

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14th DAY OF AUGUST 2009

BEFORE

THE HON'BLE Mr. JUSTICE AJIT J GUNJAL

WRIT PETITION Nos.4165 OF 2009 &
4275-89 OF 2009(GM-TEN)

BETWEEN:

Mr.Mubeen Pasha,
S/o Allah Bakash,
Aged about 45 years,
R/o Behind Housing Board,
Idgha Ground,
Kolar 563 101.

...PETITIONER

(Sri Padmanabha Mahale, Sr.Counsel for Sri
R.V.Ramesh Kumar Law Men's Co., Advs.)

AND:

1. The Managing Director,
Bangalore Electricity Supply Company,
K R Circle, Bangalore-01.
2. The Executive Engineer (Ele.),
Co & M.Division,
Bangalore Electricity Supply Company,
Kolar Division,
M.B.Road, Kolar 563 101.
3. Asian Fab Tec Ltd.,
Plot #15, 2nd Phase,
Peenya Industrial Area,
Bangalore-58,
By its Managing Director. ...RESPONDENTS

(Sri V.Y.Kumar, Adv. for R1 and R2; Sri G.Nagarajulu Naidu, Adv. for R3)

These W.Ps filed under Articles 226 and 227 of the Constitution of India praying to quash the impugned awards dated 31.1.2009 vide No.EEE/AEE(O)/A3(T)08-09/7407-09, 7412 to 19, 7453 to 60, 7463 dated 2.2.2009 7471-77 and dated 3.2.2009 7514-71, 7573 to 98, 7602 to 7610 respectively at Annexures-F1 to F16 respectively.

These W.Ps coming on for preliminary hearing in 'B' Group this day, the Court made the following:

ORDER

The petitioner is questioning the awarding of additional work in favour of the third respondent pursuant to Annexure-F1 to F16 and also for a writ of mandamus to the concerned respondents to redo the entire process as provided under Sections 5 and 12 of the Transparency Act.

2. The matter arises in the following manner:

The petitioner claims to be a licenced electrical contractor having necessary and sufficient experience in the field of execution of work of greater magnitude in the nature of supplying of transformers, cables etc. Suffice it to say that the respondents 1 and 2 invited tenders for maintenance works at Kolar, Tiptur and



Chikkaballapur divisions for the period between 2007 to 2009 i.e., for a period of 2 years ending on 01.02.2009. The case of the petitioner is that after the expiry of the term of two years on 02.02.2009, the respondents ought to have called for fresh tender before awarding certain work in favour of respondent No.3. Thus, according to them, there is clear violation of the Transparency Act.

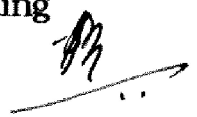
3. In response to the notice issued by this Court, respondents 1 and 2 entered appearance and filed statement of objections inter alia contending that Annexure-F1 series cannot be construed as awarding of new contract violating the norms as contemplated under the Transparency Act. They would primarily contend that in the contract entered into between the respondents 1 and 2 on the one hand and respondent No.3 on the other, a clause is specified that during the currency of the existing contract, if some work is required to be done, the same can be entrusted to the awardee. Hence, Annexure-F series cannot be faulted, inasmuch as, entrustment of work is pursuant to the contract entered into between the respondents 1 and 2,



and respondent No.3 at the inception. Another contention taken up by the respondents is that the petitioner has no locus.

4. Mr.Padmanabha Mahale, learned senior counsel appearing for the petitioner vehemently submits that a perusal of Annexure F series would clearly disclose that entrustment of work in favour of respondent No.3 assuming that it is in pursuance of an earlier agreement is after the expiry of two years i.e., after 02.02.2009 which would necessarily mean that the awarding or the entrustment of the work is not during the currency of the existing contract. Thus there is a clear violation of the provisions of the Transparency Act, inasmuch as, respondents 1 and 2 being public authorities, in all fairness, ought to have called for tenders after 02.02.2009.

5. Mr.V.Y.Kumar, learned counsel appearing for respondents 1 and 2 submit that Annexure-F series would clearly disclose that the work was entrusted to the third respondent during the currency of the existing



contract, inasmuch as, all the communications are issued on 31.01.2009 or signed on 31.01.2009. Thus, the entrustment of the work to the respondent No.3 cannot be faulted. He also refers to the terms of the contract, which according to him would empower respondents 1 and 2 to entrust the work in favour of respondent No.3 during the currency of the existing contract.

6. Learned counsel appearing for respondent No.3 submits that even before the expiry of the contract, the work is entrusted. Hence, it is not open for the petitioner to contend that the entrustment of the work is after 02.02.2009.

7. I have given my anxious consideration to the submission made by the learned counsel for the petitioner as well as the respondents.

8. The respondents at the inception have taken up a contention that the petitioner has no locus to file this writ petition. Apparently, the petitioner claims that he is a licenced electrical contractor having gained necessary and sufficient experience in the field. A

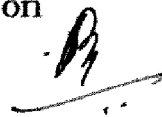


perusal of the papers do not disclose that the petitioner is a licenced contractor nor does the cause-title disclose that he is an electrical contractor. The reason for saying so is that the petitioner was not one of the participants in the tender proceedings for the year 2007 to 2009. A person or a litigant would get a locus to file the writ petition only if he has any interest in the subject matter. To prove that, necessary documents are required indicating that he is a licenced contractor and has an interest and can call upon the respondents 1 and 2 to float a fresh tender. Indeed, as observed, no documents are forthcoming to show that he is a licenced contractor or is in any way capable of doing a work of such magnitude. Hence, I am of the view that the petitioner may not have locus to file this writ petition.

