
(2003) 05 AP CK 0014

In the Andhra Pradesh High Court

Case No : WA No's. 1293, 1332 and 1355 of 2000

Sri Sai Sreenivasa Constructions

APPELLANT

Vs

T. Siva Prasad Reddy and Others

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 ALD 236 : (2003) 4 ALT 708

Hon'ble Judges : C.V. Ramulu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : O. Manohar Reddy, in WA No. 1293 of 2000 and Government Pleader for Roads and Buildings Department in WA Nos. 1332 and 1355 of 2000, for the Appellant; C.V. Nagarjuna Reddy, for Respondent No. 1, O. Manohar Reddy and 3 in WA Nos. 1332 and 1355 of 2000, Government Pleader for Roads and Buildings Department for Respondent Nos. 2 and 3 in WA No. 1293 of 2000 and B. Adinarayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. These writ appeals are filed being aggrieved by the Order of the learned single Judge in Writ Petition No. 13064 of 1999, dated 24-8-2000. While, respondents 1 and 2 in the said Writ Petition filed Writ Appeal No. 1355 of 2000, respondent Nos. 3 and 4 filed Writ Appeal Nos. 1293 and 1332 of 2000 respectively.

2. The parties are hereinafter referred to as arrayed in the Writ Petition. The brief facts, which are necessary for the disposal of these appeals, are as under:

3. According to the petitioner, he is a public spirited citizen and was the Chairman of Rayachoti Rural Electricity Supply Cooperative Society during 1997-98. He is the Convener of the Anna Telugu Desam Party for Lakkireddipalle Assembly Constituency, Cuddapah District. To espouse the public cause in the public interest, this Writ Petition was filed. He stated that the Engineer-in-Chief, Roads and Buildings Department, Hyderabad issued a tender notification dated 17-7-1998 for various works including items 1 to 8 pertaining to improvements

to the existing road described as "Carriageway" from KM 54/0 to KM 93/0 of Rajampet-Tumkur Road. Each item of work was divided into a separate reach for a distance of 5 to 6 kilometres, as the case may be. Condition No. 1 of the Special Conditions contemplates that the tenderer shall have executed the work for one year preceding the five years of the tender notification, of the value indicated in column 13 against each of the item of the work, as original agency, in their own name and style, and that such of those tenderers, who fulfil the special condition, are alone entitled to apply for such works. Evidently, the contractor in the name and style "Sri Sai Sreenivasa Construction" represented by its Managing Partner Sri R.Srinivasulu Reddy, Cuddapah -3rd respondent - filed the tender, though he did not have any previous experience, as the said partnership firm was formed only in the year 1998. Further, it was alleged that the said Srinivasulu Reddy was the son of R.Rajagopal Reddy, former Minister and a close associate and friend of S.Veera Reddy, the Minister of Minor Irrigation, who also hails from Cuddapah District. Apart from this, the father-in-law of Srinivasulu Reddy is one of the five Chief Engineers working in the Roads and Buildings Department. Obviously, the strong clout of Sreenivasulu Reddy made the department ignore the eligibility condition and purportedly on the ground that he was the lowest tenderer, there was an attempt to award the contract in his favour in respect of four reaches covered by items 5 to 8 in the tender notification. One of the eligible tenderers by name C. Babu Reddy filed Writ Petition No. 34226 of 1998 in this Court challenging the said action. This Court while admitting the Writ Petition granted interim orders of status quo as on 10-12-1998, which was extended from time to time. While the said Writ Petition was pending, the department had obviously realized that their action in treating the 3rd respondent as an eligible tenderer is in-defensive, appeared to have dropped further proceedings in pursuance of the said tender notification. Further, a press report was also published in Eenadu Telugu Daily dated 12-6-1999 exposing the grave irregularities pertaining to the work in question and the involvement of a Minister in order to get the work awarded in favour of the son of a former Minister belonging to Congress Party. After going through this report, the petitioner had collected the relevant details pertaining to previous tender dated 17-7-1998 and the present tender dated 7-6-1999. A reading of the press note shows that the above-mentioned Minister and his friends have directly interfered with the matter of awarding contract and attempted to get the work awarded in favour of the 3rd respondent and that in view of the filing of the said Writ Petition No. 34226 of 1998, the said attempt was thwarted. What is significant is, it is stated in the press report that after giving up the previous tender notification, the Minister is still persisting to award the work to the said contractor at any cost and that to achieve the objective, preparations were being made to undertake the works with the funds sanctioned under R.D.C. under special repairs account.

4. After the publication of the news item, the 2nd respondent issued a chit tender notice dated 7-6-1999, which was published in the news paper only on

22-6-1999 inviting tenders for various works including the said four items of work under items 2 to 5 in which the nature of work was described as "special repairs for the widening of the roads". It has to be noticed that while the previous proposal was of the improvement to the carriageway, the work is now attended as "special report for the improvement of the carriageway". The value of the work was also reduced.

