



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3332]

**TUESDAY, THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO: 9644/2023

Between:

Adapa Venkata Rao

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.VENKATESWARLU SANISETTY

Counsel for the Respondent(S):

1.VENKATA REDDY GAJJALA SC FOR ZPP, MPP, AND GRAM
PANCHAYAT

2.GP FOR PANCHAYAT RAJ RURAL DEV

The Court made the following order:

Questioning the disqualification of the petitioner in the technical bid in Tender Procurement vide Tender Id No.601773 in the name of "O&M of CPWS scheme to Markapur and Tarlupadu of Prakasam district for the year 2023-24 with an estimated cost of Rs.98.00 Lakhs', without assigning any reasons, the present writ petition is filed.

2. Heard Sri Venkareswarlu Sanisetty, learned counsel for the petitioner, Sri M.Sudhir, learned Standing counsel for the Gram Panchayat and Sri Bala Krishna, learned Assistant government pleader for Panchayat Raj Department.

3. Learned counsel for the petitioner while re-iterating the contents of the writ affidavit submitted that, the petitioner is a Class-I civil contractor and used to execute works of R & B Department, Panchayat Raj Department and other Government Departments more particularly laying of roads and sewage works etc. He further submitted that, the 3rd respondent, the Superintending Engineer, RWS & S Circle, Santhapeta, Ongole, called for tenders in Tender Id No. 601773 in the name of "O&M of CPWS scheme to Markapur and Tarlupadu of Prakasam district for the year 2023-24 with an estimated cost of Rs.98.00 Lakhs" and the petitioner has also participated in the said tender process. He further submitted that, the respondents did not open the bids at the scheduled time as contemplated in the tender notice and opened the technical bid on 12.04.2023 wherein the petitioner was disqualified without expressing any reasons.

He further submitted that the when the petitioner questioned the respondents about his disqualification in the technical bid, it was informed that as per clause 17.1 of the tender conditions, the petitioner was disqualified. He further submitted that, except the said reason, no other valid reasons were stated by the respondents. He further submitted that, if such action is allowed to materialize, the petitioner's right to participate in the tender would be

defeated apart from rights guaranteed under the constitution. As such prayed to pass appropriate orders protecting the interest of the petitioner.

4. On the other hand, Sri Bala Krishna, learned Assistant government pleader for Panchayat Raj Department on counter submitted that, the agreement concluding authority i.e., Chief Executive Officer, Zilla Parishad, Ongole vide letter dated 08.02.2022 has directed the 3rd respondent to take action against the petitioner for not complying the conditions of earlier contract in the work namely 'O & M of CPWSS to Medarametla' for the period from 01.09.2020 onwards and accordingly, proposals were initiated for blacklisting the petitioner and the said proceedings are pending consideration before the Government. It was further submitted the petitioner is not transparent and does not have clean record and therefore, he was disqualified in the technical bids evaluation under clause 17.1, 26.1 and 30.2 of the bid conditions. As such, there is no irregularity in disqualifying the petitioner in bid evaluation and the petitioner has not made out any case warranting the interference of this court. He further submitted that, even otherwise, the scope of the writ jurisdiction in tender matters is limited and further, the petitioner did not establish any arbitrariness or malafideness on the part of the respondents. As such the writ petition is devoid of merits and liable to be dismissed and accordingly, prayed to dismiss the writ petition.

5. Perused the record and considered the submissions of both the learned counsel.

6. It is not in dispute that the 3rd respondent has called for tender vide Tender Id No.601746 in the name of “O&M of CPWS scheme to Pullalacheruvu and other habitations of Prakasam district for the year 2023-24 with an estimated cost of Rs.70.00 Lakhs” and the petitioner has also participated in the said tender. The prime grievance of the petitioner is that the respondents have disqualified his technical bid without assigning any valid reasons intentionally, in order to benefit the other bidders who are close to the local political leaders. In the counter filed by the 3rd respondent, it was categorically stated that the petitioner has not complied the conditions of earlier contract in the work namely ‘O & M of CPWSS to Medarametla’ from 01.09.2020 onwards and his name was proposed for blacklisting which is under consideration before the Government. The contention advanced by the learned Assistant Government Pleader is that the scope of the judicial review is very limited and unless the petitioner specifically plead and prove the arbitrariness or malafideness attributed against the authorities concerned, he cannot file a writ petition.

