

IN THE HIGH COURT OF KARNATAKA

December 1, 2009

*Ashok B. Hinchigeri, J.*

VEERABHADRESHWARA TRADERS, GULBARGA

v

THE REGISTRAR, GULBARGA UNIVERSITY, GULBARGA AND ANOTHER

*The Court*, made the following:

**ORDER**

The petitioner has sought the writ of *certiorari* for quashing the 1st respondent's order, dated 03-06-2009 (Annexure-F) giving the contract of supplying and installing the solar water heater units to the first respondent-University's hostels. The learned Counsel for the petitioner, Sri N.S. Deshpande submits that the respondent 1 has given the contract to the respondent 2 without calling for the tenders. He submits that as per Section 5 of the Karnataka Transparency in Public Procurements Act, 1999 ('Transparency Act' for short), no instrumentality of the State can procure goods or services except by inviting tenders. He submits that if the petitioner were only to be given an opportunity to take part in the process of supplying and installing the solar heaters, it could have executed the work at a rate much lesser than the ones quoted and received by the respondent 2.

2. Sri N.S. Deshpande pointedly brings to my notice the legal notice, dated 02-02-2009 issued on behalf of the petitioner to the respondent 1. The respondent 2 did not give reply to the legal notice, much less complying with the demand contained therein. No information, much less the tender forms were issued by the respondent 1 to the petitioner despite the issuance of legal notice.

3. Sri A. Vijay Kumar, the learned Counsel for the respondent 1 submits that there is no legal impediment for the first respondent to procure the goods under the rate contracts from the Director General of Supplies and Disposals (DGSD). In the instant case, the list is obtained from the office of the DGSD. As the respondent 2 and another manufacturing unit M/s. Kotak Urja, Bangalore, were operating in Karnataka, the first respondent called upon both of them to install one solar heater at one of the first respondent's hostels on trial basis. On finding that the second respondent's materials and services are better than M/s. Kotak Urja, Bangalore, and as the 2nd respondent has already installed 400 solar units in Gulbarga, the respondent 1 had approved the respondent 2. Yet another aspect, which has weighed with the first respondent, is that the respondent 2 gave the document of 3% on the rates quoted by it. After lot of deliberation, the first respondent's building committee accepted the offer of the respondent 2. The highest body of the University, namely, the Syndicate has also passed the resolution approving the giving of the contract to the respondent 2.

4. Sri S.M. Chandrashekar, the learned Counsel for the respondent 2 submits that this petition has become infructuous. The respondent 2 has supplied and installed the solar units and received the payment. He submits that the respondent 2 responded to the notification issued by the first respondent on the web-site. He submits that the DGSD has prepared the list based on the good quality and lower rate offered the parties.

5. In the course of his rejoinder, Sri N.S. Deshpande submits that the legal notice was issued on 02-02-2009 whereas the contract of supplying the units and installing them is given on 03-06-2009. Further this Court granted the interim order on 15-09-2009 and the last payment is made on 02-09-2009 by the respondent 1 to the respondent 2.

6. Sri N.S. Deshpande prays for the awarding of appropriate damages and of the cost of litigation.

7. The Transparency Act is enacted for ensuring transparency in public procurements of goods and services by streamlining the procedure in inviting, processing and acceptance of tenders by procurement entities. Section 5 of the Transparency Act contains the prohibition against procuring goods or services except by inviting tenders.

8. No doubt, under Section 4(f) of the Transparency Act the goods or services can be procured under the rate contracts from the DGSD but there has to be transparency. The respondent ought to have obtained the list of the manufacturers or suppliers of the solar units from the DGSD, which has not been done in the instant case. Further, the first respondent ought to have given an opportunity to all the parties figuring in the list prepared and maintained by the DGSD. This also has not been done. Obviously, the course appears to have been choosing not the bid route but the MOU (Memorandum of Understanding) route.

9. The first respondent-University, an instrumentality of the State receives the legal notice dated 02-02-2009 but it would not give any reply to the petitioner. It would not share any information with the petitioner. After two months of the receipt of the legal notice, it awards the contract to the respondent 2. There is much that is wanting on the part of the first respondent-University.

10. The State largess cannot be given without observing the requirements of public law. Only on giving the widest possible publicity, the supplier has to be selected in accordance with the law.

11. Without giving any information to the petitioner despite the receipt of the legal notice on his behalf and without giving any opportunity to the petitioner to take part in the process of supplying and installing the solar units, the handpicking the respondent 2 only makes the first respondent-University fail in the test of reasonableness.

12. Though this Court granted an interim order of stay on 15-09-2009 and though the first respondent-University's act of denying the opportunity to the petitioner are absolutely unjustifiable, I am afraid that the clock cannot be put back. Because the respondent 2 has rightly or wrongly supplied and installed the solar units and received the payments. Under these circumstances, the only relief that can be granted to the petitioner's side is to award the cost of this litigation. I dispose of this petition with a direction to the first respondent-University to pay the cost of Rs. 5,000/- (Rupees Five Thousand only) to the petitioner within two weeks from the date of the issuance of the certified copy of today's order. The first respondent-University is directed to comply with the requirements of Transparency Act in the matter of procuring the goods and services in future.