

(1998) 02 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 33076 of 1997

Paruchuri Vasu

APPELLANT

Vs

The General Manager, Telecom and Others

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1998 AP 154

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : P. Prabhakara Rao, for the Appellant; Sriram Krishna Moorthy for Central Govt. (for Nos. 1 to 3) and V.V. Venkateswara Rao, (for No. 4), for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—A Tender notice was issued on 26-9-1997. Tenders were called for supply of labour in the Telecom office, Exchanges etc., for the purpose of cleaning, sweeping, house-keeping and security etc. The tenders which have received and the rates quoted by them are given below :--

- 1) M/s. Kamaraj Constructions, Vijayawada -- Rs. 41/-
- 2) Sri N. Bala Raju, Vijayawada -- Rs. 47/-
- 3) Sri P, Vasu, Benz circle, Vijayawada -- Rs. 52/-
- 4) M/s. G. Seetaiah & Company, Khammam -- Rs. 56/-
- 5) Sri G. Lakshmi Prasad, Vijayawada -- Rs. 61.29 ps.
- 6) Sri P. Ram Mohana Rao, Gollapudi Vijayawada -- Rs. 64/-
- 7) M/s. Rajeswara Rao & Party, Vijayawada -- Rs. 69.75 ps.

The petitioner quoted Rs. 52/- as wages per a labour which was third lowest

amongst the contenders. The petitioner submits that M/s. Kamaraj Constructions and Sri N. Bala Raju had quoted the wages of Rs. 41/- and 47/- respectively which were lesser than the minimum wages fixed by the Government of India. They could not be allowed to pay to the labour engaged by them a wage which was lesser than the minimum wage prescribed, therefore they were not at all eligible to be considered for giving the contract. He further submits that he was lowest of the remaining five as he had quoted Rs. 52/- and others had quoted rates higher than Rs. 52/-. He submits that, respondents 1 to 3 bent upon giving the contract to respondent No. 4 whose rates were higher than the rates given by the petitioner. Therefore, he sought a direction from this Court that the Contract shall be given to him and not to respondent No. 4.

2. Notice was issued and interim directions were given. After hearing the respondents the interim directions were made absolute. In the meantime the respondents have filed their counters and I have heard the parties at length and the matter is being disposed of finally.

3. The facts narrated in the petition have not been denied; they are rather been admitted. But, it has been stated that the contract has already been allotted to respondent No. 4. Since the respondent No. 4 is already were informed by the committee that the tenders filed by individuals would not be considered in view of the guidelines contained in Chief General Manager, Telecom Hyderabad letter No. TA/LC/5/190/95, dated 1-4-1997. It is submitted that the Labour Commissioner, Central, Hyderabad had issued a letter on 26-9-1997 by which wages of un-skilled labour have been fixed at Rs. 47.26 ps. and this order had to be implemented by respondents 1 to 3. It is further stated that a Tender evaluation committee was appointed on 12-11-1997 to examine all the tenders with reference to rules and standing orders. This committee consist of four members under the chairmanship of Area Manager, Vijayawada. The committee met on 13-11-97 and examined all the seven tenders and submitted report to the respondent No. 1 for taking decision. M/s. Kamaraj Constructions had offered a rate of Rs. 41/- per labour which lesser than the minimum wages therefore his offer was rejected. Sri N. Bala Raju had offered a rate of Rs. 47/- which was also lesser than the minimum wages, therefore this was also rejected. It is submitted that Sri P. Vasu, the Writ petitioner who has offered before the Court and he has filed a counter and he has been heard, therefore this Court will go into the question of allotment of contract to respondent No. 4 as well.

4. In the counter filed by the Divisional Engineer, Telecom it is submitted that, tender notice was issued based upon minimum wage policy and not on lower rate policy. It is submitted that, Contractors had to engage labour for the department and it was the endeavour of the respondents to see that the labour is not engaged on wages which are lesser than the minimum wages prescribed under the minimum wages Act. It had also been notified that the labour so engaged will get the benefits under Employees liability Act, 1938, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961 and the Contract Labour Act, 1970. It has

