

IN THE HIGH COURT OF KARNATAKA

June 24, 2009

N. K. Patil, J.

WISDOM SECURITY SERVICES, BANGALORE

v

SHIMOGA CO-OPERATIVE MILK PRODUCERS SOCIETIES UNION  
LIMITED, SHIMOGA

Writ Petition No. 4789 of 2009.

The Court, made the following:

ORDER

1. The petitioner, questioning the legality and validity of the tender notification dated 5-2-2009 published in Kannada Prabha, a Kannada daily newspaper (Shimoga Edition) dated 7-2-2009, in Annexure-G, has presented this writ petition. Further, petitioner has sought to direct the respondent to execute the contract as per the letter dated 30-12-2008, *vide* Annexure-D.

2. The grievance of the petitioner as made out by learned Counsel appearing for the petitioner is that, petitioner is a reputed Security Agency and is one of the leading Security Agents, and Labour Contractors in the State of Karnataka and is registered under Karnataka Shops and Commercial Establishments Act, 1961. The petitioner, in pursuance to the notification issued by the respondent dated 11-12-2008, has submitted his tender on 26-12-2008. The same has been accepted and a communication has been sent to the petitioner on 30-12-2008 calling upon to execute an agreement. It is the further case of the petitioner that, inspite of his persuasion, respondent has not executed the contract in his favour in the light of the communication dated 30-12-2008 and on contrary, he has proceeded to issue the impugned notification, calling fresh tenders by withdrawing the earlier notification issued on 11-12-2008. Learned Counsel appearing for petitioner has submitted that, the impugned notification issued by respondent is contrary to the relevant provisions of the Karnataka Transparency in Public Procurements Act, 1999 and respondent has no power for not signing the agreement, when the Board of Directors took a decision and accepted the tender application submitted by the petitioner. Having regard to these backgrounds, petitioner herein felt necessitated to present this writ petition, seeking appropriate relief, as stated *supra*.

3. I have heard learned Counsel appearing for petitioner and learned Counsel appearing for respondent.

4. The principal submission canvassed by learned Counsel appearing for petitioner is that, the impugned notification issued by the respondent is contrary to the relevant provisions of the Karnataka Transparency in Public Procurements Act and he cannot issue the impugned notification until and unless he withdraws the earlier notification dated 11-12-2008 in pursuance of which, petitioner has participated in the said tender, his tender has been accepted and a communication has been sent to him on 30th December, 2008 in the light of the decision taken by the Board of Directors. Further, he submitted that, the Managing Director of the respondent has no power for not executing the agreement in favour of the petitioner in pursuance of the communication dated 30-12-2008 and for issuing fresh notification calling tenders and the said exercise done by him cannot be sustained. Therefore, learned Counsel appearing for petitioner submitted that, the impugned notification is liable to be set aside at threshold and appropriate direction is to be issued to the respondent to execute the agreement in favour of the petitioner in pursuance of the communicated dated 30-12-2008.

5. *Per contra*, learned Counsel appearing for respondent, at the outset submitted that, petitioner cannot question the correctness of the impugned notification on the ground that, respondent has sent a communication dated 30-12-2008 to the petitioner calling upon to execute the agreement and the said communication issued by respondent is only a provisional communication subject to compliance of other terms and conditions of the notification.

Further, he submitted that, respondent after realising that there is some mistake in the notification while mentioning the wages of the Gunman and Supervisor and in view of notice of revision of minimum wages with effect from 1<sup>st</sup> August, 2008 produced at Annexure-R2, the wages of Security Head Guard (Gunman) and Supervisor have been fixed at Rs. 10206.32 and Rs. 11,462.89 and whereas, the petitioner has put forth his offer at Rs. 5858.56 and Rs. 6376.71 and the communication sent to the petitioner in the light of the decision taken by the Board is contrary to the notice of revision of minimum wages with effect from 1st August, 2008 issued by the Directorate General of Resettlement dated 3rd October, 2008, has proceeded to issue fresh tender notification. Further, he submitted that the respondent has reserved the said rights in the notification and if once the petitioner has accepted the terms and conditions of the said notification, he is not entitled for any notice or the compliance of principles of natural justice by the respondent. To substantiate his submission, he placed reliance para 22 of the decision of the Apex Court in the case of *Chamman Singhal v Haryana Urban Development Authority and Others*[(2009)4 SCC 369], and submitted that petitioner cannot maintain the relief in this writ petition and hence, the petition is liable to be dismissed as devoid of merits.

6. After having heard learned Counsel appearing for both the parties, in the light of the contentions urged by the petitioner and respondent and after careful perusal of the relief sought in this writ petition, including the impugned notification issued by the respondent on 11-12-2008, it emerges that, respondent has reserved rights for accepting, rejecting or provisionally accepting the tender as rightly pointed out by the learned Counsel appearing for respondent. Before executing the agreement respondent has verified the relevant material which are applicable to the contract to be awarded in favour of the petitioner and when he realised that the rate quoted by the petitioner for the services of Gunman and Supervisor are not tallying with the notice of revision of minimum wages with effect from 1st August, 2008 issued by the Directorate General of Resettlement dated 3rd October, 2008 produced at Annexure-R2, wherein it has been specifically referred the revised salary in respect of Gunman and Supervisor at Rs. 10,206.32 and Rs. 11,462.83, he has not signed the agreement. The communication dated 30-12-2008 has been sent to the petitioner accepting the tender subject to following the other terms and conditions of the notification *i.e.*, a provisional acceptance has been sent to the petitioner. Therefore, petitioner cannot claim as a matter of right that, without issuing notice to him and without complying the principles of natural justice, the impugned notification has been issued by the respondent. Nor it is a good ground to grant the relief sought by petitioner in this writ petition. The learned Counsel appearing for petitioner has not disputed that, as on date, the agreement has not been duly signed by the concerned authority of the respondent and therefore, the question of considering the specific ground taken by the petitioner that the impugned notification issued by the respondent is contrary to the principles of natural justice does not arises in view of the law laid down by the Apex Court as referred above. Therefore, I am of the considered view that, when the tender has not reached its finality or the same has not been confirmed in favour of the petitioner, the question of complying the principles of natural justice by the respondent while issuing the fresh notification does not arise.

7. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Ordered accordingly.

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