9. This takes us to the next question on merits. Annexure-A is the communication issued by the respondents 1 and 2 in favour of the third respondent indicating that the price schedule has been accepted and he was requested to enter into a rate contract for



the supply of materials / equipments specified in schedule A. The terms and conditions of the supply were also set out in schedule-B of the terms and conditions of the contract. Indeed, the supply of material /equipments are in the nature of execution of action plan works on turnkey basis under the rate contract. As per the technical specification, terms and conditions of enquiry No.BCP-130/05-06 indeed a perusal of schedule-A would clearly disclose that it is the execution of an action plan on a turnkey basis under the rate contract. The rate contract is numbered as R.C.263 for action plan works on turnkey basis under the rate contract. Indeed, it is not in dispute as to the terms of clause 2.13 that the rate contract is valid for a period of two years from the date of execution of the contract. It also states that the approximate cost of the works proposed against the rate contract is Rs.24,00,00,000/-. The validity of the contract at clause 4 says that the rate contract is valid for a period of two years which would necessarily mean that it would commence on 02.02.2007 and would end on



02.02.2009. Now, the terms of the contract regarding extension during the currency of the existing contract is made available along with the statement of objections as Annexure-R1. It is useful to extract the said terms which reads thus:

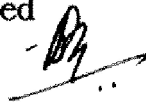
Clause 2.10.30

“During the validity of the Rate Contract the concerned Divisional/Circle Engineers will entrust the Action Plan Works to be executed under this Rate Contract. Hence the Quantity of Items covered under this Contract will vary depending upon the Work entrusted.”

Which would necessarily mean that during the currency of the existing contract it was open for the respondents 1 and 2 to entrust the work under the action plan to the existing rate contract. Hence, I am of the view that it was within the power of the respondents to entrust the rate contract in favour of the respondent No.3. But however, the question would be whether Annexure-F series have come into existence during the currency of the contract or subsequent to the expiry of the contract.



10. Indeed, both, the learned senior counsel for the petitioner as well as the counsel for the respondent were at great pains to convince the Court that either it was done during the currency of the existing contract or after the expiry of the contract. Indeed, the first of the communication is at Annexure-F1. Annexure-F1 is dated 31.01.2009. The said work award for execution of action plan and rate contract is for Kolar Division. The reference is in respect of the rate contract No.263, 264, 265, 269 and 270 /06-07. For the present, we are concerned only with rate contract No.263 in favour of respondent No.3. A perusal of the said communication would indicate that 20 numbers of work for providing additional distribution of transformers in Srinivasapura Sub-Division is awarded to respondent No.3 subject to the terms and relevant conditions. The conditions would enumerate that the work should be completed within a period of 90 days from the date of issuing of the order i.e., 31.01.2009. This is followed by another communication at Annexure-F2 once again dated

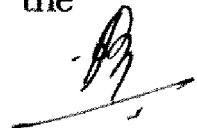


31.01.2009 which is in respect of Chintamani Urban Sub-Division. Annexure-F3 is dated 31.01.2009 which is once again in respect of Srinivasapura Sub-Division. In fact, the entire Annexure-F series is in respect of providing the power supply and erection of transformers in the entire Kolar Division. Indeed, it is no doubt true that some of the communications at Annexure-F series are dated 02.02.2009 and 03.02.2009 but however whether it is the continuation of the existing contract, would stem from the couple of other correspondences which is issued on 31.01.2009. Indeed, nothing sinister could be read into the slight change of dates. Indeed, Mr.Kumar, learned counsel appearing for respondents 1 and 2 has made available the dispatch register to show that all the communications were signed on 31.01.2009 and were dispatched on subsequent dates to the third respondent. There appears to be some confusion in this regard, inasmuch as, some of the communications are dated 31.01.2009 and some of the communications are sent on 02.02.2009. If the overall situation is taken into consideration, I am of the view that the



entrustment of the work to the third respondent would be during the currency of the contract. Indeed, if the entrustment of the additional work is after the expiry of the period of contract, inasmuch as, if there is a clinching material to buttress that fact, indeed Mr. Padmanabha Mahale, learned senior counsel is right in stating that it would violate the provisions of the Transparency Act. But however, that is not the case here.

11. That apart I have already recorded a finding that the petitioner has no locus, inasmuch as, no material is produced before this Court to show that he is a licenced contractor and has experience in taking up the work of such magnitude. Even though there is an averment in the memorandum of writ petition that award of contract is for extraneous consideration, Mr. Padmanabha Mahale, learned senior counsel has given up the said contention regarding malafides. Having said so, I am of the view that there is no violation of the Transparency Act, inasmuch as, the



entrustment of the work was during the currency of the existing contract.

Consequently, I do not find any merit in these petitions. Petitions stand rejected.

All Miscellaneous Applications do not survive for consideration and accordingly stand disposed of.

Sd/—
Judge

AI/—