

(2024) 11 KAR CK 0040

In the Karnataka High Court

Case No : Writ Appeal No.1397 Of 2024(GM-TEN)

M/S. Himagiri Sree Electricals

APPELLANT

Vs

Chief Commissioner, Bruhat Bengaluru Mahanagara Palike, N.
R. Square, Bengaluru 560002 & Ors.

RESPONDENT

Date of Decision : 15-11-2024

Acts Referred:

High Court Act, 1961 — Section 4

Citation : (2024) 11 KAR CK 0040

Hon'ble Judges : N. V. Anjaria, CJ;K. V. Aravind, J

Bench : Division Bench

Advocate : Shridhar Prabhu, S.J. Puranik, Suresh S. Lokre, T.P. Pramoda Gowda

Final Decision : Dismissed

Judgement

K. V. Aravind, J

1. Heard learned advocate Mr. Shridhar Prabhu for the appellant, learned advocate Mr. S.J. Puranik for respondent Nos.1 and 2 and learned Senior Advocate Mr. Suresh S. Lokre assisted by learned advocate Mr. T.P. Pramoda Gowda for respondent No.3.

2. This intra-court appeal under Section 4 of the High Court Act, 1961, aggrieved against the order in Writ Petition No.13733 of 2024 dated 29.07.2024.

3. The brief facts from the pleadings are that, the respondent-Bruhat Bengaluru Mahanaraga Palike (BBMP) issued a tender notification dated 24.01.2024 inviting bids for the construction of a library building, shops, comprehensive development of roads, beautification of parks, provision of Gym equipment, CCTV cameras in Chamarajpet Assembly Constituency. Further, the tender work includes improvement to the median under the BGS flyover, provision of street name boards, LED street lights and bus shelters in Chamarajpet.

4. The appellant-petitioner challenged the tender notification alleging non-

compliance with the Karnataka Transparency in Public Procurement Act, 2000 (for short 'KTPP Act') and various other defects in the tender document concerning the estimate for electrical works. It was further challenged that the composite tender, including electrical and civil works, is not in accordance with law. Merging of two works would hinder fair and equal opportunity to the petitioner.

5. The learned Single Judge, considering the nature of the work and also having regard to the fact that 60% of the entrusted work was completed, dismissed the writ petition. The writ petition was dismissed for one more reason that the tender notification was published on 21.04.2024, the petitioner approached the Court on 22.05.2024 on completion of the tender process and issue of work order.

6. Learned advocate Mr. Sridhar Prabhu, appearing for the appellant-original writ petitioner, submits that the work order was issued on 16.03.2024 on the same day when elections to the Parliament were notified. As per the communication of the Election Commission of India dated 16.03.2024, no work orders should have been issued. Even if the work order was issued as no work was started and no work would have started during the operation of the Election Code of Conduct, 60% of the work being completed is unacceptable.

6.1. Learned advocate further submits that the conditions imposed in the tender document that the tenderer shall be registered with BBMP/BDA/NHAI/PWD/CPWD or other Central/State agency is irrational and to ward off the competition. It is further submitted that the tender work in question is subject to PMC services, including supervision, quality control for the improvement to the median under BGS flyover and providing street name boards, LED street lights and bus shelters in Chamarajpet Assembly Constituency.

6.2 The agreement for PMC services was entered into on 04.06.2024. It is the specific assertion of learned advocate that when PMC service agreement in relation to the tender work in question was entered on 04.06.2024, the contention that 60% of the work was completed is without any basis.

6.3. It is further submitted that the electrical work included in the composite tender lacks the skill and expertise that the successful bidder to execute. The entrustment of electrical work to the civil contractor contravenes the law.

6.4. Learned advocate further contended that the successful bidder has no competence. It is submitted that the individual's work experience has been assigned in favour of respondent No.3 Company, which would not comply with the qualifying conditions. Learned advocate further submits that the second bidder is not BONA FIDE, made to believe arrangement to demonstrate that work awarded in favour of respondent No.3 is on competitive selection.

7. Mr. S.J. Puranik, learned advocate appearing for the BBMP would submit that the tendered work substantially involves civil work. The work relating to street lights is an integral part of civil work. Considering the nature of work, entrusting

the work splitting into civil and electrical is difficult. Coordination between the persons carrying on civil and electrical work is extremely necessary, but for the composite contract, it would be practically challenging to get the work executed.

7.1 Learned advocate for the BBMP further contended that the grounds urged relating to Election Code of Conduct, PMC services and other aspects raised in the appeal are fresh pleadings. The appellant is not entitled to raise any additional grounds. While aggrieved by the impugned order, the grounds not pleaded in the writ petition resulting in the impugned order cannot be permitted.

