, by name Sri K.M.V. Prasada Rao, was registered as a Special Class Contractor in his individual capacity and after he promoted the Company, he transferred his experience as a Contractor to the Company and thereby, he became denuded of his experience. He contends that despite this

development, the Managing Director has participated in bids in his individual capacity and secured contracts of very high magnitude from the third respondent. According to the petitioner, this act of the Managing Director of the Company amounts to corrupt and fraudulent practices as defined under Clause 31 of the conditions appended to the tender notification and thereby, the Company incurred disqualification. His grievance is that though several facts pleaded by him were found to be true and borne out by record, the University did not disqualify the Company.

3. The first respondent filed a counter-affidavit denying the allegations. It stated that acting on the representation submitted by the petitioner, explanation was called for, from the second respondent as well as the agency concerned, which awarded the contract. It is further stated that after examining the remarks offered by them, the University arrived at a conclusion that the complaint of the petitioner has no basis.

4. The second respondent has also filed a counter-affidavit denying the allegations. It is not denied that its Managing Director has transferred his experience in its favour. However, it is stated that the award of work thereafter in the name of the Managing Director was on account of procedural delay in generation of the digital key.

5. Sri S.R. Ashok, learned Senior Counsel appearing for the petitioner, submits that Clause 31 of the tender conditions is incorporated with an objective of ensuring transparency in the process and to screen the otherwise ineligible persons and agencies, who have violated the stipulated norms. He further submits that the expressions "corrupt practice and fraudulent practice" are defined in very wide terms and that if the undisputed facts are verified with reference to the same, the second respondent stands disqualified.

6. Sri K. Rathangapani Reddy and Sri V.S.R. Anjaneyulu, learned Counsel for respondents 1 and 2 respectively, on the other hand, submit that the allegation made by the petitioner is absolutely without any basis. According to them, the position was clarified by the registering authority i.e. the Engineer-in-Chief (R&B), vide letter, dated 16.09.2009, and with that, the slight doubt that existed as to the eligibility of the second respondent stood cleared.

7. The effort of the petitioner is to disqualify the second respondent from participating in the tender process. The only ground urged against the second respondent is in relation to Clause 31 of the tender conditions. It reads as under:

31. Corrupt or Fraudulent Practices.

31.1 The Government requires that the bidders/supplies/contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:

(a) define for the purposes of the provision, the terms set forth below as follows:

(i) "corrupt practices" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a Government official in procurement process or in contract execution; and

(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish in Tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition.

(b) Will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

(c) Will blacklist/or debar a firm, either indefinitely or for a stated period of time, if at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing a Government Contract.

(d) Further more, Tenderers shall be aware of the provisions stated in the General Conditions of Contract.

8. The petitioner does not allege any corrupt practices against the second respondent. The emphasis is only on fraudulent practice. It is alleged that by misrepresenting the facts, the Managing Director of the second respondent has secured the contract from the third respondent and thereby incurs disqualification.

9. It is not in dispute that the Managing Director of the second respondent was registered as a Special Class Contractor and had adequate experience that qualifies him to submit tenders for the works of the volume, that are proposed to be undertaken by the first respondent. The rules relating to the registration of contractors permit the transfer of experience of a registered contractor in favour of a firm or company promoted by him. As and when such transfer is affected, the contractor in his individual capacity becomes stripped of his experience and correspondingly, it stands transferred in favour of the firm or the company.

10. Sri K.M.V. Prasada Rao did transfer his experience in favour of the second respondent. After such transfer, the second respondent submitted a tender for a work undertaken by the third respondent. However, the work, ultimately, came to be awarded in favour of its Managing Director i.e. Sri Prasada Rao. This, according to the petitioner, amounts to fraudulent practice.

11. Acting on the representation made by the petitioner, the first respondent sought clarification from various agencies including the Engineer-in-Chief (R&B). Through his reply, dated 16.09.2009, the Engineer-in-Chief stated that the award of work by the third respondent, in favour of Sri K.M.V. Prasada Rao in relation to a tender submitted by the second respondent was on account of the delay in generation of the digital key in the name of the second respondent. In other

words, the digital key that was in the name of Sri K.M.V. Prasada Rao before he transferred his experience to the Company was not transferred, by the time, the Company submitted its tender for a work proposed by the third respondent. These facts are not denied by the petitioner.

12. When the Registering Authority itself stated that there was no element of fraud in the process, it becomes difficult to accept the contention of the petitioner. Hence, the writ petition is dismissed. There shall be no order as to costs.