
(2015) 07 KAR CK 0395

In the Karnataka High Court

Case No : Writ Appeals 1540-41/2015 (LB-Res)

Shankar V. and Others

APPELLANT

Vs

Secretary, Urban Development Authority and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Karnataka Transparency in Public Procurements Act, 1999 — Section 2, 4, 4(g)

Citation : (2015) 5 KarLJ 649

Hon'ble Judges : Vineet Saran, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Narayana Bhat M., for the Appellant; Nanjundareddy, Sr. Counsel and Reuben Jacob, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J—The dispute in the present appeals is with regard to the contract for construction of a commercial complex to be raised by Srinivasapura Town Municipality, Kolar. On a resolution for construction of a commercial complex having been passed sometime in February, 2014 by the Municipality, the State Government sanctioned the project which was valued at Rs. 5 crores and same was subject to certain conditions imposed in the Government Order dated 4.6.2014. One such condition was that the procedure laid down in the Karnataka Transparency in Public Procurement Act, 1999 (for short "the Act") and the Rules framed thereunder, as well as the procedure for e-procurement method, be observed and also to obtain approval of the competent authority.

2. Because of drought in the region and acute shortage of drinking water, the Municipality found that in the interest of the public there was urgency in the matter of construction, and as such by resolution dated 18.8.2014, a recommendation was made to the State Government for getting the work of construction executed through the 7th respondent - Kolar Nirmithi Kendra, Kolar. The proposal/recommendation of the Municipality came up for consideration before the State Government and same was rejected on 07.10.2014.

Subsequently, based on the recommendation of the local Member of Legislative Assembly stating that there was urgency in the matter, the State Government reconsidered the matter and by order dated 27.10.2014 passed under section 4(g) of the Act, granted exemption and permitted construction of commercial complex to be directly entrusted to Kolar Nirmithi Kendra, Kolar. Thereafter, vide communication dated 10.11.2014 to the Director, Directorate of Municipal Administration, Bangalore, the State Government informed that the exemption from Chapter II of the Act had been granted for construction of a commercial complex. Challenging the orders dated 27.10.2014 and 10.11.2014 passed by the State Government, petitioners, who are Municipal Councilors of the Municipality in question, filed Writ Petitions No. 755-56/2014. By judgment and order dated 13.3.2014, learned Single Judge has dismissed the writ petitions by a detailed and speaking order, which is under challenge in these appeals.

3. We have heard Sri M. Narayana Bhat, learned counsel for the appellants as well as learned Government Advocate appearing for the State and Sri Nanjunda Reddy, learned Senior counsel appearing along with Sri Reuben Jacob for the contesting 7th respondent - Kolar Nirmithi Kendra and have perused the records.

4. The submission of the learned counsel for the petitioners/appellants is that the order dated 27.10.2014 granting exemption from the provisions of Chapter II of the Act under section 4(g) is a non-speaking order, as no reasons have been assigned for granting such exemption especially when three weeks earlier, i.e., on 07.10.2014, grant of such exemption had been rejected by the State Government. It has further been contended by Sri Narayana Bhat that exemption under section 4(g) of the Act had been granted only with regard to applicability of Chapter II of the Act but not with regard to Chapter II-A which provides for e-procurement. It has thus been contended that even though such exemption had been granted by order dated 07.10.2014, the procedure laid down under section 18 A of Chapter II-A of the Act ought to have been followed. It has also been contended that though resolution dated 18.8.2014 (with regard to entrustment of the contract work in favour of respondent 7, Kolar Nirmithi Kendra, Kolar) is said to have been passed in the meeting but there was no such subject placed in the agenda nor there was any discussion on the subject in the meeting of the Municipality on the said date and as such, no approval could have been given to such resolution by the State Government. It has lastly been submitted that the entire resolution been passed at the instance of the local Member of the Legislative Assembly and thus, the entire proceedings are liable to be quashed on the ground of political interference in the matter of contract.

