

(1999) 09 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19286 of 1999

Kovvuru and Company

APPELLANT

Vs

Superintending Engineer, Nandyal and another

RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:

Citation : (2000) 3 ALD 112 : (1999) 5 ALT 787

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. C. Sadasiva Reddy, for the Appellant; Government Pleader for Irrigation, for the Respondent

Judgement

1. The petitioner firm claims to be a Special Class Contractor. It is stated that the petitioner has taken up several contract works for the State Government and has successfully completed such works. On 14-10-1997 the first respondent issued a notice calling for tenders from contractors for certain works. The petitioner had submitted his tender for the work "Earth work excavation for seating of lining and providing lining of minors and sub-minors of Pandlapuram major in Block No.VIII of SRBC". It is submitted that the petitioner's tender was the lowest and other persons who had participated had quoted higher rates than the petitioner. The respondents did not allot the work to the petitioner but cancelled the tenders and fresh tenders have been invited now vide notice CRNo.2952-In/LN-4166-IN dated 20th August, 1999. The last date for obtaining tenders is upto 21st September, 1999 and the tenders will be opened on 23rd September, 1999. The petitioner applied for tender documents in accordance with the procedure laid down in the tender notice and submitted demand draft for Rs.5,000/-. On 3rd September, 1999 he was informed that his application for supply of the documents was rejected. This letter has been challenged in this writ petition. The contents of the letter are reproduced herein below:

"With reference to your application 2nd cited, you are informed that as per clause (1) of tender notice first cited, your application for bid documents for the

work of "Earth work excavation for seating of lining and providing lining for minors and sub-minors of Pandlapuram major in Block No. VIII" is rejected, as you have quoted the high rates for the same work earlier during 1997 (i.e., + 31.63%) and not furnished the rational justification for the same.

The Demand Draft No.045018, dated 27-8-1999 for Rs.5,000/- of State Bank of India, Proddutur is herewith returned."

3. When this petition came up before this Court on 14-9-1999 the learned Government Pleader for Irrigation appeared and sought time for instructions. Today the matter was heard. Counter has not been filed, but the learned Counsel for respondents argued the matter on the basis of instructions she received from the respondents.

4. The condition in the Tender notice to which a reference has been made in the impugned letter is reproduced below:

" 1. The Government of India has received a credit from the International Development Association towards the cost of III A.P. Irrigation Project and a part of the funds to cover eligible payments under the contracts construction of work as detailed below. Bidders registered with the Government of Andhra Pradesh and bidders registered with other State Governments, Government of India State and Central Government undertakings are eligible to bid for the works. Bidding is also open to all bidders from eligible source countries as defined in the IBRD Guidelines for procurement. Bidders are advised to note the minimum qualification criteria specified in clause (4) of the instructions to quality for the award of the contract and even though the bidders meet the qualifying criteria, they are subject to be disqualified if they have participated in the previous bidding for the same work and had quoted unreasonably high bid prices and could not furnish rational justification to the employer."

5. It is the case of the respondents that, once a person quotes prices unreasonably high, the policy of the respondents based on instructions of World Bank is that, such tenderer should not be allowed to participate in future transactions. The learned Counsel for the respondents justifies this condition on the ground that, there is reasonable suspicion that a contractor who quotes unreasonably high price is either a non serious contender or is part of a group who by collusion make bids in order to get the contract at a very higher price. She further states that the project in question is a project aided by the World Bank and guidelines have been issued by the World Bank known as "Guidelines - Procurement under IBRD Loans and IDA Credits". Guideline 1.15 lays down"-

"1.15. It is the Bank's policy to require that borrowers (including beneficiaries of Bank loans), as well as Bidders/ Suppliers/Contractors under Bank financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as

follows:-

(i) "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the 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 Borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition;

(b) will reject a proposal for award if it determines that the bidder recommended for award has been engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will cancel the portion of the loan allocated to a contract for goods or works if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the loan during the procurement or the execution of that contract without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;

(d) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank financed contract; and

(e) will have the right to require that, in contracts financed by a Bank loan, a provision be included requiring Suppliers and Contractors to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank".

6. Going by these guidelines it appears that the effort of the respondents is to exclude non serious contenders and who quoted a price earlier which was highly exorbitant. The learned Counsel for the petitioner submits that this condition is unreasonable and arbitrary. The principles guiding the Courts in scrutinising matters like the present one have been laid down by the Supreme Court in *Tata Cellular Vs. Union of India*, . One of the principles laid down in Para 113 of the judgment is principle No.5. It lays down;-

"(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*."

7. In the light of the principle laid down by the Supreme Court it has only to be seen whether the condition laid down by the respondents which is subject matter

of this writ petition is a reasonable condition in view of the Wednesbury's principle of reasonableness, Wednesbury's principle was also discussed by the Supreme Court in the same judgment very elaborately and it noted with approval the meaning given to the "irrationality" by Lord Diplock in Council of Civil Services Unions v. Minister For The Civil Service 1985 (1) AC 374. Lord Diplock held:-

"By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223(233). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at."

8. So, while testing the condition laid down by the respondents in the contract, it cannot be stated, in view of the judgment of the Apex Court, that the condition was unreasonable.

9. Therefore, I do not find merit in this petition which is accordingly dismissed.