(2009) 01 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 7799 of 2007

N.G. Puttaswamy and Another — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:
Karnataka Transparency in Public Procurements Act, 1999 — Section 18, 4 (d), 5, 6

Citation : (2009) 2 KCCR 1201

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlamance, for the Appellant; H.T. Narendra Prasad, Government Pleader for Respondent-1 to 3, G.M. Chandrasekhar, for Respondent-4, B.K. Manjunath, for Respondent-5 and S.Y. Shivalli, for Respondent-6, for the Respondent

Judgement

N. Kumar, J.—The petitioners have preferred this writ petition seeking quashing of Annexure-C passed by the third respondent-Commissioner, Davanagere Municipal Corporation releasing foodgrains for implementation of the contract of various developmental activities as set out in Schedule I to Annexure-C.

2. The first petitioner was Ex-Chairman of APMC, Davanagere and the second petitioner was also Ex-Chairman of City Municipality, Davanagere. The first petitioner is also a contractor. Both of them are social workers. They claim that they are interested in the welfare of Davanagere City Corporation. Their grievance is that as per Schedule I to Annexure-C, various construction works were undertaken by the second respondent. The said contract was awarded to respondents 4 and 5. The total value of the said contract is Rs. 4,79,04,000.00. As per Annexure-C, foodgrains were released for being distributed to persons who are employed in the said construction work. It is their further contention that the said allotment of work was done at the behest of the 6th respondent who was in-charge of Municipality of Davanagere District and most of the work is executed in his constituency, Mayakonda. The petitioners contend that

respondents 4 and 5, even if they are Governmental agencies, they could not have been entrusted with the said work without calling for tenders under the provisions of the Karnataka Transparency in Public Procurements Act, 1999 (for short hereinafter referred to as "the Act"), as the total value of the work exceeded Rs. 5 lakhs. Therefore, the petitioners seek quashing of Annexure-C and for a writ of mandamus directing respondents 1 to 3 to comply with the Government order at Annexure-B and entrust the work through calling for public tenders.

3. After service of notice, respondents 3 to 5 have entered appearance and they have filed detailed statement of objections. They contend that respondents 4 and 5 to whom contract was entrusted are Governmental agencies and for awarding contract to them, it is not necessary to follow the procedure prescribed in the Act. Section 4(d) of the Act is attracted to the contract in question. Moreover, the entire work entrusted to them has been completed and therefore the writ petition has become infructuous.

4. I have heard learned Counsel for the parties.

5. The procurement of goods and services by Government agencies for their own purposes is a core element of the operation of Governments. It secures the inputs that enable Governments to fulfill their tasks, having a major impact on key stakeholders in society. Since public resources are scarce, the efficiency of the procurement process is a primary consideration of every procurement regime. Open, transparent and non-discriminatory procurement is generally considered to be the best took to achieve ''value of money'' as it optimises competition among suppliers. Governments are the largest consumers in an economy. Public procurement is an influential vehicle for Governments to lead by example and "walk the talk" on sustainable development. Public procurement is about laws, policies and practices to integrate economic, social and environmental risks into public procurement processes and decision.

6. A well-regulated Government procurement system, embodying the principles of transparency and non-discrimination, helps to ensure optimal value for money in public purchasing. At the domestic level, the procurement of goods and services by Government agencies provides needed inputs that enable Governments to deliver public services and fulfill other tasks. Procurement systems have a significant impact on the efficiency of the use of public funds and, more generally, on public confidence in Government and on good governance. The attainment of value for money, public access to information on Government contracts, and fair opportunities for suppliers to compete for Government contracts, are all essential requirements of an efficient Government procurement system.

7. The irregularities in the processing of tenders occurred in the various Government Departments, Public Sector Undertakings Statutory Boards, etc., due to inadequate publicity of tenders, restricted supply of tender documents are

resulting in lack of transparency in evaluation and acceptance of tenders. The Kamataka State Legislature which is committed to good governance, with an intention to put in place an efficient Government procurement system brought about the legislation to provide for transparency in the tender processes and to regulate the procedure in inviting, processing and accepting tenders. Accordingly, Karnataka Transparency in Public Procurements Act, 1999 was enacted, which came into force from 4th October, 2000.

8. Chapter II of the Act comprising Sections 5 - 18 sets out the regulation of procurement. Section 5 of the Act mandates that on and from the date of commencement of this Act, no Procurement Entity shall procure goods or services except by inviting tenders for supply. Section 6 of the Act, deals with procedure to be followed by the Procurement Entity. It provides, no tender shall be invited, processed or accepted by a Procurement Entity after the commencement of this Act except in accordance with the procedure laid down in this Act or the rules made thereunder. The Procurement Entity is also defined to mean, any Government Department, a State Government Undertaking, Local Authority or Board, Body or Corporation established by or under any law and owned or controlled by the Government and any other body or authority owned or controlled by the Government and as may be specified by it. Elaborate procedure has been provided under the Act, constituting Tender Bulletin Officers, Publication of Tender Bulletin, Constitution of Tender Inviting Authority and Tender Accepting Authority, Tender Scrutiny Committee, Opening of Tenders, Rejection of Tenders and providing for statutory appeal to the aggrieved person whose tender is rejected. However, Section 4 of the Act, provides exception to the applicability of the said Act. It reads as under:

