

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11<sup>TH</sup> DAY OF MARCH, 2003

BEFORE

THE HON'BLE MR. JUSTICE H. KUMAR

WRIT PETITION NOS. 22588-22589/2002 (EM-TEN)

BETWEEN

SAMBHAV CONSTRUCTIONS  
BEING A REGISTERED PARTNERSHIP  
FIRM HAVING ITS PRINCIPAL  
PLACE OF BUSINESS AT SRINIVASA  
VINAYAKA COLONY SIRSI 402  
REP. BY ITS MANAGING PARTNER  
C. AJAY KUMAR

... PETITIONER

(By Sri G L VISHWANATH & V. SUKANYA)

AND :

- 1 STATE OF KARNATAKA BY ITS CHIEF SECY  
VIDHANA SOUHA  
BANGALORE
- 2 STATE OF KARNATAKA  
DEPT. OF MAJOR AND MEDIUM IRRIGATION  
VIDHANA SOUHA  
BANGALORE  
BY ITS SECRETARY
- 3 KARNATAKA NIRAVARI  
NIGAM LTD BEING A GOVT. OF KARNATAKA

UNDER TAKING 4TH FLOOR COFFEE  
BOARD BUILDING NO.1 AMBEDKAR VEEDHI  
BANGALORE 1  
REP. BY ITS MANAGING DIRECTOR

... RESPONDENT'S

(By Smt SHOBHA PATIL GP FOR R1 & 2  
Sri DAYANAND S NAIK & PREETI DAYANAND  
FOR R3)

-----

THESE WRIT PETITIONS ARE FILED UNDER  
ARTICLES 226 AND 227 OF THE CONSTITUTION OF  
INDIA, PRAYING TO SET ASIDE THE DECISION OF THE  
BOARD OF DIRECTORS OF THE THIRD RESPONDENT TAKEN  
AT ITS MEETING HELD ON 13.5.2002 VIDE ANNEX.G. IN  
SO FAR AS IT RELATES TO CALLING FOR FRESH TENDERS  
FOR THE PROJECT NAMELY, CONSTRUCTION OF BARRAGES  
ACROSS BHIMA RIVER AT VILLAGE SONNA, AFZALPUR  
TQ., GULBARGA DISTRICT, ETC.

THESE WRIT PETITIONS COMING ON FOR  
PRELIMINARY HEARING, THIS DAY THE COURT MADE THE  
FOLLOWING:-

ORDER

The petitioner is a registered partnership firm carrying on the business of construction and engineering. The third respondent invited tenders for the construction of Barrages across Shima River at various places. The petitioner submitted his bid towards such tender by complying with all the formalities. The tenders were opened by the Executive Engineer of the third respondent on 8.11.2001. In all there were 17 bids. Out of these, 16 bids were opened at the first instance and thereafter the Executive Engineer adjourned the proceedings and later re-convened after an hour to open the 17<sup>th</sup> bid, namely that of M/s.G.H.Reddy and Associates. The petitioner was the second lowest tenderer. The terms and conditions of the tender inter alia provide that the offer of the tenderer shall be valid upto 7.2.2002. The tenderers had to provide bank guarantee and same has to be in force for a period of three months. As no decision was taken by the third respondent, they

WP.22588-22589/02(GM-TEN)

-4-

called upon the petitioner and the lowest bidder and others to extend the validity of tender for a period of two months, i.e., till 7.4.2002. Accordingly, the petitioner extended the validity period and also extended the bank guarantee. However, the lowest tenderer neither extended the validity period nor he offered the bank security. As no decisions were taken beyond the expiry of the extended period, again the petitioner was requested to extend the validity of the tender for a period of two months, which was acceded to by the petitioner. The said two months' period expired on 7.6.2002.

2. In the meanwhile, it appears that in a meeting held on 13.5.2002 the third respondent took a decision to cancel the tender and to invite fresh tenders. Accordingly, a letter dated 2.6.2002 cancelling the tender was issued, which is produced as per Annexure-R1. As the petitioner was not aware of this cancellation, his tender has not been accepted, his enquiries did not yield any results and when he came to

know that an attempt to invite the fresh tender is being made, he preferred these writ petitions on 6.6.2002, seeking a writ of certiorari quashing the decision of the Board of the third respondent on 13.5.2002 calling for fresh tenders and for a direction to award contract in favour of the petitioner as he being the lowest bidder. He also sought for an interim order.

