

(1983) 08 AP CK 0004
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 743 of 1983

Dorai Murugan Company, Madras

APPELLANT

Vs

Andhra Pradesh Small Scales Industries Development
Corporation Ltd. and Another

RESPONDENT

Date of Decision : 19-08-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 AP 144

Hon'ble Judges : K. Madhava Reddy, C.J.; Lakshmana Rao, J

Bench : Division Bench

Advocate : P. Srikrishna Reddy, for the Appellant; G. Suryanarayana Murthy, for the Respondent

Judgement

K. Madhava Reddy, C.J.—This writ appeal is directed against an order of the learned single Judge dismissing the writ petition filed by the appellant herein. Pursuant to a tender notice issued by the Andhra Small Scale Industrial Development Corporation, (the 1st respondent herein) calling for tenders for purchase of coal dust from Ceramic/Glass Factory, Gudur, Nellore district, on "as is where is" basis, the appellant offered his tender and it was accepted by respondent 1. The 1st respondent communicated its acceptance to the appellant through its letter. Ref. No. SIDC/CMM/GF/13 Disposal of Coal Dust/82, dated 8/10-2-1983. As desired in the tender notice, the appellant also deposited the Demand Draft for Rs. 1,000/-. When the appellant approached the Ceramic/Glass Factory, Gudur, for lifting the coal dust, he was not permitted to do so. Even when it was brought to the notice of the Chief Material Manager of the Andhra Pradesh Small Scale Industrial Development Corporation (2nd respondent), no action was taken to deliver the coal dust. To his surprise, on 31-3-1983, a fresh tender notice dated 24-3-1983 was published in a Telugu Daily "Eenadu" (Tirupati Edition) calling for fresh tenders. The appellant-petitioner, therefore seeks a writ of mandamus restraining the respondents from cancelling the acceptance of his tender and also reacceptance of his tender and also

restraining them from accepting any fresh tender for purchase of coal dust from Ceramic/Glass Factory, Gudur.

2. The facts averred by the appellant-petitioner are not disputed. What all is contended is that, though the 1st respondent-Corporation had accepted his tender for lifting the coal dust at Rupees 187/- per Metric Ton, it had not delivered the site to him to remove the coal dust already stored there. Before this was done, the Corporation received fresh offers from parties who had represented that they had not seen the earlier tender notice. So, in view of Clause 5 of the letter dated 9/10-2-1983 under which the Corporation reserved to itself the right to cancel the contract, it cancelled the contract of the appellant-petitioner and issued a fresh tender notice. In our view, this can hardly be a valid ground for cancellation of the earlier contract, that apart, it is seen that even before the cancellation of the contract was ordered, a fresh tender notice was issued on 24-3-1983. The contract itself is purported to have been cancelled on 31-3-1983. The fresh tender notice issued even before the cancellation of the contract cannot, therefore, be sustained. In our view, the cancellation of the contract under Cl. 5 of the letter dated 9-10-1983 is not contemplated merely because after the contract is entered into between a private party and a public sector undertaking, which is an instrumentality of the State, higher offers were received from third parties. The right reserved under Clause 5 of the said letter, in our view is intended to be enforced when the other contracting party does not perform his part of the contract and not on the ground that higher offers were received subsequently.

3. In that view of the matter, the writ appeal is allowed and the order under appeal is set aside and the writ, as prayed for by the appellant-petitioner, shall issue to the respondents. There will be no order as to costs.

4. Appeal allowed.