
(2022) 11 TEL CK 0123

In the Telangana High Court

Case No : Writ Petition Nos. 8805 And 32996 Of 2022

M/S. Saroja Transport

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 11 TEL CK 0123

Hon'ble Judges : A.Abhishek Reddy, J

Bench : Single Bench

Advocate : Venkateshwara Reddy

Final Decision : Dismissed

Judgement

Since the issue involved in both the Writ Petitions is intrinsically connected with each other, they are taken up together and being disposed of by this common order.

The case of the petitioner, in brief, is that pursuant to the e-tender notification issued by respondent No.2-Corporation for transportation of food grains, pulses and other commodities, the petitioner and two others have submitted their respective tenders along with all necessary documents. Respondent No.3 was declared as lowest tenderer (L-1). On 11.02.2022, when the technical bid was opened, the tender of the petitioner was kept aside and its financial bid was not opened, allegedly on the ground that Annexure-VIII filed along with tender documents does not contain the numbers of the lorries. The case of the petitioner is that the said annexure is not applicable to the petitioner and is applicable only in case the tender is submitted by Lorry Owners' Association. It is further stated that the petitioner had quoted 7% less than respondent No.3, which would work out to around Rs.1.2 lakhs every month for the Corporation. Ignoring all the above facts, the respondent Corporation has not considered the tender of the petitioner with a malafide intention. Aggrieved by the same, W.P. No.8805 of 2022 has been filed.

On 18.02.2022, this Court while issuing Notice Before Admission, has issued interim directions to the authorities not to issue work order to respondent No.3 and the said interim order was extended from time to time till 23.03.2022.

However, alleging that in spite of the specific directions of this Court, the 2nd respondent had issued the proceedings No.PDS2/Movt./FG5(1)/Stage-I Tenders/2021-23/TS-KTGM, dated 10.08.2022 appointing respondent No.3 as Stage-I Transport Contractor, pending disposal of W.P. No.8805 of 2022. W.P. No.32996 of 2022 has been filed questioning the said proceedings dated 10.08.2022.

On 22.08.2022, this Court while issuing notice to respondent No.3 has passed interim orders directing the parties to maintain status quo obtaining as on that date. The said interim order was in force till 06.08.2022.

In W.P. No.8805 of 2022, the respondent-Corporation has filed a counter affidavit mainly stating that the petitioner has submitted the affidavit under Annexure-VIII without signature of the deponent therein though the said affidavit was notarized. Therefore, the tender submitted by the petitioner was disqualified technically and the financial bid of the petitioner was not opened. It is further stated that respondent No.3 had submitted all the necessary documents as per the tender conditions and being the lowest tenderer, he was awarded the contract.

In W.P. No.32996 of 2002, respondent No.3 has filed a vacate stay petition along with a counter affidavit mainly stating that the tender document submitted by the writ petitioner is not in accordance with the terms and conditions prescribed in the tender notification. The tender bid of the petitioner was disqualified in technical round itself and therefore the financial bid cannot be opened. It is further averred that as the tenders were invited through online process, there is no manual interference by anyone. Further the respondent-Corporation after elaborate procedure has awarded contract dated 10.08.2022 to the respondent No.3, but due to the order of status quo granted by this Court, the respondent No.3 is unable to execute the work order. Hence, it is prayed to dismiss the writ petition itself.

A reply affidavit has been filed by the writ petitioner mainly stating that Annexure-VIII itself is not applicable to the writ petitioner herein. Therefore, the authorities cannot insist all the tenderers to file Annexure-VIII.

Heard the learned counsel for the petitioner, Sri T.P. Acharya, learned Standing Counsel for respondent-Corporation, and Sri Upender Sangem, learned counsel for respondent No.3.

Learned counsel for the petitioner has stated that rejection of the petitioner's technical bid without assigning cogent reason is totally illegal and done only to favour respondent No.3. Learned counsel has stated that as per the counter filed by respondent No.2 the reason for rejecting the technical bid of the petitioner is

that she has not submitted the Annexure-VIII in prescribed format, which is contrary to the e-tender notice dated 22.12.2021. Learned counsel has stated that as per clause 50(i)(k) of the tender conditions, annexure-VIII is applicable only for the Lorry Owner Association and not for individual lorry owners like the petitioner. That even though the petitioner has submitted Annexure-VIII clearly mentioning that the said affidavit is not applicable to the petitioner, the authorities concerned only to favour the respondent No.3 have rejected the technical bid of the petitioner. That as a matter of fact, the price bid offered by the petitioner is less than the offer made by respondent No.3 and therefore the action of the respondents in rejecting the bid of the petitioner is highly unsustainable and thus prayed to allow the writ petition.