3. On 5.8.2002, an interim order was granted by this Court to the effect that any decision to be taken by the respondents regarding the allotment of contract in pursuance of the tender dated 29.6.2002 is subject to the result of these writ petitions.

4. The respondents have entered appearance and filed their statement of objections. They did not dispute the facts aforesaid, but they contend that the Board of Directors of the third respondent in the meeting held on 13.5.2002 after considering all the aspects and as per Rule 22(3) of the Karnataka Transparency in Public

WP.22588-22589/02(GM-TEN)

-6-

Procurement Rules, decided to cancel the tender and call for the tender afresh. Accordingly, fresh tender has been called on 29.6.2002 and therefore they submit that there is no merit in these writ petitions and sought for the rejection of the same.

5. The learned counsel appearing for the petitioner Sri G.L.Vishwanath contended that a reading of Rule 22 makes it very clear that the Tender Accepting Authority has the power to extend the validity of tender and that provision cannot be construed to mean that such an extension can be given only once and on proper interpretation of the said rule it is clear that the Tender Accepting Authority has a jurisdiction to grant extensions as required and when once the extension is granted on 7.2.2002 which expired on 7.4.2002 and again on 7.4.2002 the validity of the tender was extended up to 7.6.2002 and therefore the authorities were not justified in cancelling the tender on 13.5.2002 on the ground

that Rule 22(3) does not provide for further extension. He also submitted that the authorities did not communicate the date of cancellation at all and infact the same was communicated to him after filing of the writ petitions.

6. In support of his contention, the learned counsel for the petitioner has relied on the following judgments:-

- i) AIR 1990 SUPREME COURT 123 (Tinsukhia electric supply Company Limited ..vs.. State of Assam & others)
- ii) AIR 2002 SUPREME COURT 1334 [Padmasundara Rao(dead) & others ..vs.. State of Tamil Nadu & others]
- iii) ILR 2000 KARNATAKA 1137 (Kirloskar Brothers Limited & another ..vs.. Bangalore Water Supply and Sewerage Board & others)

7. Therefore the learned counsel for the petitioner submitted that on a proper construction of Rule 22 it is clear that there is no prohibition contained in the said Rules for

✓

WP.22588-22589/02(GM-TKN)

-8-

extending the validity of the tender beyond one extension.

8. Learned counsel appearing for the third respondent contended that in the first place in view of Section 16 of the Karnataka Transparency in Public Procurement Act, 1999 (hereinafter referred to as "the Act" for short) as a statutory appeal is provided, these writ petitions are not maintainable. Secondly she contended that a reading of the aforesaid Rule 22 of the Rules, makes it very clear that every effort should be made to complete the evaluation of tenders though the original period prescribed and only in the event it is not possible to do, the Tender Accepting Authority has been conferred the power to extend the validity of tenders and Sub-rule (3) of Rule 22 makes it very clear if the contract is not completed within the extended period, the tender becomes invalid and fresh tenders have to be called for. Therefore, she submits that the Tender Accepting Authority has extended the tender from 7.4.2002 to 7.6.2002.

✓



WP.22502-22509/02(GM-TEN)

-9-

The said Rule 22 does not provide for Tender Accepting Authority to grant second extension. In that view of the matter, it is submitted that as the fresh tenders have been called on 29.6.2002, it was always open to the petitioner to participate in the said tender and no injustice has been done to him and therefore she submits that the writ petitions lack merits and they are liable to be dismissed.

9. From the above facts and rival contentions, it becomes clear that the petitioner in pursuance of the tender notification issued by the third respondent submitted his tender. On 8.11.2001 the tender was opened. His was the second lowest bid. The period within which the evaluation of tender and award of contract should have been done was on or before 7.2.2002. Admittedly it has not been done. Therefore the Tender Accepting Authority sought for extension of validity of tender from the tenderers for completion of the evaluation by two months, i.e., on or before 7.4.2002. It is only the petitioner



the second extension. The answer to this question depends on the interpretation to be placed to Rule 22. Rule 22 of the Rules, reads as under:-

"Rule 22:- Time taken for evaluation and extension of tender validity - (1) The evaluation of tenders and award of contract shall be completed, as far as possible, within the period for which the tenders are held valid.

(2) The Tender Accepting Authority shall seek extension of the validity of tenders from the tenderers for the completion of evaluation, if it is not completed within the validity period of tender. ✓

(3) In case the evaluation of tenders and award of contract is not completed within extended period, all the tenders shall be deemed to have become invalid and fresh tenders may be called for."

