

(1999) 07 AP CK 0168

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6444 of 1999

B. Siva Prasad

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 08-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 5 ALD 158 : (1999) 4 ALT 365 : (1999) 4 ALT 265

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : Mr. O. Manohar Reddy, for the Appellant; Government Pleader, for Roads and Buildings and Additional Advocate General, for the Respondent

Judgement

1. Heard Sri O. Manohar Reddy, learned Counsel appearing for the petitioner, and Sri B. Prakash Reddy, Additional Advocate-General appearing for the State of Andhra Pradesh. Both the Counsels have requested for disposal of writ petition itself. Accordingly, the main writ itself is taken up for hearing and disposal.

2. The petitioner seeks to issue a Writ of Mandamus declaring the action of the respondent in recommending the three items of work of his choice out of 9 items of work for which the petitioner is the lowest tenderer in the tender notification dated 8-1-1999 in Bid.No.3/ NCB/APEP, without affording an opportunity to the petitioner, as illegal and arbitrary and to direct the respondent to recommend three works i.e., Item Nos.47, 56 and 57 of the tender notice dated 8-1-1999 as mentioned in the representation dated 22-3-1999 and pass such further orders.

3. The petitioner filed WP MP No.8068 of 1999 to stay all further proceedings pursuant to the tender notice dated 8-1-1999 or in the alternative direct the respondent to recommend the three items of work i.e. 47, 56 and 57 of the tender notice dated 8-1-1999. This Court, by order dated 20-4-1999 granted interim direction as there was no representation on behalf of the respondent when the matter came up for admission on 31-3-1999 and 20-4-1999. The State filed Vacate Stay Petition in WVMP No.1710 of 1999 to vacate the said interim

order dated 20-4-1999.

4. The petitioner states that the respondent issued notification dated 8-1-1999 in Bid No.3/NCB/APEP inviting tenders from the qualified contractors for 18 works at various places as mentioned in the tender notification. For each item of work, the value of the work, the bid security, the price of the document and the time for completion of the work has been mentioned. The petitioner states that he has qualification as prescribed in the notification to bid for the said works and he has applied for the tender schedules and participated in the tenders.

5. It is submitted that the petitioner made a representation dated 22-3-1999 to the Engineer-in-Chief, R&B, A&EAP, Erra Manzil, Hyderabad, stating that the petitioner is one of those tenderers for certain reaches of different roads shown in the tender notice and they have filed their tenders for two works on Ongole-Chirala Road, one work on Arkonam-Renigunta Road and for six works on Mypadu-Nellore-Bellary-Bombay Road. Thus the petitioner has applied for nine works and stated that the petitioner had experience and resources which are more than adequate to handle any of these works. By the words "package of contracts" figuring in clause 4.5.c at page 11 of the tender schedule, the petitioner understood and assumed that a "package" contains a group of works on one particular road and that the petitioner has assumed "Package" pertains to one area or district which falls in the zone of an Executive Engineer (R&B). But on the date of tenders at Hyderabad, the petitioner was given a different interpretation of the said clause 4.5.C stating that the "package" applies for any group of all the roads indicated in chit tender notice. In the absence of clear definition of "Package" of clause 4.5.c the petitioner assumed different understanding, according to which, the petitioner says that he has experience and resources to execute all the works and requested to consider the said representation.

6. In the writ petition, the petitioner alleges that if the interpretation of the department as provided in clause 4.5.C. is accepted, the petitioner is entitled for three works out of nine works, for which the petitioner declared as lowest tenderer and the petitioner shall be given an option to chose any of three works at his choice, and the petitioner further stated that though he is eligible for all nine items of work, for which his tender is lowest, the petitioner limited his right to question the manner of choosing 3 items of work by the respondent. It is relevant to extract para 8 of the writ affidavit which is as follows:

"8. I submit that I am eligible for all the 9 items of work for which my tender was the lowest. Though the interpretation placed by the respondent with regard to clause 4.5.c of the General conditions of tender is erroneous, I am limiting my right to question the manner of choosing the three items of work by the respondent. I submit that principles of fair play require that an opportunity should be given by the respondent to the tenderer before selecting the works to be warded from the items of work far which I am the lowest tenderer. It is submitted that the action of the respondents in not giving an opportunity is not

legal and the same is arbitrary."

7. It is further submitted that the action of the respondent in recommending 3 items of work out of 9 items of work is not legal and valid and on the above said averments, the petitioner seeks to issue a Writ of Mandamus directing the respondent to recommend the works of item Nos.47, 56 and 57 offender notice.

