

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15th DAY OF JUNE, 2016

BEFORE

THE HON'BLE MR.JUSTICE S.ABDUL NAZEER

WRIT PETITION NOs.15667-15668 OF 2016 (GM-TEN)

BETWEEN:

SRI.A.NAVEENCHANDRA
SON OF SRI.H.SHANKAR SHETTY
AGED ABOUT 60 YEARS
CLASS-I CONTRACTOR
HOSANGADI, KUNDAPURA TALUK
UDUPI DISTRICT.

...PETITIONER

(BY SRI PRASAD HEGDE.K.B, ADV.)

AND:

1. KARNATAKA NEERAVARI NIGAM LTD.,
COFFEE BOARD BUILDING
VIDHANA VEEDHI, BANGALORE – 560 001.
BY ITS MANAGING DIRECTOR.

2. THE CHIEF ENGINEER,
VARAHI PROJECT DIVISION,
KARNATAKA NEERAVARI NIGAMA LTD.,
SIDDAPUR, KUNDAPURA TALUK,
UDUPI DISTRICT – 576 229.

3. THE EXECUTIVE ENGINEER
VARAHI PROJECT DIVISION,
KARNATAKA NEERAVARI NIGAMA LTD.,
SIDDAPUR, KUNDAPURA TALUK,
UDUPI DISTRICT – 576 229.

...RESPONDENTS

(BY SRI.M.R.C.RAVI, ADV. FOR R1
R2, R3 SERVED AND UNREPRESENTED)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS FROM THE OFFICE OF THE R-3 IN RESPECT OF TENDER NOTIFICATION DATED 20.11.2015 IN TENDER NOTIFICATION NO.EE/KNNL/VFD/PB/TENDER/2015-16/1848 AND TENDER NOTIFICATION DATED 20.11.2015 IN NO.TENDER NOTIFICATION NO.E /KNNL /VPD/ PB/ TENDER /2015-16/1849 AT ANNEX-A & B AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The petitioner is a Class-I PWD Contractor and registered Category II contractor with the first respondent company engaged in the business of excavation and construction of tunnels, irrigation projects, construction of road and other buildings.

2. The second respondent floated tender notifications at Annexures 'A' and 'B' both dated 20.11.2015 from Category II and above contractors. The contractors are required to submit the tenders through e-procurement portal of Government of Karnataka. In the notification, it has been clarified that Rules of the Karnataka Transparency in Public Procurement Act, 2000 should be strictly adhered to. One of the pre qualification criteria is that the agency intending to bid for the works should have

achieved in atleast two financial year a minimum annual financial turnover (in all classes of Civil Engineering construction works only) not less than two times the amount put to tender for the works in the last five years reckoned back from 2014-15 and that the financial turnover shall be certified by the registered Chartered Accountant. The petitioner is aggrieved by the inclusion of the aforesaid condition in the tender notifications. Therefore, he has filed these writ petitions for quashing of the said notifications.

3. Sri Prasad Hegde, learned Counsel appearing for the petitioner submits that the aforesaid pre qualification criteria has been introduced for the first time in the tenders issued by the second respondent. This was done with a view to help a particular contractor. The said clause has been rightly withdrawn by the second respondent by issuing a corrigendum to tender notification dated 31.12.2015 at Annexure 'E'. However, the said corrigendum to the notification has been withdrawn by issuing another corrigendum at Annexure 'J' dated 11.3.2016, which is illegal and unsustainable in law.

4. Learned Counsel appearing for respondent Nos.2 and 3 submits that the tender notifications at Annexures 'A' and 'B' have been issued as per the Karnataka Transparency in Public Procurements Act, 1999 (for short 'KTPP Act'). The pre qualification conditions are as per the KTPP Act and the subsequent amendments made to the Act. The pre qualification criterias are stipulated based on the Government Order at Annexure 'R1' dated 14.10.2008. It is submitted that the corrigendum at Annexure 'E' was issued by the second respondent inadvertently without taking into account the Government Order at Annexure 'R1'. It is submitted that no prejudice has been caused to the petitioner by withdrawing the corrigendum dated 31.12.2015 vide Annexure 'E'. It is further submitted that several contractors registered with respondent Nos.2 and 3 in the State of Karnataka, who fulfil the terms and conditions stipulated in the tender and 17 of them have already participated in the tendering process. Therefore, there is no

question of creating monopoly in the present work to help a particular contractor. He prays for dismissal of the writ petitions.

5. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

6. As noticed above, one of the pre qualification criteria for submission of tenders is that the agency intending to bid for the works should have achieved in atleast two financial year a minimum annual financial turnover (in all classes of Civil Engineering construction works only) not less than two times the amount put to tender for the works in the last five years reckoned back from 2014-2015. The financial turnover shall be certified by the registered Chartered Accountant.

7. The State Government has issued a Government Order No.FD 4 PCL 2008 dated 14.10.2008 as per Annexure 'R1', whereby certain conditions have been imposed as pre-clarification

for submission of tender. It is not in dispute that the provisions of the KTPP Act and the Rules made thereunder are applicable to the 1st respondent. The relevant clause in the notification dated 14.10.2008 is as under:

“To qualify for award of this contract each tenderer in his name should have in the last five years’ period (a) achieved in at least two financial years an average amount financial turnover (usually not less than the estimated cost under this contract for works costing upto Rs.1.00 lakh). However, the existing clause remains the same for works costing more than Rs.1.00 lakh.”

8. It is not in dispute that condition No.(i) in the impugned notification is in conformity with the aforesaid clause contained in the Government Order at Annexure ‘R1’. Therefore, petitioner cannot find fault with the inclusion of condition No.(i) in the notifications at Annexures ‘A’ and ‘B’. It is no doubt true that the aforesaid condition was previously not enforced as against the contractors registered with the 1st respondent. The condition now

imposed is in conformity with the Government Order at Annexure 'R1'. The respondents have categorically stated that the corrigendum notification at Annexure 'E' was issued inadvertently. Realising the said mistake, they have issued the corrigendum notification at Annexure 'J' withdrawing the earlier corrigendum at Annexure 'E'. The exemption granted earlier to the contractors registered with the respondents was not tenable in law as it was contrary to the provisions of KTTP Act and the Government Order at Annexure 'R1'. The exemption granted by mistake will not vest any right on the petitioner to claim the same privilege in future also.

9. There is absolutely no merit in the contention of the petitioner that the impugned corrigendum has been issued to help a particular contractor. As many as 17 contractors, who fulfil the terms and conditions in the tender have participated in the tendering process. In the circumstances, respondent Nos.1 and 2

have rightly withdrawn the corrigendum notification at Annexure 'E' dated 31.12.2015.

10. It is settled that the terms and conditions of tender are prescribed by the Government bearing in mind the nature of the contract and in such matters, the authority calling for the tender is the best Judge to prescribe the terms and conditions of tender. It is not for the Courts to say whether the conditions prescribed in the tender under consideration were better than the one prescribed in the earlier tender invitations. The Court can interfere with the administrative policy decision only if it is arbitrary, discretionary or malafide. I do not find any unreasonableness or arbitrariness in the impugned condition in the tender notifications. It is neither discriminatory nor malafide as contended by the petitioner. There is no merit in these writ petitions. They are accordingly dismissed.

11. At this stage, learned Counsel for the petitioner submits that even otherwise, tender submitted by the petitioner has

satisfied the pre-qualification criteria stipulated in the notifications at Annexures 'A' and 'B'. Needless to say that if the tender submitted by the petitioner satisfies the condition stipulated in the notifications, respondent Nos.1 and 2 have to consider the same in accordance with law. The petitioner is permitted to submit the additional certificates, if any, to the 3rd respondent within a period of one week from the date of receipt of copy of this order.

12. In view of the disposal of the writ petition as above, IA-2/2016 is dismissed as unnecessary. No costs.

Sd/-
JUDGE

KLY/BMM/-