5. The petitioner further submits that a reading of the tender conditions would fully justify the apprehensions expressed in the news report that there was every attempt to entrust this work to a particular contractor of the choice of the Minister. In the first place, the conditions of present tender notification are so tailor-made as to eliminate any meaningful competition even at the threshold. Condition No. 23 stipulates that the tenderers at the time of purchasing tender schedule itself shall file the proof of his owning a hot mix plant within a distance of 50 KMs from the work site and such a condition was not stipulated in the previous tender notification dated 17-7-1998. What is more interesting is that while the department did not think fit to stipulate the condition of the tenderer owning and having hot mix plant, leave alone within a distance of 50 KMs for a work of higher magnitude and wider in scope than the work which is put to tender in the impugned tender notification, the stipulation of such a condition for repair work is obviously intended to eliminate competitive offers and to prevent several contractors for competing in the tender process. It is further averred that pursuant to the previous tender notice, four contractors have filed their tenders, since there was no condition in the tender to have a hot mix plant within 50 KMs. But, in view of the present stipulation, only two contractors - respondents 3 and 4, who have their hot mix plants within 50 KMs have filed their tenders. The 4th respondent -N. Srinath Reddy - is no other than the son of the Member of Parliament from Chittoor and brother of N. Amarnath Reddy, MLA of Punganoor and both of them belong to ruling Telugu Desam Party. As such, respondents 1 and 2 succumbed to political pressures and have fixed the tender conditions to exclude all others from the competition.

6. Yet another glaring deviation, according to the petitioner, is as per condition No. 1 of the previous tender notice, the prescribed quantity of work should be executed in the prescribed period of five years by the tenderer of the original agency in the same name and style. Whereas, in the present tender notice, the stipulation of execution of work in the same name and style is omitted. This is apparently done with a view to make the 3rd respondent eligible, as the previous tender has become ablative on the ground that the 3rd respondent did not execute the works in its name and style. It is further stated that under clause (3) of G.O. Ms. No. 132 dated 11-8-1998, the time between the date of publication of tender notice and the date of receipt of notice shall be 14 days for the first call and 7 days for the second call. The impugned notification is treated as a first call itself as evident from the schedule of dates, according to which the applications for tenders should be made from 7-6-1999 to 26-6-1999 and tenders to be issued during the said period. Surprisingly, the notification was published after 15

days of the commencement of the schedule for the issuance and receipt of tenders, viz., 22-6-1999. This is obviously done to allow as little time as possible and give less opportunity to participate in the tender process. The another glaring instance of abuse of power and official machinery by the favoured contractors is evident from the fact that even before the tenders were finalized in pursuance to the previous tender notice dated 17-7-1998, the department had allowed the contractors of their choice to cart and collect metal in all the reaches between 73 KM and 93 KM. However, on seeing the press report, in which this fact was also mentioned, he had gone to the work spot, with a Photographer and got the photographs taken, which are filed along with the Writ Petition. This clearly demonstrates that the Departmental Officers are acting to the dictates of the persons in power by giving a go-bye to the fundamental principles of handing over of site only after the finalisation and acceptance of tenders. The estimates do not suggest that the cost of the metal is deducted from the work estimates under the present tender. It is also averred that the petitioner was advised to state that the Courts in India have recognized the award of contracts by State and its instrumentalities as "new property" and while distributing these largesses they should strictly adhere to the principles of non-arbitrariness and fair play. The Courts in number of cases have noticed favour treatment being given to a particular individual in the matter of award of contracts. This is one such case where a favoured treatment is sought to be given to the persons of choice of the State and as a public spirited citizen he felt it, as his duty, to prevent this fraud from being perpetrated on the society and he has no personal ill-will against any one or self-interest in filing the Writ Petition. He sought for a Mandamus to declare the chit tender notice No. 6/D2/ 1999-2000, dated 7-6-1999 to the extent it relates to the works mentioned in items 2 to 5 as arbitrary and illegal and to direct the respondents to forbear from proceeding further in pursuance of the said tender notice.

7. Separate counter-affidavits have been filed by respondents 2, 3 and 4 denying the averments made by the petitioner.

8. In the counter-affidavit filed by the 3rd respondent, the frontal attack was that the Writ Petition was filed under the garb of public interest litigation to wreak political vengeance and, as such, it is not maintainable. It is stated that a plain reading of the writ affidavit does not disclose any public cause and in fact, it is more in the nature of wrecking private vengeance against the 3rd respondent. The 3rd respondent had completed more than 50% of the work and for the remaining extent he had already collected the material at the site. The writ affidavit does not disclose as to how the general public would suffer from the action of the official respondents in notifying the contracts and the enquiry caused by the petitioner before approaching this Court under Article 226 of the Constitution of India. The petitioner is not espousing any public cause. The report appeared in the news papers cannot be given any credence to, as the same was published at the behest of the close associates of the petitioner. The allegation that the local Minister had intervened to get the work awarded in favour of the

