

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL, 2017

BEFORE

THE HON'BLE MR. JUSTICE A S BOFANNA

WRIT PETITION Nos.51487-51488/2016 (GM-TEN)

C/W

WRIT PETITION No.44997/2016 (GM-TEN)

W.P.Nos.51487-51488/2016

BETWEEN:

1. G. SUBRAMANYAM
PROPRIETOR OF
SHAKTI VAISHNAVI ENTERPRISES,
AGED ABOUT 41 YEARS,
OFFICE SITUATED AT NO. 13,
1ST FLOOR, BHARATH BHAVAN,
INFANTRY ROAD, SHIVAJI NAGAR,
BANGALORE-560 001.
2. M/S. H.K.S. SERVICES
REPRESENTED BY ITS PARTNER,
SRI. K. HANUMANTHA RAJU,
AGED ABOUT 41 YEARS,
NO.137, 4TH CROSS, 1ST MAIN,
1ST BLOCK, 8TH PHASE, J.P. NAGAR,
NEAR VINAYAKA THEATRE,
BANGALORE-560 062.

... PETITIONERS

(BY SRI. HAIKSHA R G, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPLE SECRETARY,
DEPARTMENT OF HORTICULTURE,
M.S. BUILDING,
BANGALORE-560 001.

2. THE DIRECTOR
DEPARTMENT OF HORTICULTURE,
GOVERNMENT OF KARNATAKA,
LALBAGH,
BENGALURU-560 004.
3. THE DEPUTY DIRECTOR
DEPARTMENT OF HORTICULTURE,
LALBAGH GARDENS,
BANGALORE-560 004.

... RESPONDENTS

(BY SMT. PRATHIMA HONNAPURA, HCGP. FOR R1 TO 3
SRI. VIVEK HOLLA, ADV. FOR IMPL. LEADING
APPLICANT ON I.A. No.1/16)

THESE PETITIONS ARE FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO DIRECT
TO THE RESPONDENTS TO COMPLETE THE TENDER PROCESS
OF THE LALBHAG'S ENTRY FEE AND PARKING FEE
COLLECTIONS WORK, IMMEDIATELY.

W.P.No.44997/2016

BETWEEN:

KARNATAKA COMMERCIAL
& INDUSTRIAL CORPORATION PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT
NO.10, CHURCH ROAD,
BASAVANGUDI,
BENGALURU-560004
REP. BY ITS CHAIRMAN &
MANAGING DIRECTOR
MR. I. A. SIDDIQUI

... PETITIONER

(BY SRI. RAJENDRA M S, ADV. FOR
SRI. VIVEK HOLLA, ADV.)

AND:

1. STATE OF KARNATAKA
REP. BY THE DIRECTOR
OF HORTICULTURE,

DEPARTMENT OF HORTICULTURE
LALBAGH
BENGALURU-560004

2. THE DEPUTY DIRECTOR OF
HORTICULTURE
LALBAGH GARDENS,
BANGALORE-560004

... RESPONDENTS

(BY SMT. PRAITHIMA HONNAPURA, HCGP, FOR R1 & 2)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE REQUEST FOR PROPOSAL / TENDER DATED 16.08.2016 AT ANNEX-J; DECLARE THAT THE PETITIONER IS THE SUCCESS TENDERER IN RESPECT OF THE TENDER DATED 14.03.2016 AT ANNEX-D AND ETC.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners in W.P.Nos.51487-88/2016 are before this Court seeking issue of direction to the respondents to complete the tender process for the Lalbagh entry fee and Parking fee collection work. In that regard, the petitioners therein have sought that the tender process initiated through the request for proposal dated 16.08.2016 be completed.

2. Though such prayer is made in the said petitions, the contentions as urged in W.P.No.44997/2016 would have a bearing on the same since the petitioner therein has sought for quashing the said request for proposal/tender dated 16.08.2016 impugned at Annexure-J thereto. In that light, the petitioner therein has sought that he be declared as the successful tenderer in respect of the tender dated 14.03.2016 and to issue a mandamus to direct the respondents to award the tender in favour of the petitioner.

3. The brief facts common to decide both these petitions are that the respondents had issued the tender/request for proposal dated 14.03.2016 calling for tenders for providing services of collection of entry and vehicle parking fee at Lalbagh gardens for a period of one year. The petitioner in W.P.No.44997/2016 was one among the tenderers who had participated in the said process. The petitioner contends that the petitioner

being technically qualified had offered the highest financial bid of Rs.4,21,07,770/-. In that light, the petitioner contends that the process was required to be completed and the work was required to be awarded to them. At this stage, the respondents had taken a decision to cancel the same and thereafter have issued the fresh tender/request for proposal dated 16.08.2016. The petitioner therein therefore claiming to be aggrieved is before this Court.

4. It is no doubt true that the work order had not been issued in favour of the petitioner and in a normal circumstance, before finalization the authority would have the power to cancel the tender, more particularly keeping in view the circumstance as provided under Section 14 of the Karnataka Transparency in Public Procurement Act. The issue in the instant case is as to whether the power as exercised by the respondents could be considered as bonafide keeping in view the nature of the contentions

that have been put forth by the parties and the reasons for which cancellation is permissible?

5. In order to contend that the respondents have taken the decision to cancel and retender is due to the fact that the Tender Accepting Authority had arrived at the conclusion that the department was not able to show any scientific calculation to support the figure of Rs.3.60 crores as the reasonable estimate for probable collection figures during the year. In that regard to consider as to whether the reason as put forth would be justified, as rightly pointed out by the learned counsel for the petitioner in the notification dated 14.03.2016 an expected price is indicated as Rs.3.60 crores at Clause-6.2 in the Special Conditions of Contract. In the said process the annual turnover of the tenderer was fixed at Rs.4 crores. As already indicated, the petitioner having satisfied all other criteria had offered the amount of Rs.4,21,07,770/- as against the minimum tender amount

of Rs.3.60 crores. Though the reason as put forth that the amount of the minimum expected value has not been justified with appropriate calculations in the subsequent notification which is issued on 16.08.2016 at Clause-6.2 in the Special Conditions of Contract, the expected tender amount has not been indicated but is left blank. Therefore, at the outset the same does not justify the reason and in any event the offer made was higher than the expected price fixed.

6. Another aspect of the matter is that in the said notification the annual turnover no doubt has been reduced to Rs.50,00,000/- and the justification put forth is that there would be more number of bidders from whom the highest bid could be selected and in any event the petitioner in W.P.No.44997/2016 can also participate in the said process.

7. In a normal circumstance, if the bid at the first instance was indicated at a lower value than expected price and in that circumstance if it was sought to be increased so as to generate more revenue for the respondents, the contention as put forth could have been accepted. However, the contention presently put forth cannot be accepted in a circumstance where as against the first tender notification the price offered was much more than what had been indicated as the expected price in the said document. Hence, the subsequent tender notification as issued would not be justified. Accordingly the request for proposal/tender dated 16.08.2016 is quashed.

8. Since, against the tender notification dated 14.03.2016 the petitioner had qualified and had offered a price higher than the expected value indicated, the respondents are directed to proceed further and complete the transaction in accordance with law. In view of such

direction issued, the prayer as made in W.P.Nos.51487-488/2016 would not arise for consideration.

In view of the disposal of the petitions, IA-I/2016 filed in W.P.Nos.51487-488/2016 also stand disposed of without any specific orders.

These petitions stand disposed of in the above terms.

**Sd/-
JUDGE**

hrp/akc