8. The respondent filed a counter stating that the petitioner is the lowest tenderer for 9 packages and his qualification is not sufficient for all the nine packages as per aggregate qualification criteria for which he being the lowest bidder vide 4.5.C. of the Bid document. The petitioner after satisfying all the conditions imposed in the bid documents, particularly, the condition No.4.5.c., the petitioner has obtained the tender schedule. It is further submitted that when all the works are considered for which the petitioner is the lowest bidder, his qualifications are not sufficient to meet the aggregate criteria as laid down in Clause 4.5.C. of the bid document. Clause 4.5.C. with regard to qualification of a bidder in Section 1 of Instructions to Bidders of the bid document, is as follows:

"To qualify for a Package of Contracts made up of this and other contracts for which bids are invited in the IFB (Invitations for bids), the bidder must demonstrate having experience and resources sufficient to meet the aggregate of the qualifying criteria for the individual contract"

From the said clause it is clear that if the bidder has applied for more than one work, he must qualify the aggregate of the qualifying criteria which, he is not satisfying the same for works for which he is the lowest bidder. Hence the works are selected to be awarded to him keeping his qualifying criteria.

9. Admittedly, the petitioner is not having qualification for the aggregate of all 9 packages and the petitioner is having qualification to execute the work only for 3 items of the work. It is stated in the counter that since the petitioner is eligible only for 3 packages, those, which are most beneficial to the Government were chosen and the contention of the petitioner that he should be given an opportunity to choose three packages is not correct and cannot be accepted in the interest of the Government revenue and the petitioner has not vested any right, more so, any fundamental right to demand for awarding any three of the works at his choice at the loss of the Government.

10. It is further stated that with regard to the contention of the petitioner to recommend the packages 47, 56 and 57, the petitioner is not qualifying and he does not have the qualification of executing maximum quantities in the financial year. It is stated that as per the bid document, the bidder should have executed the following quantities of work in a year for qualifying for the above three works of packages 47, 56 and 57.

(1) Water Bound Macadam (WBM) 4863 cum.(2) Bituminous Macadam (BM) 18984 cum.(3) Semi Dense Bituminous

Concrete (SDBC) 4963 cum.

Whereas the maximum quantities executed by the bidder in a year (financial year) are:

(1) WBM 16,839 cum. (2) BM 19,660 cum. (3) SDBC 3,861 cum.

As seen from the above, the bidder does not satisfy the quantity of SDBC. As against the experience of execution of 4963 cum., the petitioner is having experience of execution of the quantity in respect of SDBC is only 3,861 cum. It is stated by the petitioner that the said figures are wrongly calculated as the experience in a financial year from January to December has not been taken. In response to the said argument, the learned Additional Advocate General stated that as per clause 4.5.c. to qualify for the award of the contract, his qualifications should be taken into account in respect of a financial year and financial year means; 1st April to 31st March and, therefore, the department has rightly taken the maximum quantities executed by the bidder in respect of a financial year from 1st April to 31st March.

11. The Government of India has received a loan/credit from the International Bank of Reconstruction and Development/ International Development Association towards the cost of Andhra Pradesh Economic Restructuring Project and intends a part of the funds to cover eligible payments under the contracts for construction of works as detailed in the notifications for Bids. Only eligible bidders are permitted to bid and the bidders should have minimum qualification criteria as specified in clause 4 of Instructions to the Bidders to qualify for the award of contract. The bidders may submit Bids for any or all the works detailed in the table given in invitations for Bids and the successful bidder shall complete the works within the specified time. Only eligible contractors are entitled for payment of the said loan received by the Government of India towards the cost of Andhra Pradesh Economic Restructuring Project. According to clause 4.5, to qualify for award of the contract, each bidder in its name should have in the last five financial years: i.e., 1994-95 to 1998-99 (Financial year means 1st April to 31st March of next year), one should have executed minimum annual financial turnover and similarly, works of the value and the minimum quantities of works as prescribed in "a to d" of clause 4.5. As per clause 4.5.B, each bidder should further demonstrate of having the machinery as stated in the above said clause. Thus, the learned Additional Advocate General says that as per clause 4.5.C, the contractor should have the experience and capacity to execute the aggregate works and admittedly the petitioner is having experience and qualification criteria to execute only three works and not all nine works, and therefore, the contention of the petitioner that he is entitled to execute nine works is not tenable. A person who is having experience, capacity and equipment to execute three works alone cannot be awarded more than the said works. There is no ambiguity in clause 4.5.C. The said clause clearly says that the Contractor should have experience and resources sufficiently to meet the aggregate of the qualifying criteria in respect of the works which he is entitled to execute.

12. It is further contended by the learned Additional Advocate General that as

per clause 31 i.e., criteria for awarding the works, the employer is at liberty to determine the substantially responsive to the Bids and as per clause 32, the respondent reserves the right to accept or reject any bid and to cancel the Bidding process and reject all Bids, at any time prior to the award of the contract.

13. I am of the considered opinion that in the interest of the revenue, it is open for the State to take any reasonable action to get the works executed at the minimum rates and the contractors cannot question the action of the State in getting the works executed at the minimum price as long as, there is no violation of Article 14 of the Constitution of India. The entire exercise of the State is to execute the works with the minimum expenditure in the interest of the State revenue and the contractor cannot question the said action. It is further stated that is a time bound programme and if the works are not executed within the time bound programme, the funds will be lapsed and the public interest will be jeopardized.

14. For the aforesaid reasons, I see no merits in the writ petition and the petitioner is not entitled for the relief as claimed in the writ petition and accordingly, the writ petition is dismissed. No costs.