3rd respondent-company is denied. The further allegation that after giving up of the previous tender notification, the Minister was still persisting to get the work awarded to the said contractor at any cost and to achieve this objective, preparations were being made to undertake the works with the funds sanctioned under RDC under special repairs account is also denied. In fact, by the time the news paper report appeared on 12-6-1999, the official respondents have already issued the tender notification for as many as 24 items of work. The Writ Petition was filed under a false notion that the 3rd respondent was not eligible at the time of original tender. It is further asserted that the 3rd respondent-company was eligible for awarding of contract even according to the original tender and in fact, the 3rd respondent is aggrieved by the action of official respondents in cancelling the earlier tender notification. The present notification was published inviting tenders for various works including the four items of work under items 2 to 5. It is also stated that the special repair grants are sanctioned every year by the Engineer-in-Chief basing on the report of the Superintending Engineer and the Executive Engineer with regard to the condition of the road, the intensity of the traffic etc. Basing on the recommendation of the concerned Engineers, the Engineer-in-Chief accords approval for the special repair grants. In fact, for the very same road, earlier tenders were invited and as the same could not be finalized within the validity period because of the pendency of the Writ Petition and as it was causing inconvenience to the travelling public, the department made a recommendation for sanction of special grants to widen the road. Thus, the averment that the previous proposal was for the improvement of the carriageway and the present one is for special repairs for improvement of the carriageway and the value of the work also reduced is not correct. The petitioner, in fact, is under a misconception that the work notified is identical. The nature of work notified under special repair grant cannot be compared to the work earlier notified. In fact, after the Engineer-in-chief accorded approval, the present notification was issued. The allegation that the conditions of the present tender notice are so tailor-made as to eliminate the meaningful competitors even at the threshold is denied. The tender notification issued by the official respondents is in conformity with the conditions imposed to this kind of work. In this nature of work, the department always insist for owning and having a hot mix plant within a radius of 50 KMs from the site. The said condition is imposed only with a view to see that the road works are done with the help of hot mix plant. In fact, such a condition is imposed in big contracts as the contractors would definitely have a hot mix plant nearer to the site and it would also be economical to them. It is not economically viable in case of small items of work, to erect a hot mix plant. Thus, the contention of the petitioner that the impugned tender notice is obviously intended to eliminate competitive offers and to prevent several contractors from competing in the tender process is not correct. As it is, this sort of condition is being imposed by the department in the entire State for this nature of contracts. The period for submission of tenders has been extended and the same was displayed on the notice board. The 3rd respondent submitted tenders within the period prescribed. There was no deviation and the period

prescribed has been strictly followed by the officials. It is also not true to suggest that the department has allowed the contractor of their choice to cart and collect material even before the finalization of the tenders. The petitioner lost sight of the fact that there are stone quarries along the road. It is also stated that the Writ Petition is devoid of merits and liable to be dismissed.

9. Respondent No. 4, in his counter-affidavit, has stated that the petitioner does not disclose any valid or substantial grounds for grant of any relief. The petitioner had not claimed that he is a contractor fulfilling the criteria for award of the contract and because of the stipulations in the tender notice, he was eliminated from consideration. The petitioner has no locus standi for filing the Writ Petition. The alleged public interest claimed by the petitioner is only an emotive screen to settle political rivalries under the garb of public interest litigation. Hence, the Writ Petition is liable to be dismissed. The petitioner on his own showing belonging to a political party and in fact, unsuccessfully contested in the elections to the A.P. Legislative Assembly held during September/October, 1999. Thus, the claim that the Writ Petition is filed in the public interest is wholly untenable. He further states that he is a registered Class-1 contractor with the State Government. He had erected a hot mix plant in KM 106 of Chittoor-Kurnool road at a cost of Rs. 70.00 lakhs. The 2nd respondent had issued tender notice dated 7-6-1999 in respect of 24 items. As he satisfies the eligibility criteria in respect of items 1 to 6 since his hot mix plant is within the prescribed radius, he submitted his tenders on 9-7-1999 for the aforesaid works. The tenders were opened on 20-7-1999 and he was declared as the lowest bidder in respect of items 1, 2 and 5 and work orders were issued to him by the 2nd respondent on 4-8-1999 and 6-8-1999. Accordingly, he had executed the agreements and started execution of the works. He had completed nearly 50% of the work by the time the orders are passed by this Court staying the execution of the work. He also stated that he did not participate in the tender floated on 17-7-1998 and he is not aware of the proceedings initiated by C. Babu Reddy or he is connected with the Minister for Animal Husbandry B. Veera Reddy or the former Minister - R. Rajagopal Reddy. As regards the condition of proof of owning the hot mix plant such a condition is being imposed in all the tenders relating to laying black top roads. The Supreme Court and this Court held that it is open to the Government to prescribe conditions and those conditions are not open to judicial review. The allegation that it was intended to eliminate competitive offer is not correct. Though his father was the Member of Parliament and his brother was an M.L.A. at that time, he is not in any way associated with politics nor political affiliation of his father and brother can disentitle him to participate in competitive bidding. The allegation that due to political pressure, the conditions were altered is not correct. As regards the allegation that sufficient time was not allowed for submitting the tenders is concerned, it is wholly baseless as the last date was extended till 9-7-1999 during which period he had filed the tender. Insofar as the allegation of carting material even before the entrustment of work is concerned, it is not correct. He had carted the material only after the work was entrusted to

him. He has no connection with the 3rd respondent, except the fact that they have also got works in some other reaches. The inferences drawn and conclusions arrived at by the petitioner are self-serving. There was no surreptitious entrustment of work as pleaded. There was no illegality in the execution of the works or in the tender conditions. The situation does not warrant for interference of the tender process or execution work. If the petitioner is interested in the execution of the work, he is prepared to leave the balance work, which can be completed by the petitioner at contractual terms and collect the amount. Further, it is stated that if the petitioner is interested in the execution of the work, he is prepared to leave the balance work, which can be completed by the latter at contractual terms and collect the amount. He requested the Court to call upon the petitioner to execute the balance of work, if the petitioner is really concerned with public interest, for which he has absolutely no objection. The Writ Petition is devoid of merits and liable to be dismissed.