Per contra, the learned Standing Counsel for respondent No.2 Corporation has stated that the official respondents have duly followed the tender conditions and rejected the bid of the petitioner at the technical stage itself. Learned counsel has drawn the attention of the Court to the tender documents, more particularly clause 50(i)(k) thereof and also Annexure-VIII wherein the petitioner has not signed the affidavit, but has got it notarized and stated that the petitioner's bid was rejected at the technical level, inconsonance with clause 50(i)(k). That the learned counsel has also stated that the transportation of the food grains, pulses and other commodities are time bound programs and the authorities concerned have already issued the work order to respondent No.3, but for the status quo order granted by this Court, the respondent No.3 is unable to transport the material. Therefore, the learned counsel has prayed this Court to dismiss the writ petitions.

Learned counsel appearing for respondent No.3 while adopting the arguments of the learned counsel appearing for respondent No.2 has stated that the petitioner's bid was rightly rejected by the authorities concerned as the petitioner has not signed in annexure-VIII, even though he got it notarized. Further, it is stated that the entire tender process is only through online process and there is no manual interference by person, much less, the respondent authorities. That respondent No.3 has already procured the vehicles for transportation of the commodities and even though the work order has been issued, he is unable to execute the same due to the status quo order granted by this Court and therefore prayed this Court to dismiss the writ petition.

Perused the record.

For better adjudication of the matter, clauses 50(i) and 50(i)(k) of the tender conditions are hereby reproduced:

50(i) It is mandatory for all the Tenderers to upload scanned copies of the following documents and Annexures in the website www.tender.telangana.gov.in as per the given time schedule. If any particular Annexure is not applicable, then the Annexure must be submitted as "Not Applicable" in the same prescribed format. Failure to upload any of the documents or Annexures will lead to

Technical disqualification of the tenderer.

50(i)(k) Annexure-VIII – Affidavit for Lorry Owner Associations as indicated in clause no.11 should be uploaded in the prescribed proforma.

The main contention of the respondent authorities for rejecting the tender submitted by the petitioner is that the petitioner has not submitted annexure-VIII as stipulated.

A perusal of the Annexure-VIII enclosed by the petitioner along with the material papers to the writ petition shows that even though the petitioner has written on the said affidavit that the same is not applicable to him, but he has got it notarized through one P. Rama Chandra Reddy, Advocate & Notary, on 05.01.2022, but the said affidavit is not signed by the deponent i.e. the petitioner herein.

Even though the learned counsel for the petitioner has vehemently contended that the petitioner has submitted Annexure-VIII in the required format and also mentioned on the said affidavit that the same is not applicable as envisaged under clause 50(i)(k), admittedly, the petitioner has not signed the same. Therefore, it cannot be said that the petitioner has submitted the same in the prescribed manner. Merely endorsing on the affidavit that it is not applicable to them without appending the signature cannot be countenanced and the affidavit cannot be said to be a legally valid document.

Insofar as tender matters are concerned, the scope of interference by the Courts in Writ Petitions filed under Article 226 of the Constitution of India is limited. This Court as well as the Hon'ble Apex Court in number of judgments have repeatedly held that wherever a particular procedure is prescribed, the same has to be scrupulously followed. The petitioner, who is well aware of the prescribed procedure in which the documents have to be filed, ought to have submitted the annexure in the prescribed manner and there is no explanation whatsoever as to why the petitioner got it notarized by a Notary Advocate without appending his (petitioner's) signature thereon that too when the said annexure is not applicable to him, as contended by him.

In *Silppi Constructions Contractors V. Union of India* and another (2019) SCC Online SC 1133, at para 20, the Hon'ble Supreme Court has observed as under:

"The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as

to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.”

(emphasis added)

For the above reasons and the law laid down by the Hon’ble Supreme Court in the above referred judgment, this Court is not inclined to interfere with the decision taken by the respondent authorities in rejecting the tender of the petitioner and therefore, the Writ Petitions are liable to be dismissed.

Accordingly, both the Writ Petitions are dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.