5. Per contra, learned Senior counsel appearing for the contesting respondent has submitted that petitioners/appellants are themselves members of the Municipality and one of the petitioners (2nd petitioner) had attended the meeting on 18.8.2014, on which date the resolution had been passed and as such, petitioners/appellants cannot now turn around and challenge the order of the government passed in furtherance of the resolution dated 18.8.2014. He has

further contended that in the absence of any challenge to the resolution dated 18.8.2014 in the writ petitions, orders passed by the State Government on the basis of such resolution cannot be challenged. It is further submitted that petitioners/appellants cannot be said to be aggrieved persons and that the contract having been given only to a governmental agency, no prejudice would be caused to any of the parties.

6. In response to the applicability of Chapter II-A of the Act, it has been contended that once the exemption has been granted to the applicability of Chapter II of the Act by invoking the provisions of section 4(g) of the Act, such exemption would be deemed to have been granted with regard to Chapter II-A of the Act also or else the entire purpose of granting the exemption would be defeated.

7. Having heard the learned counsel for the parties and on perusal of the record as well as the judgment of the writ court, we are of the view that these appeals lack merit and deserve to be dismissed for the following reasons:

It is not disputed that the government has power to pass an order granting exemption from the applicability of Chapter II of the Act by passing an order under various clauses of section 4 of the Act which provides for exceptions to applicability of Chapter II with regard to "procurement of goods and services". On considering the definition of "procurement" and "services" provided under sub-section (e) and (f) of section 2 of the Act, it is clear that "construction work" would be included in "procurement of goods and services". Section 4(g) of the Act clearly provides that the provisions of Chapter II shall not apply to "procurement of goods and services" in respect of specific procurement as may be notified by the government from time to time.

8. In the present case, the order for construction of commercial complex by Kolar Nirmithi Kendra has been passed by the State Government exercising power under the said provision. The same was done on the recommendation made by the Municipality. The recommendation of the Municipality made by resolution dated 18.8.2014 or power of granting such exemption were not under challenge in the writ petitions. The question of giving reasons while passing administrative orders does not exist. The government, in its wisdom, can always exercise powers for granting exemption and no specific reasons are required to be given while doing so. Such order granting exemption can be challenged only when there is any mala fide or arbitrariness alleged and proved, which is not so in this case. In the present case, the construction work has been entrusted to a governmental agency and not a private agency. The urgency for raising such construction was given in the resolution passed by the Municipality. As such, the submission of the learned counsel for the appellants that the order dated 27.10.2014 is bad on account of not assigning any reasons does not have much force.

9. Once the exemption has been granted by the State Government from the

applicability of provisions of Chapter II, we are in conformity with the opinion expressed by the learned Single Judge that the provisions of Chapter II-A would also stand exempted as provisions of Chapter II and II A are two sides of the same coin and unless both are exempted, the very purpose of granting such exemption would be defeated. Learned Single Judge has dealt with this aspect at length and we are in agreement with the reasons given therein on this issue.

10. As regards the question that the matter in issue was not there in the agenda of the meeting of the Municipality dated 18.8.2014, it may only be stated that no such ground has been raised in the writ petitions nor there is any whisper of the same in the body of the writ petitions and as such, same does not require consideration. Even otherwise, it is an admitted fact that 2nd petitioner had attended the meeting in which the resolution was passed unanimously and the petitioners cannot now be permitted to turn around and challenge the resolution passed by the Municipality, which was duly attended by one of the petitioners.

11. The question of local Member of the Legislative Assembly having put pressure for granting such exemption would not be of much relevance in the facts of the present case as a Member of the Legislative Assembly is certainly entitled to or may be required to espouse the cause of his Constituency and if he does so and the same is validly considered by the government, and for good reasons the government agrees to pass orders on the basis of such recommendation made by the Member of the Legislative Assembly, same cannot be said to be tainted or a case of political interference merely because a Member of the Legislative Assembly had recommended the matter. Thus, on this ground also the order impugned does not deserve to be interfered with.

12. For the foregoing reasons, we are of the firm view that no interference is called for with the judgment and order passed by the writ court. Appeals are accordingly, dismissed. In view of the dismissal of the writ appeals, all pending applications stand disposed of.