10. Respondent No. 2, in his counter-affidavit, has stated that the Writ Petition itself is not maintainable and the mandatory requirements of public interest litigation as laid down by the Apex Court are not made out. The petitioner made wild allegations against the public authorities to achieve his political ends. The whole purpose of filing the Writ Petition is only to stall public works with ulterior motives resulting inconvenience to the public and it is not in the interest of the public at large. It is also stated that the official-respondents are bound by the mandatory requirement of the tender conditions and act according to law. The various wild allegations made against the official-respondents are only imaginary, baseless and incorrect. The official-respondents have nothing to do with the relationship of the petitioner, the contractors, Ex.M.L.A., Ex. Minister or the present Minister. The works are sufficiently delayed and the public are put to great inconvenience, apart from financial loss to the Government. It is also stated that this work relates to carriageway from KM 73/02 to 91/8(4) reaches was put to tender vide the impugned tender notice dated 7-6-1999 along with other works. The said notification contains 24 works out of which items 2 to 5 relate to the 3rd respondent. These works, according to the notification, were to be completed in nine months. The works consist of widening, metalling and laying BT for widened portion with hot mix process. The last date for issue of tender schedules was fixed initially as 29-6-1999. This was further extended till 9-7-1999 and the tenders were scheduled to be opened on 9-7-1999 at 12.30 noon. Clear conditions were laid down as to the deposit of HMD, experience certificate, eligibility and the procedure to be adopted as per G.O. Ms. No. 23. Further, as per the said conditions, the tenderer should also possess the requisite machinery and experience in similar works, in the same name and style. Such conditions were prescribed in respect of similar works in the entire State and are not intended only for four works referred to by the petitioner. Such conditions, in fact, were held to be valid by this Court. It is not correct to allege that the present tender notice does not stipulate the condition as to the same name and style. The present notification also prescribes that the contractor should have

executed the works of similar nature with the same name and style as being original agency and such tenders alone would be considered and not otherwise. It is also not correct to allege that the present notification does not prescribe the time between the date of publication and date of receipt of tenders as being 14 days. In fact, an amendment was issued extending the time from 7-6-1999 to 9-7-1999. The amended notification satisfies the time requirement. It is absolutely false to say that the department had allowed the contractors of their own choice to cart and collect material in all the reaches between KM 73 and KM 93 etc. The department never issued any such permission either orally or in writing in this regard.

11. On the basis of the above pleadings, mainly three questions arose before the learned Single Judge, viz.

(i) Whether the very writ petition is maintainable under law as it was filed as a pro bono publico?

(ii) Whether the condition that one should possess hot mix plant and it should be located within a distance of 50 kilometres radius of the workshop was bona fide or it was meant only to eliminate others other than respondents 3 and 4 ? and

(iii) Whether the action of the official respondents in trying to get the work done under the special repairs programme for the year 1999-2000 was a bona fide one or whether it is intended to confer undue favour on the 3rd respondent ?

12. Insofar as the first question regarding maintainability, locus standi and the nature of the public interest litigation, the learned Judge held :

".... With regard to the locus standi of the petitioner in filing this Writ Petition, (though it can be stated that the Court cannot interdict any action of the execution in exercise of its power of judicial review, when a decision has been taken bona fide and the choice has been exercised on legitimate consideration and not arbitrarily, but if the Court finds that the decision is not result of bona fide exercise of the power or for extraneous reasons, this Court can always interdict such an action in the interest of justice and fair play more so to save the public money in cases of this nature."

13. Placing reliance on the judgment of the Supreme Court reported in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, and *Malik Brothers v. Narendra Dadhich and Ors.* (1996) 6 SCC 552, the learned Judge held:

"From these decisions, it is evident that the concept of locus standi was not only given the widest amplitude and meaning, but made it clear and also declared that the purpose of entertaining such application is to redress public injury, enforcing public duty vindicating public interest apart from protecting social rights of economically weaker classes".

Learned Judge further held :

"....If the rates quoted by both the respondents are seen, it is visible that while the third respondent quoted 9.95% and 9.90% excess for the Reaches 78 to 83 and 83 to 88 kilometres, the fourth respondent quoted 9.90% and 10% excess for Reaches 73 to 78 KM and 88 to 93 KM respectively. It is also seen that for the reaches that were allotted to third respondent, the fourth respondent quoted 11% excess and for the Reaches that were allotted to the fourth respondent, the third respondent quoted 10% excess. Except these two tenders, no other contractors filed the tenders in the instant case. As the issue relates to the public exchequer, the Courts are expected not to unsuit the petitioner on technicalities and they are expected to cull out the truth and see whether the authorities acted in a good faith and in accordance with law or whether they have acted with ulterior motives. Further, it should be kept in mind, that this type of defalcation of public monies will be brought to light only by the persons who are opposed politically and not by probono publico. Hence, I hold that the petitioner is entitled to file this Writ Petition as a public interest litigation as it involves the public monies, which are collected from the nose of the tax payers and the authorities, however, high they may be, they cannot squander the public monies in this manner. It is immaterial whether the Writ Petition is laid by the petitioner to settle their scores or for some other reason. When it is brought to the notice of this Court that public monies are being squandered away with right and left hand, it is the bounden duty of the Court to save the public monies by restraining the authorities concerned from acting in an arbitrary manner. Accordingly, this contention is rejected."