7.2 Learned advocate for the BBMP asserting the petitioner's locus standi, submitted that the petitioner has not participated in the tender process. The person who remained outside the tender process cannot allege illegalities and cannot challenge the tender.

7.3 Learned advocate further submitted that tender process were started in January 2024, the work order was issued much prior to the code of conduct comes into operation. It is submitted that the substantial work was completed when the petitioner challenged the tender process. It is further submitted that the tender notification scrutiny and award of the contract are as per the provisions of the KTPP Act.

8. Having considered the contentions and grievance, it may be stated that the appellant preferred the instant Writ Petition No.13733 of 2024 questioning the tender notification dated 24.01.2024 (Annexure-A). The grounds urged, firstly regarding merging the electrical and civil works. Secondly, certain defects were pointed out in the estimate for electrical work. Learned Single Judge rejected the petition on the ground of delay. The tender notification was dated 24.01.2024, the work order was issued on 16.03.2024. The writ petition is dated 22.05.2024. On the above sequence of events, the learned Single Judge concluded that the petitioner had approached the Court belatedly.

9. The appellant has filed an application in I.A.No.2 of 2024 for additional documents. There is no reference in the pleadings in the writ petition to the additional documents sought to be brought on record.

10. However, the grounds relating to the model code of conduct, joint venture tender submission, licence qualification, fraud perpetrated by the respondents, and consideration of a single bid are fresh grounds in this appeal. The fresh grounds are opposed by the respondents on its maintainability.

11. Before considering the fresh grounds raised in the appeal, it is necessary to determine whether the appellant has made out a case for interference with the impugned order of the learned Single Judge.

12. Respondent No.3 has raised a contention regarding locus standi of the petitioner in maintaining the writ petition and the appeal. The precise contention is that the petitioner has not participated in the tender, is not aggrieved, and lacks locus standi to maintain the writ petition.

13. To consider the above aspect, it would be relevant to refer to the judgment of this Court in Larsen and Toubro Limited vs. The Karnataka Power Corporation Limited and another, Writ Appeal No.381 of 2024, DD on 25.04.2024. This Court has extensively examined the scope of judicial review and the extent of intervention. This Court also considered the LOCUS STANDI to maintain writ petition when not participated in the tender process. It is held that while examining any administrative decision or action, the judicial review power is to be confined to the examination of decision making process and not the decision itself. This Court has further held that it is entirely the domain of the tender inviting authority as to which conditions are to be attached to the tender notice and with which conditions it would accept the offers from the intending bidders. It is not permissible for the intending bidder to dictate its own terms to the tender inviting authority.

14. When the petitioner herein has not participated in the tender process and has remained outsider, the petitioner has no right to challenge the process. Subsequent change of mind will not crave to be excused.

15. This Court has further held that the person keeping himself away from tender participation cannot make suggestions about the conditions considering the negotiation with the expert partners for the technical part of the project. It is held that the person challenging the tender process and indulging in suggestions, none other than the fence-sitters cannot be allowed to interfere in the tender process or in the proceedings challenging such process.

16. While examining the locus standi, the petitioner's conduct is also of serious concern. If the third parties are allowed to challenge the tender process and entertain, the entire work to be achieved in the tender would seriously affect the process and the public interest. It will further lead to the abuse of the process, even at the instance of the interested person.

17. The time at which a challenge is posed to the tender is also highly relevant. As evident from the record, the tender notification was published on 24.01.2024, work order is issued on 16.03.2024. Whereas, the writ petition is preferred on 22.05.2024 after a lapse of four months. No justification has been submitted for the delay. In the absence of any justifiable reasons for delay, the theory of fence-sitter would reasonably apply.

18. Further, the fresh grounds are urged to be without any substance and pleadings to that effect. The contention that no work was commenced until the election code of conduct expires is without any substance. Another contention that the law prohibits the entrustment of electrical work to civil contractors merits no consideration.

19. The petitioner has neither placed reliance nor invited the attention of the Court to any of the provisions imposing such a statutory bar. The contention that work could not have commenced before the signing of PMC services is without merit and has no significance on the issue, as it is factual.

20. Be that as it may, in view of the finding herein above that the writ petitioner has no locus standi to maintain the writ petition and the conduct of the petitioner is not bonafide, the conclusion reached by the learned Single Judge while dismissing the writ petition cannot be faulted and interfered with. In that view, other contentions renders academic, the same do not merit consideration.

21. No error can be booked from the order of learned Single Judge. Accordingly, the appeal is dismissed.

In view of dismissal of the main appeal, pending interlocutory applications do not survive for consideration and they stand disposed of.