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(2014) 09 KAR CK 0317

In the Karnataka High Court

Case No : Writ Petition No. 108477/2014 (GM-TEN)

Peter APPELLANT

Vs

Deputy Commissioner RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0317

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : A.R. Hegde and Vishwanath Hegde, Advocate for the Appellant; K. Vidyavathi, AGA and Suresh N. Kini, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner has assailed order at Annexure-A passed by the first respondent-Deputy Commissioner dated 28.08.2014 and as well as the order of the second respondent-City Municipality, Sirsi (''CMC for short) dated 04.09.2014, Annexure-B.

2. The facts in a nutshell are that the petitioner claims to be a registered contractor eligible to apply for the tenders invited by the second respondent-CMC for carrying out various civil works. That pursuant to sub section (2) of Section 18A of the Karnataka Transparency in Public Procurement Act, 1999 (hereinafter referred to as an ''Act''), the State Government issued a notification dated 09.10.2012, indicating the criteria for issuance of e-procurement tenders under Section 18-A of the Act. According to the petitioner, this notification was issued subsequent to the order passed by this Court in W.P. No. 64281/2012 disposed on 05.09.2012 and the notification at Annexure-F dated 09.10.2012 issued by the State Government is applicable to the second respondent-CMC, as per Sl. No. 84 in that notification. By that notification, inter alia 44 CMCs, including the second respondent-CMC, who intend to procure goods or services of value of Rs. 5,00,000/- or more, must do so only through e-procurements. Thus, notification is issued pursuant to sub section (2) of Section 18A of the Act by the State Government. Thereafter, the second respondent has issued two tender

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notifications dated 13.08.2014 and 28.08.2014 which are at Annexures-G and H respectively. Those tender notifications are stated to be contrary to the Government order dated 09.10.2012 (Annexure-F). Inasmuch as, the second respondent has not resorted to e-procurement under those notifications. It is in that context that the first respondent-Deputy Commissioner passed the order at Annexure-A dated 28.08.2014, cancelling Annexures-G and H In response to Annexure-A, the second respondent issued Annexure-B dated 04.09.2014 under which certain items of the tender notifications at Annexures-G and H are cancelled, while a few items are not. It is under the aforesaid factual matrix that the petitioner has assailed Annexures-A and B orders.

3. I have heard the learned counsel for the petitioner and learned AGA for the first respondent and learned counsel for the second respondent-CMC and perused the material on record.

4. It is contended that on behalf of the petitioner that Annexures-G and H, tender notifications were in line with Annexure-F notification issued by the State Government, as each of the procurement under those notifications did not exceed Rs. 5,00,000/-. Therefore, the second respondent need not have resorted to e-procurement. That being the case, the first respondent could not have held that those tender notifications were contrary to Annexure-F notification dated 09.10.2012 and thereby unilaterally cancelled those tenders notifications on the premise that the second respondent had not resorted to e-procurement. He therefore contended that the order at Annexure-A has adversely affected the right of the petitioner to apply to the tenders at Annexures-G and H.

5. Per contra, learned AGA for the first respondent supported the order at Annexure-A and has stated that the Deputy Commissioners order is in accordance with the State Government''s notification at Annexure-F and therefore, there is no merit in the writ petition.

6. Annexure-B is the response to Annexure-A order passed by the second respondent-CMC. Learned counsel for the second respondent-CMC stated that Annexure-B order has been issued pursuant to the order of the Deputy Commissioner at Annexure-A and there can be no fault found in Annexure-B.

7. Having heard the learned counsel for the parties, it is noted that Section 18-A(2) mandates certain procedures to be followed prior to calling for tenders under e-procurements by various procurement entities. Section 18-A reads as under:

"18-A. E-Procurement.-

(1) There shall be a single unified e-procurement platform for all procurement entity which may be notified under sub-section (2).

(2) With effect from such date, as may be specified by the Government, by notification, a procurement entity in respect of a class of procurement, if any, as may be notified shall procure its procurements through the e-procurement

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platform.

(3) Notwithstanding anything contained in this Act, the Government may make rules, for specifying a separate procedure to be '' followed by procurement entities notified under sub-section (2) for e-procurement through e-procurement platform; and for non-application of other procedure of procurement to e-procurement."

8. It is pursuant to Section 18-A(2) of the Act that the notification at Annexure-F dated 09.10.2012 was issued by the State Government. That notification has given a criteria to various procurement entities under which the procurement entities would have to resort to e-procurement. In the instant case, the second respondent issued Annexures-G and H, calling for tenders in respect of various works which are essentially in the nature of civil works, but those notifications are not under e-procurement system, they are what is known as "manual tenders". The Deputy Commissioner on perusal of the same, was of the opinion that notification at Annexures-G and H, issued by the second respondent were contrary to the Government Notification dated 09.10.2012. If that was so, then the second respondent could not have unilaterally withdrawn both Annexures-G and H notifications. Even if in his opinion they were contrary to Annexure-F notification of the State Government, a direction could have been issued to the CMC to re-issue the notification in accordance with government notification at Annexure-F. But it is noted by Annexure-B order of the second respondent that only in respect of certain works, Annexures-G and H notifications have given effect to, while those notifications have been cancelled in respect of other works, though each of the works was below Rs. 5,00,000/-. It is not clear from the action of the second respondent as to whether the Annexure-B, order is in consonance with the government notification dated 09.10.2012 or the order passed by the Deputy Commissioner in Annexure-A. If the second respondent was acting in response to the order passed by the Deputy Commissioner, then the entire notifications at Annexures-G and H ought to have quashed, but that is not the case. Perusal of Annexure-B shows that Annexures-G and H tenders are being in force in respect of certain items, but not in respect of other items. Therefore, there is no clarity in the action of the second respondent-CMC and in the matter of calling of tenders under Annexures-G and H, as it is not known whether in respect of some items, the object is to resort the e-procurement and not so in respect of other items, whereas each of the items are within Rs. 5,00,000/-.

9. In that view of the mater, Annexures-G and H, tender notifications are quashed, even though the petitioner has not assailed the same, but they are quashed in view of Annexure-B order passed by the CMC. The second respondent is directed to apply its mind to the notifications of the State Government dated 09.10.2012 and thereafter, reissue fresh tender notification. In view of the above direction, the order at Annexure-B has no consequence and therefore, cannot be given effect to. In view of the aforesaid directions, the order dated 28.08.2014

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issued by the Deputy Commissioner would also have no consequence. The writ petition is disposed in the aforesaid terms.

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