11. The law regarding interpretation of statute is well settled. The golden rule of interpretation is that the words of statute must prima facie be given their ordinary meaning. The cardinal rule of construction of statutes is to read the statutes literally, i.e., by giving to the words their ordinary, natural and grammatical meaning. If however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may not adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. The intention of the legislature is primarily to be gathered from the

language used, which means that the attention is to be given to what has been said, as also what has not been said. It is contrary to Rules, to read words into the statute unless it is absolutely necessary for the Court.

12. Keeping this principle in mind if we look into Rule 22 it becomes clear that the said Rule provides for a time limit within which these tenders have to be evaluated and in the event of the same being not done within the stipulated period, provides for extension of time. The sub-Rule (1) of Rule 22 categorically states that the evaluation of tenders and award of contract shall be completed, as far as possible, within the period for which the tenders are evaluated. Therefore, the completion of evaluation of tender within the period stipulated is the rule and only in exceptional cases, the period for evaluation may be extended. If within the stipulated period the tenders are not evaluated, sub-Rule (2) of Rule 22 confers the power on the Tender Accepting Authority to seek extension for evaluation of

✓

WP.22588-22589/02(GM-TEN)

- 14 -

tenders from the tenderers for the completion of evaluation. Therefore when this power is to be exercised as an exception, the said provision has to be construed strictly. Sub-Rule (3) of Rule 22 categorically provides that even if the evaluation of the tender is not made within the extended period, then no option is given to the Tender Accepting Authority and the Legislature has made its intention clear by using the words that all the tenders shall be deemed to have become invalid and fresh tenders have to be called for. Therefore, once the Tender Accepting Authority does not evaluate tenders within the stipulated period or within the extended period, then that tender becomes invalid and no discretion is given to the said Authority except to call for fresh tenders. The whole object of Rule 22 appears to be have these contracts executed and implemented within a time frame.

13. If the sub-rule (2) of Rule 22 regarding extension is to be interpreted as extensions by adding the letter "s", not only it would amount

✓

WP.22588-22589/02(GM-TEN)

- 15 -

to rewriting the Section, but it runs contrary to the intention of the Legislature in enacting the aforesaid law. When after opening of a tender, the Tender Accepting Authority unduly delays the finalisation of the tenders and acceptance of tender, it would lead to doubt in the mind of the tenderers. More over, the work for which the tender is called for has to be completed within a particular time frame. When a tenderer quotes his price, he would take into consideration the prevailing price and possible escalation in the price during the period of completion of the work. If there is inordinate delay in completing the process of finalising the tender, the entire calculations would go hay wire. But, at the same time sufficient time is to be given to the Tender Accepting Authority to evaluate each tender and as far as possible every effort should be made to complete the process within the period for which the tenders are evaluated. However in exceptional cases if some more time is required, taking note of the practical difficulties, provision is made for extension of time.

✓

Therefore, keeping in mind the object sought to be achieved, the language employed in the Section and the intention of the Legislature, it becomes clear that extension of time for completion of evaluation is only by way of an exception and it should be evaluated within the stipulated period. Therefore, it follows that the word "extension" used in sub-rule (2) of Rule 22 cannot be interpreted to be extensions which are unlimited. If such an interpretation is placed, it would result in absurdity and would defeat the very object of the law. Therefore, I do not find any substance in the contention of the learned counsel for the petitioner that word "extension" should be read as extensions and in that context the judgments relied on by the learned counsel for the petitioner in so far as the interpretation of the statute is concerned, are of no assistance.

14. Infact dealing with the right of the tenderer, a Division Bench of this Court in the case **SOUTH INDIA CORPORATION LIMITED ..vs.. THE**



KARNATAKA POWER CORPORATION LIMITED & OTHERS, reported in ILR 2002 KARNATAKA 3038, after reviewing the entire case law including the judgment in the case of TATA CELLULAR ..vs.. UNION OF INDIA, rendered by the Supreme Court, has held that the tenderer's right is only for a just consideration of his tender. Only if his case is not considered in a just manner and only when the Decision Making Authority exceeds its power, commits an error of law, commits breach of natural justice or abuse its powers, then judicial review is called for. In the instant case as no such circumstances exist, a case for judicial review is not made out.

15. Therefore, I do not find any merit in these writ petitions. Accordingly, they are rejected.

\*ck/-

Sd/-  
Judge