

(2011) 07 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20126 of 2009 and WVMP No. 3273 of 2009

Paidala Thirupathi Reddy and Bros.

APPELLANT

Vs

The Engineer in Chief, The Superintendent Engineer and The
Commissionerate of Tenders
 The Engineer in Chief,
The Superintendent Engineer and The Commissionerate of
Tenders Vs Paidala Thirupathi Reddy and Bros.

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : (2011) 5 ALD 462 : (2011) 5 ALT 664

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : A. Kranthi Kumar Reddy, for the Appellant; GP for Roads and
Buildings and A. Kranthi Kumar Reddy in WVMP No. 3273 of 2009, for the
Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a mandamus to declare the action of Respondent No. 2 in disqualifying the Petitioner at the stage of technical bid in respect of work "Improvements to Mamda-Kamalkote road from km 0/0 to 14/0 in Adilabad District (Work in km 0/0 to 5/2)" as notified vide tender notification No. 1/CRF/DEE2/AEE2(CRF)/09-10, dated 07.07.2009, issued by Respondent No. 1, as arbitrary and illegal.

2. The Petitioner is a firm involved in the execution of engineering contracts and registered as such with the Respondents. In response to the tender notification, dated 07.07.2009, issued for the above noted work, the Petitioner submitted its tender. It appears that the Petitioner has eventually turned out to be the lone tenderer for the said work. The Petitioner pleaded that on coming to know from the Technical Superintendent of office of Respondent No. 2 that it has not submitted the bank guarantee in the prescribed proforma, on 03.08.2009 it has submitted a representation to Respondent No. 2, wherein it is stated that it has

been submitting the bank guarantees in the same format, in which, it has submitted in respect of the present work which were all accepted and that the said fact may be verified from Respondent No. 1, who has approved all those bank guarantees. The Petitioner further pleaded that responding to the said representation, Respondent No. 2 has addressed letter, dated 05.08.2009, to it, wherein he has informed that the bank guarantee furnished by the Petitioner is not in the prescribed format and therefore, its tender cannot be accepted. Feeling aggrieved by this action of the Respondents, the Petitioner filed the present writ petition.

3. On behalf of the Respondents, Respondent No. 2 filed a counter affidavit, wherein it is *infer alia* averred that the uploaded bank guarantee is not in the specified standard format as annexed to the bid document and that as compliance with the said condition is one of the major qualifications required to be fulfilled by the tenderers, the Petitioner's price bid was not opened by treating its bid as not qualified.

4. At the hearing, the learned Counsel for the Petitioner submitted that the Petitioner has bona fide submitted the bank guarantee in the proforma, which is meant for the bank guarantees for the additional further security, instead of submitting in the proforma for earnest money deposit. He further contended that in as many as six works, the details of which, were given in paragraph-7 of the affidavit filed in support of the writ petition, the Respondents have accepted the bank guarantees furnished by the Petitioner in the same proforma, which was submitted in the present work and that having not raised any objection in those cases, the Respondents are not justified in rejecting the Petitioner's tender on a purely technical ground as noted above. The learned Counsel alternatively submitted that even now his client is ready and willing to submit the bank guarantee in the prescribed proforma.

5. The learned Government Pleader for Roads & Buildings opposed the above contentions and submitted that as the Petitioner admittedly failed to submit the bank guarantee in the prescribed proforma, its tender was rightly disqualified and that therefore it has No. right to insist that its tender should be accepted.

6. I have carefully considered the respective submissions of the learned Counsel for the parties.

7. The Respondents have not disputed the averment made by the Petitioner that in as many as six works, it has submitted the bank guarantees in the same proforma as submitted in the present work and that the same were accepted without any demur. Ordinarily, the tenders filed in deviation of the tender conditions are treated as non-responsive and are rejected as such. The tenderers cannot insist that the defects, if any, shall be allowed to be rectified after filing of the tenders. This is because in competitive bidding, such indulgence would give scope for arbitrariness and lack of transparency in finalisation of tenders in the face of competition arising out of submission of more than one tender.

Furthermore, if the State and its Officers show such indulgence, the other competitors for the work may raise objections stultifying the tender process itself by indulging in litigation. Therefore, to avoid such consequences, once the tenders are filed, the tenderers will not be permitted to amend or vary or substitute the documents, except in cases of clerical or bona fide mistakes.

8. But, admittedly, this is a case where the Petitioner is the only tenderer in respect of the work in question and therefore, the Respondents could have No. difficulty in calling upon it to submit the bank guarantee in the prescribed proforma. Unless the Respondents were dissatisfied with the offer made by the Petitioner, there could be No. reason whatsoever to permit it to rectify the defect by furnishing the bank guarantee in the prescribed proforma. In such an event, nobody would have questioned such action as the Petitioner's was the only tender filed for the work in question.

9. Having regard to the facts of the case as discussed above, I have No. doubt in my mind that the Respondents have not acted in a fair and proper manner in dealing with the Petitioner's tender.

10. During the course of hearing, this Court has enquired with the learned Counsel for the Petitioner as to whether despite apse of two years period, his client is still willing and prepared to execute the work at the rates as were offered by it in its tender. The learned Counsel has taken a short adjournment and reported back to the Court by stating that his client is willing to execute the work at the same rates as were offered by it without claiming any escalation.

11. In my opinion, it would be in the interests of the State that the Petitioner's tender is considered. Otherwise, in the event of calling fresh tenders, the estimate value is bound to shoot up due to the revision of estimates on account of passage of two years time.

12. For all the above-mentioned reasons, the writ petition is allowed. The Petitioner is permitted to furnish the bank guarantee in the prescribed format within a period of four weeks from today. The Respondents shall on receipt of the same, open the Petitioner's price bid and finalise the same in accordance with the tender conditions.

13. As a sequel to disposal of the writ petition, W.P.M.P. No. 26253 of 2009 and W.V.M.P. No. 3273 of 2009 are disposed of as infructuous.