

(1995) 07 KAR CK 0029
In the Karnataka High Court
Case No : Writ Appeal No. 1979 of 1995

B.C. Raju

APPELLANT

Vs

Commissioner, Karnataka Housing Board and Another

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19 (1) (g)

Citation : AIR 1996 Kar 84 : (1995) ILR (Kar) 2729 : (1995) 4 KarLJ 500

Hon'ble Judges : S.A. Hakeem, Acting C.J.; J. Eswara Prasad, J

Bench : Division Bench

Advocate : U.L. Narayana Rao for N.S. Srinivasan, for the Appellant; R.S. Hegde, for the Respondent

Judgement

S. A. Hakeem, Actg. C. J.

1. Although this appeal has come up for admission, by consent of the parties, it is heard for final disposal.

2. This appeal is against the order rejecting the appellant's petition for the issue of a writ of mandamus directing the respondents to issue tender forms in-respect of the work which was notified on 7-9f-1994 with estimate, and to further direct the respondents to renotify the tender notification with the revised estimate of Rs. 3,52,70,831/-.

3. The brief facts are as follows:--

The petitioner claims to be a Class I licensed electrical contractor. The respondent-Board issued a notification dated 7-9-1994 inviting tenders from the licensed contractors for providing external electrification for the multistoried tenements in the KHB Layout at Yelahanka New Town, Bangalore.. The last date for issue of tender forms on payment of the prescribed fee was between 10-10-1994 and 12-10-1994. The last date for receipt of sealed tender forms was 22-10-1994. The appellant submitted the application without payment of the requisite fee. Hence his application was rejected by the Board.

4. It transpires that the respondents decided to postpone the issue of Blank tender forms and fixed a fresh date for submission of tenders on 21st and 22nd of March, 1995 since the Executive Engineer, K.E.B. had reduced the estimated cost of the work from Rupees 3,97,51,423 - to 3,53,70,831/- thereby reducing the estimate of the works contract by 45 lakhs. Pursuant to the said revision, the respondents issued, individual letters to individual contractors who had earlier applied for tender forms in pursuance of the earlier notification dated 7-9-1994 and called upon them to receive the Blank tender forms on 21st and 22nd of March, 1995. The appellant was not issued any such notice on the ground that his application had already been rejected for non-payment of the requisite fee. The appellant being aggrieved by his exclusion from participating in the tender on the basis of the revised estimate preferred W.P. 10615/ 1995, which came to be rejected by the impugned order. The main reason given by the learned Judge for rejecting the appellant's claim is that when once the process for calling tenders had started and the petitioner did not apply for the forms with the prescribed fee, he has no right to participate in the tender on re notification of the tender. With due respect, we are unable to agree with this reasoning.

5. It is urged by Shri U.L. Narayana Rao, learned senior counsel for the appellant, that once the original tender amount was reduced by as much as Rs. 45 lakhs i; amounted to a fresh offer and accordingly the respondent which is an authority under Article 12 of the Constitution was bound to afford an equal opportunity to all persons interested by re-notifying the same, failing which their action would be violative of Articles 14, and 19(1)(g) of the Constitution of India. It is brought to our notice that the tender amount has to be fixed only on the basis of the estimate prepared by the Board in accordance with clause 10.09 of the Electricity Supply Regulations, 1992, without which no work could be either entrusted or carried out. Admittedly, such an estimate was prepared by the Board only in December, 1994, i.e., three months after the issue of the tender notification. As such the earlier notification on the basis of a higher estimate of 4 crores and odd ceased to be operative in the eye of law, and only the tender forms issued in pursuance of the revised estimate should be treated as an offer to the intending contractors. The argument is justifiable even on the ground of long lapse of time of about six months, during which several other persons would have become eligible to participation in the tender. The escalation and variation in the cost also will have an impact necessitating issuance of a fresh tender notification to allow all the eligible contractors to participate in the tender and not to confine the benefit only to the contractors who had made their applications in October, 1994. Hence there is considerable force in the contention of the learned counsel. On this ground alone this appeal has to succeed. Hence we make the following order:--

The writ appeal is allowed. The impugned order is set aside. The writ petition is allowed. It is stated that the nine contractors participated by submitting the tender which were opened in pursuance of the interim order. The Board is directed to renotify the contract calling for fresh tenders in accordance with law.

The appellant, the nine tenderers and any others who are qualified contractors may apply and participate in the tender.

6. Appeal allowed.