14. With regard to the second question that one should possess hot mix plant, the learned Judge held:

".....it is one thing to say that one must have a Hot Mix Plant and machinery required for execution of the work, but it is another thing to say that he must locate the plant within 50 kilometres from the work spot on the date of filing of the tender and no purpose will be served by imposing such condition except curtailing the number of participants and draining of public exchequer as is evident in this case. In other words, though no meaningful purpose is served by insisting for the location for the hot mix plant, within a particular distance or work spot at the time of filing tender itself resulted in escalation of the prices. Hence, I hold that the circular of the Engineer-in-Chief dated 20-3-1999 as well as condition No. 23 of the impugned tender notification dated 7-6-1999 are not only illegal but irrational and it scuttles any healthy competition between the contractors to take up the work on competitive rates."

15. Dealing with the third question of showing undue favour to the 3rd respondent, the learned Judge held that in the earlier tender notification dated 17-7-1998 tenders were invited for widening the existing roads by seven meters with 3.5 meters shoulders on both sides and strengthening the same by black topping the entire road. In the present tender notification, the entire length of road was divided into eight Reaches and while the works were awarded to the

respective contractors in other reaches, the official respondents could not finalise the tenders, as, one Baburao filed W.P.No. 35226 of 1999 and during the pendency of that case, the Engineer-in-chief cancelled the tenders on the pretext of pendency of the Writ Petition as well as the expiry of the validity of tenders, apart from paucity of funds. However, within five weeks thereafter, he issued orders to take up the work on the disputed length of the road under special repair programme by reducing the estimated costs of the works and tried to justify the action by stating that due to lack of funds no fresh tenders were called for execution of the work in the original form and in view of the urgency, he has taken up the work of widening and repairing the existing road under special repair programme by meeting the expenditure from the bulk grant given by the Government for 1999-2000 for attending to minor work on the said highways. Such a statement made by the 1st respondent is nothing but falsehood for the simple reason that the road in question was transferred to RDC way back on 5-11-1997 and he called for tenders for execution of the work from the funds that were made available by RDC.

It was further held:

"Further, the issue can be looked at from another angle also. Assuming for a moment that funds are not available as contended by Engineer-in-chief, the RDC in his letter dated 21-1-1999 requested the 1st respondent not to take up further works except the works already grounded until the issue is sorted out with the Government. In his second letter dated 15-3-1999, the Engineer-in-chief was informed to delay the taking up new work. From these two letters, it is evident that if the Chief Engineer is of the opinion that the work is not grounded, he is not expected to take up the work. In fact, in his memo dated 20.9.1999 he has given this also as one of the reasons for cancellation of the earlier tender for these four reaches, which in my opinion, may not be correct as the work was already grounded and major portion of the work was already executed by other contractors after the RDC deposited the total estimated costs of the work with him. Hence, the contention of the Engineer-in-chief that the work was taken up under special repair programme by reducing the estimated cost of work due to paucity of funds do not hold good and it is accordingly rejected. Next, I perused the note file of the Engineer-in-Chief with regard to selection of the roads for repair under the special repair programme in Cuddapah District Though these reaches were shown at Sl.No. 3, I did not notice any discussion or any decision by the Engineer-in-chief on this work.

Next, I do not see any wisdom in the decision taken by the Engineer-in-chief in getting a stretch of 20 KM repaired having got the major portion of the road strengthened, as, such an action results in extra burden on the tax payers money as this stretch of the road has to be strengthened to bring it on par with the remaining length of the road, if not today, tomorrow. Next, the 3rd respondent started collecting the road metal for executing the work even before the tender notification was issued and this fact is evident from the write up

published in Eenadu under the head "3.40 Koti Rupayala Roddu Pani Anarhulaku Arpanam" on 11.6.1999 and the photographs filed in the Court along with the W.P. on 29.6.1999. For the repeated queries put by the Court as to who stocked the road metal on the roadside, the official respondents did not open their mouth. It is also not in dispute that the third and the fourth respondent are using this material while executing the work after the same was entrusted to them in August, 1999. All these facts led to an irresistible conclusion that the department is bent upon awarding the work to the respondents. In fact, the petitioner filed an additional affidavit dated 5.2.2000 stating that though the department awarded work in two reaches in the name of third respondent and the other two reaches in the name of the fourth respondent, 3rd respondent alone is executing the entire work. As I observed supra, the department received only two tenders from these two individuals for the work in question.

All these facts lead to an irresistible conclusion mat the department is bent upon entrusting the work to the third respondent by deviating the norms and procedure prescribed"

16. In view of the above, the learned Judge allowed the Writ Petition holding :

"As I have no manner of doubt that the entire exercise of power in this case smacks colorable exercise of power and intended to confer undue favour on the third respondent resulting in financial loss, even as per the statement of the third respondent itself to a rune of Rs. 50.00 lakhs for the work that is sought to be executed. This is the result of condition No. 23 that was introduced in this second notification (i.e.) one must not only possess his hot mix plant in a working condition, but should also be located within 50 kilometres from the work spot, which I have already held as an unreasonable condition and does not serve arty purpose. Hence, this Court is of the firm opinion that, however, high an individual may be, he cannot be allowed to defraud the public monies in this manner. As the third respondent agreed to execute the work on the date of first notification at 5% less than the estimated costs of the work, I direct the official respondents to settle the claim of the respondents 3 and 4 on that basis and if any excess amount is paid to them, the same shall be recovered from them and to complete the remaining work departmentally.

In the result, the Writ Petition is allowed with costs. Advocate fee is Rs. 5,000/-."