7. The respondents have relied on the clause 17.1, 26.1 and 30.2 of the bid conditions for rejecting the petitioner’s tender. The said conditions are extracted hereunder:

“17.1. Even if the contractor meets all the eligibility and qualification criteria, his tender shall be summarily rejected if he is found to have misled or made false representation in the form of any of the statements submitted in proof of the eligibility criteria and qualification requirements or if he has a record of poor performance such as absconding from work, works not properly completed as per contract, inordinate delays in completion, financial failure and/or has participated in previous tendering for the same works and had

quoted unreasonably high tender price/premium. In addition to the above, even while executing the work, if it is found that he produced false/fake certificates in his Tender, he will be blacklisted and the work will be taken over invoking clause 60(a) of the Preliminary Specification to AP Standard Specification.

26.1. *After the opening of tender, information relating to the examinations, clarification, comparison of tenders and recommendation concerning the award of contract shall be kept confidential and shall not be disclosed to the Contractors or other persons not officially concerned with such process.*

30.2. *The Tender inviting Authority or Higher Authority reserves the right to accept or reject any or all tenders without assigning any reasons thereof and to annul the rendering process at any time prior to award of contract without thereby incurring any liability to the affected Contractor of Contractors”.*

8. As per the above said conditions, if the bidder has a record of poor performance such as absconding from work, works not properly completed as per contract, inordinate delays in completion, financial failure and/or has participated in previous tendering for the same works and had quoted unreasonably high tender price/premium, his tender shall be summarily rejected even if the contractor meets all the eligibility and qualification criteria. In the instant case, the respondents have stated that the petitioner has not complied with the conditions of the previous work allotted to him, as such, they have rejected his technical tender as per the above said conditions.

9. In regard to the other contention raised by the learned Assistant Government Pleader in respect of scope of the writ jurisdiction, the Hon'ble Apex Court in catena of cases has held that the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. If the Court finds that there is total

arbitrariness or that tender has been granted in a mala-fide manner, still the court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. It is further settled law that burden of proving malafides is on the person making allegations and burden is very heavy as has been held by the Apex court in ***E.P.Royappa Vs State of Tamil Nadu***¹. Moreover, in ***Union of India Vs Ashok Kumar***² the Apex Court has held that seriousness of allegations of malafides demands proof of high order of credibility and the Courts should be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office having high responsibility. It was further held that, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers.

10. In the instant case, except stating that, in order to benefit the other bidders who are close to the local political leaders, no other valid reasons are attributed by the petitioner against the respondents for his disqualification in the tender process. Moreover, in the counter, it was stated that, as the petitioner's name was recommended for blacklisting for non-compliance of tender conditions in the earlier contract, he was disqualified from the tender process as per clause 17.1, 26.1 and 30.2 of the bid conditions. This court is not inclined to test the veracity of the said allegations in the present writ

¹ (1974) 4 SCC 3

² (2005) 8 SCC 760

petition as the same is subjudice before the State government. Moreover, the petitioner had failed to establish the arbitrariness or malafideneess with cogent material.

11. In view of the said facts and circumstances of the case and as stated supra, this Court is of the opinion that it is appropriate to relegate the petitioner to competent civil court for seeking damages, if any, if so advised.

Accordingly, the writ petition is ***disposed of*** granting liberty to the petitioner to approach competent civil court for seeking damages, if any, if so advised. Any observations made in this writ petition should not come in the way, if any suit is filed by the petitioner. No costs.

Miscellaneous applications, pending if any, shall stand closed.

BRS

JUSTICE RAVI CHEEMALAPATI