

(2017) 01 KAR CK 0351
In the Karnataka High Court
Case No : 205075-205076 of 2016

M/s. Karnataka Agro Agency

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Citation : (2017) 01 KAR CK 0351

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : Sachin M. Mahajan, A. Syed Habeeb, Gourish S. Khashampur,
Prakash M. Patil, Ameet Kumar Deshpande, Anneveerappa S

Judgement

1. The petitioner is before this Court aggrieved by the order of respondent No.1 - The Secretary, Social Welfare Department whereby the Tender applications of the petitioner and respondent Nos.4 and 5 were rejected by respondent No.2 - The Tender Accepting Authority and the matter was remanded back to respondent No.1 for fresh examination and to undertake action as per the law, within fifteen days.

2. Briefly stated the respondent No.3 called for drilling of borewells under the scheme of "Ganga Kalyan" in Vijayapur district, the petitioner and respondent Nos.4 to 6 responded with their application. Amongst others, one of the condition stipulated in Tender Notification/Annexure-A is, "3.2(a) Achieved in at least TWO financial years a minimum financial turnover of Rs.603.20/- lakhs (usually not less than two times the estimated annual payment under this contract) notarized copies of certificates issued by Chartered Accountant should be uploaded."

3. Sri Sachin M. Mahajan, learned counsel for the petitioner submits, Tender application of the petitioner was rejected on the ground that he was unable to achieve the minimum financial turnover, as required in Clause 3.2(a) of Annexure-A. The Tender process insofar as respondent Nos.4 and 5 are concerned, the same was cancelled because they did not possess requisite

qualification. On rejection of the Tender Application respondent Nos.4 and 5 filed appeal before respondent No.1. The petitioner filed his objections to the said appeal stating that respondent No.4 is not having one set of GPS Equipment for each rig as required under 3.3 (a) (iii) of Annexure-A and respondent No.5 had applied in six districts, though there was prohibition to that effect at Clause No.3.3(b) of Annexure-A. The objections raised by the petitioner were found to have merit and disqualified the Tender of respondent Nos.4 and 5 so also of the petitioner. Respondent Nos.4 and 5 filed an appeal before respondent No.1/ Secretary to Government, Social Welfare Department. Considering their grievance, respondent No.1 passed order - Annexure-G. Relevant lines from the operative portion of the order read thus: "..... hereby set aside the order of Tender Accepting Authority, and revert the file back to the Tender Accepting Authority for fresh examination and to undertake action as per the law within 15 days".

4. The petitioner aggrieved by the same is before this Court mainly challenging the said order on the ground that respondent Nos.4 and 5 without arraying him as a party to the said appeal have got the relief. In fact respondent Nos.4 and 5 are also not eligible for consideration of their Tender applications. On a mechanical view of the matter, competent authority has allowed their appeal only on the ground that issues raised by the petitioner should have been considered at the Tender evaluation stage.

5. Sri Gourish S. Kashampur, learned counsel for respondent No.3 submits that Tender accepting authority has found that the petitioner with regard to his financial capacity had furnished a wrong and incorrect statement though his turn over was not to the extent of Rs.603.20 lakhs. Respondent No.4 was not having one set of GPS equipment for each rig and respondent No.5 had applied for six districts, though it was prohibited in Annexure-A. In that view of the matter, without bringing all these facts before the appellate authority, the order impugned is passed. Thus Annexure-G is required to be quashed. In the event fresh Tenders are called, parties may apply for the same again.

6. Sri Syed Habeeb, learned Additional Government Advocate fairly submits that respondent No.2 had disqualified respondent Nos.4 and 5 on the complaint of the petitioner herein at the stage of finalizing the bid. But, the petitioner was not heard by the Appellate Authority since, he was not arrayed as a respondent in the appeal.

7. Learned counsel for respondent No.4 Sri Prakash Patil and learned counsel for respondent No. 5 Sri Ameet Kumar Deshpande in one tone submit that the petitioner having been found disqualified to apply for the Tender Notification has no locus-standi to maintain this writ petition. That apart he was not arrayed as a party before the Appellate Authority and it is not necessary at this length of time to call for Tenders afresh.

8. In the light of above submissions, I have perused the order passed by

respondent No.1 at Annexure- G. In the body of the order there is reference to the objections raised by the petitioner before respondent No.2 that led to the rejection of Tender of respondent No.5. Despite the same, the Authority observes that the reason given for rejection is not clear and the matter should have been considered at the stage of Tender evaluation. Contrarily to the above observation, on the operative portion, the matter is remanded with a direction for fresh examination. The operative portion of the order does not flow from the reasoning part of the order. That apart, the petitioner, on whose objections eligibility of respondent Nos.4 and 5 was disqualified is not given an opportunity to present his view of the matter before the Appellate Authority. In that view of the matter, the order at Annexure-G requires fresh consideration after giving opportunity to the petitioner to present his case before Appellate Authority. With these observations, the petitions are allowed and the order passed by respondent No.1 at Annexure-G is set aside. The matter is remanded to respondent No.1 - Social Welfare Department for reconsideration afresh after giving opportunity to the petitioner. Without waiting for the notice from respondent No.1, the concerned parties shall appear before respondent No.1 on 20.02.2017 at about 11.00 a.m. In that event, hearing date shall be fixed and the entire exercise of hearing and disposal of appeal shall be completed by respondent No.1 within three weeks therefrom. The petitioner is at liberty to file an application seeking to implead himself as a respondent. On such application, he shall be permitted to come on record as a contesting party.