

IN THE HIGH COURT OF KARNATAKA

GULBARGA BENCH

DATED THIS THE 01<sup>ST</sup> DAY OF AUGUST, 2014

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

**W.P.No.202475/2014 (LB-TEN)**

**BETWEEN:**

Syed Akbar Pasha  
S/o Akbar Bashumiya,  
Aged 44 years,  
Occ: Class-I Contractor,  
R/o House No.13-4-335/1,  
Chirag Ali Colony,  
Manvi, Raichur Road,  
Dist. Raichur – 584 101.

... **PETITIONER**

**(By Sri Ameet Kumar Deshpande, Advocate)**

**AND:**

1. The Tender Evaluation Committee,  
Represented by its Member,  
Office of the Chief Engineer,  
Communications & Buildings,  
PWD Office, Bangalore -- 560 001.
2. The Chief Engineer (Planning),  
Communications & Buildings,  
PWD Office, Bangalore – 560 001.
3. The Chief Engineer,  
Communications & Buildings,  
South Bangalore – 560 001.
4. The Chief Engineer,  
Communications & Buildings,  
North Dharwad.

5. The Chief Engineer,  
National Highways,  
Bangalore – 560 001.
6. The Executive Engineer,  
Public Works Inland Post and  
Inland Water Transport Division,  
Raichur – 584 101.
7. M. Eranna  
S/o Malleshappa,  
Aged about 50 years,  
Occ: Class I contractor,  
R/o Five Star Function Hall,  
Raichur Road, Manvi,  
Dist. Raichur – 584 101.

... **RESPONDENTS**

**(Sri Manvendra Reddy, Govt. Advocate for R1 to R4 & R6;  
Sri Sachin M. Mahajan, Adv. for R5;  
Sri Mahantesh Patil, Adv. for R7)**

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari quashing the decision of respondents No.1 to 5 herein passed in its meeting dated 24.02.2014, rejecting the technical bid of the petitioner and thereby accepting and forwarding the technical bid of the respondent No.7 for approval in respect of the tender for "improvements to Manvi Cross to Gavigat via Aldas road from KM 1.00 to 2.20 and KM 3.40 to 10.00 in Manvi Taluka, Raichur District", as copy of which is at Annexure-E and etc.

This petition coming on for Orders this day, the Court made the following.

**ORDER**

1. This writ petition is filed challenging the decision taken in the meeting dated 24.02.2014 presided by the

Superintendent Engineer, Public Works, Ports and Inland Water Transport Department, Bellary Zone, Bellary regarding the tender submitted for improvements to a road from Manvi Cross to Gavigat via Aldal in Raichur District.

2. As per the impugned resolution/decision, technical bid submitted by the petitioner has been rejected based on the Evaluation Report submitted by the Executive Engineer. The reason for the rejection of the technical bid is, petitioner had excess work in hand. The impugned resolution is passed on 24.02.2014. This was followed by communication addressed to the Chief Engineer, North Dharwad on 26.02.2014 vide Annexure R4 produced by the State Government along with the statement of objections forwarding the recommendations of the Committee after analyzing the bids of the remaining persons with regard to the work. Later on, the bid of the 7<sup>th</sup> respondent has been accepted and a contract was entered into as per Annexure-R5 – agreement dated 04.03.2014. Work order has been issued on the same day, as is evident from Ex R6 and it is urged by respondent No.6 that he had

carried on the work until the interim order was granted in the said case on 23.05.2014.

3. Learned counsel for the petitioner submits that the entire proceeding initiated against the rejection of the technical bid itself is illegal, as the bid could not have been rejected on the ground that the petitioner had excess work in hand.

4. Learned counsel for the respondents submit that petitioner has got alternative remedy to file an appeal under Section 16 of the Karnataka Transparency and Public Procurements Act, 1999 (for short 'the Act'). This is resisted by the petitioner stating that what is he challenging is the rejection of the technical bid and therefore, Section 16 of the Act has no application.

5. Having heard the learned counsel for both parties, I find that after rejecting the technical bid of the petitioner before the writ petition was filed, the bid of the 7<sup>th</sup> respondent has been accepted and an agreement has been entered into awarding the contract in his favour. Therefore, the petitioner

if at all aggrieved has to approach the Appellate Authority as provided under Section 16 of the Act. When a statutory remedy of appeal is provided, it is not proper to interfere in exercise of the writ jurisdiction. Hence, reserving liberty to the petitioner to file an appeal, this writ petition is dismissed.

6. It will be open to the petitioner to urge that the time taken in prosecuting this writ petition may be excluded while computing the period of limitation.

**Sd/-  
JUDGE**

LG