17. Sri B. Adinarayana Rao and Sri O.Manohar Reddy, learned Counsel appearing for the appellants in W.A. Nos. 1293 and 1332 of 2000 i.e., respondents 3 and 4 in the Writ Petition, contended, at the outset, that the Writ Petition was filed in the nature of pro bono publico. The petitioner, in fact, is a political rival of appellants-respondents 3 and 4. To this extent, he brought to our notice, the statement made by the 3rd respondent in its counter that the writ petitioner is not a public spirited citizen and in fact, the petitioner is closely related to one Dwarakanath Reddy, Ex-MLA of Lakkireddipalli Assembly Constituency and he himself was a candidate for the assembly elections contested on behalf of Anna

Telugu Desam Party against the brother of the Managing Partner of the 3rd respondent-company. There is a rivalry between the said Managing Partner's family and the writ petitioner and only in order to cause loss and to wreak vengeance against the family, the Writ Petition was filed in the guise of public interest litigation. Even the earlier Writ Petition was also filed by one of the close associates of the said Dwarakanath Reddy and stalled the finalization of the tenders and that was the reason why the tenders were cancelled earlier. Learned Counsel states that absolutely there is no answer or reply from the writ petitioner for the said statement made by the 3rd respondent. It is further contended that the petitioner did not participate in the auction; therefore, absolutely there is no locus standi to the petitioner to file the Writ Petition and agitate the matter to the detriment of the public interest.

18. Coming to the conditions prescribed by the department in the tender notification dated 7-6-1999 that one must have hot mix plant and it should be located within a radius of 50 kilometres of the workspot, learned Counsel - Sri B.Adinarayana Rao -submitted that there is no ground for the learned Judge to hold that by prescribing such condition, the department is trying to eliminate the competition against respondents 3 and 4. Learned Counsel has drawn our attention to the following findings of the learned Judge and submitted that the said findings are unsustainable on the face of it.

".....At the same time, it should not be understood that I have gone to the extent of invalidating the action of the respondent, if they insist for location of the hot mix plant at a particular distance from the work spot by the time of (he execution of the agreement i.e., concluded contract between the parties, which will definitely achieve the desired results in quality and. quantity with the sophisticated machinery."

19. Learned Counsel submitted that neither it is the case of the petitioner that he had been prevented from participating in the tenders nor any loss was caused to the State nor he suggested that there were no other people, who own hot mix plants except respondents 3 and 4 and as such, the said condition was put to eliminate others. Even in the earlier tenders called for on 17-7-1998, the appellant 3rd respondent was the lowest bidder.

20. Learned Counsel also submitted that the required experience was not included in the present tender notification is of no consequence whatsoever. In fact, it could have enabled even a novice to participate in the tenders. But, the fact remains that experience was suggested first through the very same company, which is participating in the tenders and the appellants-respondents 3 and 4 satisfy that condition. In view of this, the findings of the learned Single Judge that the conditions were prescribed only to suit the persons of choice and to eliminate others is absolutely baseless.

21. Insofar as the third question is concerned, the learned Counsel for the appellants-respondents 3 and 4 submitted that the earlier tender was cancelled

for more than one reason. Firstly, in view of the Writ Petition filed by a close associate of Dwarakanath Reddy, who is a public rivalry of the Managing Partner of the 3rd respondent-company and as the validity of the tenders expired and also due to paucity of funds that was cancelled. According to the learned Counsel, it is unfortunate that the learned Judge has also faulted this holding that only to do undue favour to the appellants-respondents 3 and 4, the earlier tender notification was cancelled, which is not true. He submits that the nature of work for which the tenders were called on 17-7-1998 and the nature of work for which tenders were called on 7-6-1999 was altogether different. Due to paucity of funds, the work was condensed and tenders were called again. In fact, it is the appellant-3rd respondent, who suffered a set back, because in the present tender notification dated 7-6-1999 the work awarded is a similar one and the profit making would be lesser than what he would have in the works of the first tender dated 17-7-1998 being the lowest tenderer. Thus, the finding of the learned Judge that the cancellation of the earlier tender and calling for fresh tenders on 7-6-1999 itself is only to eliminate the competition to choose persons of choice is not sustainable. Learned Counsel also submitted that the observations that the very tender does not contemplate sufficient time for receipt of tender schedules and the time purported to have been extended till 8-7-1999 was never notified and surprisingly the respondents 3 and 4 filed their tender schedules on 8-7-1999, but from the register it is seen that the 3rd respondent paid E.M.D. for the reaches 78 to 83 and 88 to 93 on 9-7-1999 i.e., on the next date of the last date for receipt of the tender schedules was over, themselves are not correct. In fact, the 2nd respondent filed a counter stating that the tenders were extended up to 9-7-1999 at 11.00 a.m., and they were opened at 12.30 noon on the same day. In view of this, neither it can be said that there was any manipulation in the registers maintained by the department nor it can be said that the tenders were accompanied by E.MDs., which were drawn on 9-7-1999.