4. Exceptions to applicability.--The provisions of Chapter II shall not apply to procurement of goods and services.--

(a) During the period of natural calamity or emergency declared by the Government;

(b) Where the goods or services are available from a single source or where a particular supplier or contractor has exclusive rights in respect of the goods or services or construction work and no reasonable alternatives or substitutes exist:

Provided that for the purpose of this clause there shall be a committee of three experts consisting of one technical representative of the procuring entity one technical representative of the Government organisation dealing with similar procurement and one representative from a reputed academic or research institution or non-commercial institution having expertise in such line to examine and declare that the goods or services are available from a single source;

(c) Where the procuring entity having procured goods, services or technology from a supplier or contractor determines that additional supplies must be procured from the same supplier or contractor for reasons of standardisation and compatibility with the existing goods, services or technology;

(d) Where the goods or services are procured from certain departments of Government, public sector undertakings, statutory boards and such other institutions specified by the Government and such goods are manufactured or services are provided by them, for a period not exceeding three years from the date of commencement of this Act;

(e) Where the procurement is by the Government departments, State Government Undertakings, or any Board, Body or Corporation established by or under any law and owned or controlled by the Government or Zilla Panchayats constituted under the Karnataka Panchayat Raj Act, 1993 or City Municipal Corporations established under the Municipal Corporations Act, 1976 or City Municipal Councils established under the Karnataka Municipalities Act, 1964 or the Hyderabad Karnataka Areas Development Board constituted under the Hyderabad Karnataka Area Development Board Act, 1993 or Malnad Area Development Board constituted under the Malnad Area Development Board Act, 1991 or the Bayaluseeme Development Board constituted under the Bayaluseeme Development Board Act, 1994.--

(i) in case of construction works of all types the value of which does not exceed rupees five lakhs;

(ii) in case of goods or services other than construction works the value of which does not exceed rupees one lakh;

....

9. Clause (d) of Section 4 provides, where the goods or services are procured from certain Department of Government, public sector undertakings, statutory boards and such other institutions specified by the Government and such goods are manufactured or services are provided by them, for a period not exceeding two years from the date of commencement of this Act, the provisions of Chapter II of the Act is not applicable. By the Karnataka Transparency in Public Procurements (Amendment) Act, 2003, Section 4 was amended by introducing the words ''three years'' in place of ''two years'' in clause (d). The Act came into force on 4-10-2000. Three years period from that date i.e., 4-10-2003, the exemption granted ceases to operate. Having regard to the express words used in this provision, it is clear that the legislative''s intent was to grant exemption from the application of this Act to the goods and services procured from certain Departments of Government, Public Sector Undertakings, Statutory Boards and such other institutions for a period of three years from the date of commencement of the Act i.e., 4-10-2000. Therefore, this provision cannot have any application beyond three years from the date of commencement of the Act. After the expiry of three years from the date of commencement of this Act, Chapter II of the Act is made applicable to Departments of Government, Public Sector Undertakings and Statutory Boards and other instrumentalities of the State also, insofar as procurement of goods and services are concerned.

10. Therefore, this provision, strictly speaking is in the nature of transitory

provision. After the expiry of 3 years from 4-10-2000, i.e., from 4-10-2003 this provision has become otiose. Though the provision continues to be in the statute book, it has no application beyond 4-10-2003. It has spent itself. In fact it needs to be deleted. Therefore, from 4-10-2003 the Government or the other authorities mentioned in clause (d) could not procure goods or services except by inviting tenders for supply. Any contract entered into contrary to the express provision of the Act is void ab initio, without the authority of law and is liable to be quashed.

11. In the instant case, admittedly, the procedure prescribed under the Act has not been followed in awarding the construction work. The respondent claims exemption u/s 4(d) of the Act. The contract was entrusted in 2007, nearly 7 years after the commencement of the Act. Section 4(d) has no application. Therefore, it is clear that the contract awarded by the second respondent to respondents 4 and 5 is contrary to the provisions of the Act and is illegal.

12. Insofar as the contention that the contract work has been completed and therefore the writ petition has become infructuous is concerned, the fact that the contract work is completed, is disputed by the petitioner. Even otherwise, from the date of this order, no further contract can be granted to any of the Governmental agencies without following the procedure prescribed in the aforesaid Act. Therefore, it cannot be said that the writ petition has become infructuous, as the petitioners are seeking writ of mandamus directing respondents 1 and 2 to comply with the Government order which is in conformity with the Act and Rules framed by the Act. In that view of the matter, I pass the following order:

13. Respondents 1 and 2 shall follow the provisions of Karnataka Transparency in Public Procurements Act, 1999 for awarding contract in future or in respect of work which is not yet completed. Writ petition is accordingly disposed of. No costs.