further been stated that the seven tenders which were received were opened in the presence of the tenderers present. The tenders were opened by a committee consisting of one Divisional Engineer, one Assistant Engineer and one Accounts Officer. It is further stated that when the tenders were opened the tenders present rate of Rs. 52/- was rejected on the ground that he was an individual and in terms of directions dated 1-4-1997 he was not eligible for being given the contract. Next to petitioner was respondent No. 4 who had offered Rs. 62/- per day per labour which was lower than other contestants who were according to them eligible. It is submitted that there were four individuals who had filed their tenders and they were ignored which means that only three tenderers were remained in the field and one of them being M/s. Kamaraj Constructions who had been rejected on the ground that he had quoted wages lesser than the minimum. Therefore, according to the respondents it was only respondent No. 4 and M/s. Rajeswara Rao & Party who were eligible to be considered as both of them were representing agencies. M/s. Rajeswara Rao & Party had quoted a rate of Rs. 69.75 ps. whereas respondent No. 4 had quoted a rate of Rs. 56/-. Respondent No. 1 did not allot the contract straightway to respondent No. 4 but again constituted a Negotiation committee on 1-12-97 with specific direction to the Committee that they should negotiate with respondent No. 4. The committee met on 1-12-97 itself when it was constituted. This committee negotiated with respondent No. 4 and respondent No. 4 agreed to supply labour at the rate of Rs. 54.50 ps. Therefore, the respondents submit that, his contract was accepted. It is also submitted that respondent No. 4 has already deposited F.D.R. for Rupees 1,00,000/-. It has further been stated that the petitioner has come to the Court after finalisation of the tender.

5. There were certain allegations levelled by the petitioner against respondent No. 2. It was submitted by the petitioner that 2nd respondent has been transferred five months back from Khammam to the present place. An Assistant Engineer by name Sri N. Yogananda Rao who has been working in the place of 2nd respondent was also transferred five months back from Khammam to the present place. It has further been stated that when the 2nd respondent and Sri Yogananda Rao were working at Khammam similar Labour Contract in the Telecom office of Khammam was awarded to the 4th respondent. It has been further submitted that Sri Yogananda Rao influenced the 2nd respondent and both of them by virtue of their previous intimacy with 4th respondent preferred 4th respondent to others. That has been denied by the 2nd respondent in his affidavit. The only two questions that need to be decided in this Writ petition are (1) Whether individuals could be excluded from competition in the absence of having stated it in the tender notice, and (2) Whether negotiations could be initiated only with respondent No. 4.

6. Coming to the first question, it is admitted that in the Tender notice there was no such stipulation that no individuals can come for obtaining the tender and the tenders will only be accepted from the agencies. Even when the petitioner and others applied for the tender documents they were not at all told that they were

not eligible because they were individuals and not agencies. My attention has been drawn to the judgment of Supreme Court reported in *Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd.*, (1996) 8 Sc 203 in which the Supreme Court has held in ui.ambiguous terms that the procedure to be followed in accepting and rejecting the tender must be known to the tenderers. In the case before the Supreme Court the allotment of tender to a particular person was sought to be defended on the ground of "viability range" but the tender notice did not specify that the viability range should be taken into consideration. Therefore, the Supreme Court held that, whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. In the present case, there was no stipulation in the tender notice that the contract would be given only to the agencies and not individuals, therefore in my view the petitioner and others would not be excluded from the competition on the ground that they were individuals.

7. Coming to the second question that whether the negotiations could be made only with respondent No. 4, even if the contentions raised by the respondents are accepted, even then there were two contenders who were eligible for being awarded the contract. One was respondent No. 4 which was an agency according to the respondents another was M/s. Rajeswara Rao & Party who had quoted Rs. 69.75. Who knows he would have offered a lesser rate than what was offered by respondent No. 4 in the negotiations. Respondent No. 4 had offered Rs. 54.50 ps. although in the tender he had quoted a rate of Rs. 56/-. Therefore, had the respondents decided to go for negotiations, in my view they were bound, atleast even by their own standards, to call M/s. Rajeswara Rao & Party to the negotiations. I am fortified in my view by various judgments of the Supreme Court. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Apex Court held as under (at pp. 1637-38 of AIR) :--

"Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting forms of largess, Government cannot act arbitrarily at its sweet-will and like a private individual, deal with any person, it pleases. Its action must be in conformity with the standard or norms which is not arbitrary, irrational, or irrelevant. Power or discretion of the Government in the matter of grant of larges must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

Applying the principles laid down by the Supreme Court in judgment referred to above and various other judgments I am of the view that had the respondents decided to avert to negotiations, they had to offer negotiations to all those who were eligible even according to the respondents.

8. For these reasons I find that the allotment of tender to respondent No. 4 was clearly an arbitrary exercise of powers and the order allotting the works to respondent No. 4 is quashed. In the circumstances of the case, respondents 1 to 3 are directed to call for fresh tenders and allot the tenders in accordance with law.

9. The Writ petition is accordingly allowed. No costs.