22. Learned Government Pleader submitted that the APRDC is only intended to raise funds to develop roads. There is no question of transferring the roads to APRDC. The target for development of the roads with the RDC funds was indicated as 5,400 KMs. The actual funds raised viz., Rs. 400 crores was not sufficient for 4500 KMs road and hence, only the length of 1546 KMs of road was taken up for improvement. This does not mean that the balance of road will not be maintained by the Roads and Buildings Department or that the Government is not entitled to maintain the said roads. The Government is entitled to improve the roads with the funds made available by the APRDC or from out of the general funds according to the exigencies in the general public. APRDC was also entitled to invest funds in other Corporations and the decision of APRDC cannot be questioned in this Writ Petition. The fact remains that the funds are not available with APRDC and hence, the grounding of the works notified under chit tender notice dated 17-7-1998 were stalled. The said action of APRDC and the consequential cancellation of the tender notification by the Engineer-in-Chief cannot be termed as motivated or otherwise as observed by the learned Judge

and as rightly pointed out by the learned Government Pleader that the stray letters placed before the Court cannot be the basis to come to a conclusion that the cancellation of the tender by the Engineer-in-chief is not valid etc. In fact, works to the tune of Rs. 73.82 crores were cancelled after calling for tenders due to difficulty in funds position and there was no basis to hold that it is clear that the works worth Rs. 400 crores cannot be taken up with Rs.79 crores. The Government is always at liberty to cancel the tender notification on the ground of non-availability of funds. It is also noticed that the cancellation of tender notification dated 17-7-1998 was bona fide and is in accordance with law. The said tender notification was cancelled on 18-3-1999 after seven months, for the reasons stated therein. Thus, it is not correct to say that the tenders were finalized within three months and nothing prevented the Engineer-in-chief to ask the contractor for further extension etc., are contrary to the tender conditions. The action of the Engineer-in-chief is in accordance with the Rules and the same cannot be questioned. Acceptance of tenders of respondents 3 and 4 for SR works does not result in any financial loss to the Government and the estimates for the said works were arrived at on the basis of 1997-98 SSR rules only. Thus, it is in the interest of the Government to get the works completed at that rate. The observations as to financial loss, collusion of politicians and bureaucrats have no basis.

23. In fact, the petitioner acting for his personal gains and out of political motivation and other oblique considerations approached this Court and as such, at the threshold, the Writ Petition could have been rejected, more so, to save public money. In fact, in a public interest litigation like this, the Courts would be guided by considerations of public interest and would also ensure that it does not result in abuse of the process of law. There are umpteen ways in which the process can be abused and the Courts must be aware of the same before entertaining the Writ Petition. We agree that this is one such case where the petitioner tried to abuse the process of the Court in the guise of public interest for settling the political scores. A petition filed in personal interest or to satisfy any grudge or enmity cannot be initiated in the garb of public interest litigation. Such Writ Petitions deserve summary dismissals even at the threshold. The petitioner is a meddlesome interpoler and a busy body and filed the Writ Petition with an ulterior motive to settle scores of political rivalry,

24. At the outset, we deal with the aspect of locus standi and maintainability of the Writ Petition by the petitioner. In this regard, it is pertinent to refer the decision of the 7-member Bench of the" Supreme Court in S.P. Gupta Vs. President of India and Others, , popularly known as Judges Transfer case, in which it was held that any member of the public having "sufficient cause" can approach the constitutional Courts for enforcing constitutional or legal rights of other persons and redressal of a common grievance or for a public cause. However, while expanding the scope of the locus standi rules, his Lordship Bhagwati, J (as he then was) administered a note of caution. His Lordship speaking for the majority observed:

".....But, we must hasten to make it clear that the individual, who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular Writ Petition filed in Court.....".

Admittedly, in this matter, the political rivalry between the writ petitioner and the appellants-respondents 3 and 4 is not categorically denied by the petitioner by way of reply affidavit. The aspect that neither the petitioner nor anybody, who was really interested, was eliminated by putting such conditions or the petitioner himself was prevented, was also not taken into consideration. In fact, the writ petitioner himself asserted that he had political association and he is the Convener of Anna Telugu Desam Party for Lakkireddipalli Assembly Constituency. This itself clearly indicates that when the writ petitioner himself has no personal interest nor it is his complaint that he was prevented from participating in the tenders nor any loss was caused to the State in issuing the fresh tender notification on 7-6-1999, it simply drives home, the point, that the Writ Petition was filed with some political motive and object sought to be achieved for purposes other than the one mentioned in the Writ Petition. Thus, neither it can be treated as a public interest litigation nor the petitioner has come to this Court with clean hands. May be that once the Writ Petition is filed in the nature of pro bono publico, this Court may look into all aspects and come to a conclusion that the matter brought to the notice of this Court reveals invidious discrimination causing loss to the public exchequer. But, in our view, it is not so, for the reasons to be furnished, while dealing with the other aspects of the matter on merits.

25. It is not denied that the appellant-3rd respondent participated in the process pursuant to the earlier tender notification dated 17-7-1998 and he was the lowest tenderer and in fact, when he was awaiting the allotment of the same, a close associate of Dwarakanath Reddy, namely, C. Babu Reddy filed Writ Petition No. 34226 of 1998 and thwarted the proceedings, which resulted in cancellation of the earlier tender notice dated 17-7-1998 for various reasons.

26. In the present tender notice dated 7-6-1999, the prescription of condition that one must have a hot mix plant and it should be located within a radius of 50 KMs of the workspot cannot be said to be an unreasonable condition. In fact, it is stated in the counter-affidavit of the official respondents that this procedure is being prescribed for such nature of works uniformly all over the State and it received the approval of this Court in Writ Appeal No. 981 of 1992, dated 2-2-1992. For this, there is no reply from the writ petitioner nor any discussion and finding in the judgment. The contention of the writ petitioner that the experience required was not prescribed seems to be not correct. In fact, the tender notification itself prescribes that the tenderer shall have executed in any

one year in the preceding five years, the work of the value indicated in column No. 13 against each of the item of the work, as original agency, in their own name and style and that such of those tenderers, who fulfil the said special condition, are alone eligible to apply for the works. The appellants-respondents 3 and 4, in fact, satisfied the said condition.

27. Now coming to the crucial aspect that the very tender forms submitted by respondents 3 and 4 are invalid and are liable to be set aside on the ground that the last date of receipt of tenders was 8-7-1999, whereas the tenders were submitted along with the E.M.D. on 9-7-1999, the observations of the learned Judge seems to be not correct. As seen from the counter filed by the 2nd respondent, the last date for receipt of the tenders was extended from 30-6-1999 to 11.00 a.m., on 9-7-1999 vide amendment No. II dated 28-6-1999 and the same were sought to be opened at 12.30 noon on the same day. This aspect seems to have escaped the attention of the Court. As it missed the attention of the Court as to the last date of receipt of the tenders as 9-7-1999 and not 8-7-1999, after perusal of the records, the learned Judge held that the EMD was drawn on 9-7-1999 and the entries were made on the same day i.e., 9-7-1999 and as such, it must be deemed that there was no valid tender submitted by respondents 3 and 4 and accepting the same by official respondents 1 and 2 is nothing, but showing an undue favour to respondents 3 and 4. Though it was pointed out that the said amendment extending the date of notification was not properly published, it was stated in the counter-affidavit of the 2nd respondent that the said amendment No. II was communicated to all the Executive Engineers, Deputy Executive Engineers and Assistant Executive Engineers, Assistant Engineers (R&B), Circle Cuddapah, for affixing in their office notice boards and the same was also sent to the Director, Information and Public Relations Department, Hyderabad for publication in the newspapers vide Office Letter No. 6/D2/ 99-2000, dated 28-6-1999 of the 2nd respondent. Mr. B. Adinarayana Rao, learned Counsel, submitted that this is not an unusual practice and it was not adopted only to favour appellants-respondents 3 and 4. In any view of the matter, we find that neither the petitioner alleged that he was prevented from participating in the tender nor it has resulted in heavy loss to the State Exchequer and on verification of the registers by us being produced by the learned Government Pleader at the time of hearing of these appeals, we are convinced that the E.M.Ds. for reaches KM 73 to KM 78 were drawn on 7-8-1999 itself, though it was entered in the register on 9-8-1999. But that itself does not invalidate the tenders submitted by respondents 3 and 4. This also equally applies to the tenders for reaches KM 83 to KM 88 and KM 88 to 93. In view of this factual position that the date for submitting the tenders was extended up to 9-7-1999 at 11.00 a.m., it cannot be said that the tenders submitted by respondents 3 and 4 neither invalid nor liable to be set aside.

28. Insofar as the undue favour shown to appellants-respondents 3 and 4 is concerned, it cannot be said that any such favour was shown. In fact, in the tender submitted by the 3rd respondent pursuant to the first notification dated

17-7-1998, it was shown to be the lowest tenderer and while expecting the tenders to be finalized, by filing Writ Petition No. 34226 of 1998, its efforts were throttled. May be, the department has cancelled the earlier tender notice for other reasons also. That itself cannot be said that the 3rd respondent offered 5% lowest in the earlier tender and only to get over that, fresh tender notice has been issued on 7-6-1999, as it is stated by the 2nd respondent that due to paucity of funds, a different nature of work was taken up and the tender value was reduced. As such, it cannot be said that by possessing and locating the hot mix plant within the radius of 50 KMs from the workspot, in the nature of the work, in the second tender notice, the appellants-respondents 3 and 4 are going to be benefited. On the other hand, it is the case of the appellants-respondents 3 and 4 that they lose much more for the reason that such an equipment is used only to turn out heavy works and not small works like the present one. Even otherwise, it causes loss to respondents 3 and 4. Thus, it cannot be said that by way of either calling for second tenders or extending the date of submission of tenders or by way of prescribing the conditions, in any way, any undue favour has been shown in favour of respondents 3 and 4.

29. Therefore, we are of the view that the decision of the 2nd respondent is not vitiated on account of any mala fide exercise of power or for extraneous reasons. No case, as such, is made out requiring this Court's interference on any ground. There is not a whisper in the Writ Petition that the decision of the 2nd respondent had resulted in any loss to the public money. Any assumption, as to undue favour, may be drawn only when there is definite allegation that there caused a definite loss to the public exchequer and the same can be reasonably inferred. Once this element is absent, as in this case, no one, who was really eliminated by such undue favour, if any, has come before this Court and the clout of political rivalry haunting the appellants-respondents 3 and 4 through the first and second writ petitions is at large. We are of the view that any interference in this matter may result in loss to the public exchequer.

30. It may also be noted that by the time the Writ Petition came up for hearing, 75% of the work was completed and appellants-respondents 3 and 4 were not ready to proceed with the work, as there has been escalation in the price and SSR rates itself.

31. While trying to unearth the undue favour etc., in a public interest litigation, the Court should be guided by the pros and cons even at the threshold keeping paramountcy of the public interest in view. Due to this frivolous and mischievous litigation initiated in the purported public interest had resulted in irretrievable loss to the public exchequer.

32. For the aforesaid reasons, we do not find any merit whatsoever in Writ Petition No. 13064 of 1999 filed by the respondent-writ petitioner. The same deserves dismissal. The Writ Petition is accordingly dismissed. Consequently, the Writ Appeals are allowed with costs quantified at Rs. 2,000/-. The impugned judgment is accordingly set aside.