

(2016) 07 KAR CK 0034

KARNATAKA HIGH COURT

Case No: Writ Petition No. 15012 of 2016 (CM-TEN)

Chaithanya Bharathi Grameena
Abhivrudhi Samshte, Yelawala
Hobli, Mysore

APPELLANT

Vs

General Manager, South
Western Railway, Hubli

RESPONDENT

Date of Decision: July 28, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 6 KantLJ 679

Hon'ble Judges: A.S. Bopanna, J.

Bench: Single Bench

Advocate: Sri Y.K. Narayana Sharma, Advocate, for the Petitioner; Served and Unrepresented, for the Respondent No. 4; Sri N.S. Prasad, Advocate, for the Respondent Nos. 1 to 3

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.S. Bopanna, J. - The petitioner is before this Court assailing the order dated 12-2-2016 impugned at Annexure-M to the petition. In that light, the petitioner is seeking that the respondents 1 to 3 be directed to accept the bid/offer of the petitioner as on the date of submission of the bid as per the observations by this Court through the order dated 2-9-2015 passed in W.P. No. 11532 of 2015.

2. The petitioner and the fourth respondent among others responded to the tender notification floated by respondents 1 to 3. On consideration of the same, through the letter of acceptance dated 28-1-2015 the work had been assigned in favour of the fourth respondent herein. The petitioner claiming to be aggrieved by the same was before this Court in W.P. No. 11532 of 2015. This Court on consideration of the

rival contentions has by its order dated 2-9-2015 arrived at the conclusion that the action of respondents 1 to 3 was not justified and in that light having set aside the recommendation of the Tender Committee dated 27-1-2015 which resulted in letter of acceptance dated 28-1-2015 had directed respondents 1 to 3 to redo the process in terms of the observations made in the order within four weeks.

3. Respondents 1 to 3 had assailed the said order before the Hon"ble Division Bench in W.A. No. 3489 of 2015 and connected petitions. The Hon"ble Division Bench by the order dated 2-11-2015 had however affirmed the order and as such the reconsideration has thereafter been made by the respondents. The Tender Committee by consideration dated 12-2-2016 made a recommendation to discharge the earlier tender and call for a fresh tender duly recasting the estimate taking into consideration the High Court"s observations. The petitioner being aggrieved by the act of respondents 1 to 3 in not considering the case of the petitioner and awarding the work to him, is before this Court in this petition.

4. Respondents 1 to 3 have filed their objection statement seeking to sustain the order. It is their contention that the consideration made by the respondents 1 to 3 is in terms of the directions issued in W.P. No. 11532 of 2015. In that light, taking in consideration an observation that had been made by this Court that respondents 1 to 3 being the Statutory Authority are to ensure the payment of minimum wages, have kept in view the prevailing minimum wages applicable as on the date of reconsideration made by the Tender Committee. In that view, having reassessed the bid submitted by the tenderers and on finding the bid submitted by M/s. Vinayak Manpower Consultant, Mysore which had qualified as being excessive has arrived at the conclusion that the same tender process cannot be concluded and therefore has discharged the same to call for fresh tender. Hence, it is contended that when the Tender Committee has applied its mind to the fact situation keeping in view the observations of this Court in the earlier petition, the action of the respondents 1 to 3 does not call for interference, is the contention. It is also pointed out that the petitioner had filed a contempt petition and the said proceedings had been dropped taking note of the fact that respondents 1 to 3 have taken a decision in the matter. It is therefore contended that the instant petition is liable to be rejected.

5. In the light of the rival pleadings, I have heard the learned Counsel for the parties and perused the petition papers.

6. At the outset, it is to be taken note that though the Hon"ble Division Bench of this Court by the order dated 23-2-2016 in CCC No. 93 of 2016 had dropped the proceedings on taking note of the recommendation which is presently impugned in the instant petition, that is only in view of the compliance of the direction. However, liberty had also been reserved to the petitioner herein to seek for appropriate relief and it is in that view, the petitioner is before this Court. Therefore to the said extent, in any event, the consideration in the present proceedings is permissible in law as the correctness of the consideration and recommendation made has not been

decided.

7. Further the contention on behalf of respondents 1 to 3 at the outset is that by the recommendation, the Tender Committee had taken into consideration the quote that had been made by the qualified tenderer. When it was not acceptable and tender form in Clause 5 as also in Clause 8.18 had provided to reserve right in favour of the Railways to abandon the tender process without accepting any of the bids is justified. Such right which is being sought to be exercised at this juncture will have to be considered in the background of the earlier proceedings between the parties and only thereafter this Court will have to arrive at a conclusion as to whether the consideration as made is justified. In that circumstance, the said right cannot be considered as an absolute right which would be available to respondents 1 to 3 as otherwise the process of judicial review will be defeated.

8. Therefore, if these aspects of the matter are kept in view, what requires consideration is as to whether the manner in which respondents 1 to 3 have proceeded and concluded the matter would be justified keeping in view the consideration that had been made earlier in W.P. No. 11532 of 2015 through the order dated 2-9-2015 and whether respondents 1 to 3 would be justified in contending that the present position was taken into consideration to ensure that the minimum wages prevailing as on today was taken into consideration.

9. In that regard, what is necessary to be noticed is that this Court at the first instance while considering the minimum wages that was required to be quoted, had also taken into consideration the date on which the tender documents was to be dropped for the purpose of consideration and in that regard had taken note that it was to be done on 13-10-2014 and 14-10-2014 during the office hours and on 15-10-2014, that is the date of opening the tender. The said dates had been referred for the purpose of arriving at the conclusion that the minimum wage that was prevailing as on such date and the bids that were to be submitted could not have been for lesser than minimum wage prevailing as on that date. Such consideration had been made to ensure that the minimum wage which was prevailing as on the date of submission of the tender was required to be quoted by the tenderers and that would be the relevant price to be considered for the purpose of arriving at the conclusion both with regard to the qualification and the price quoted at the evaluation of the technical as well as the financial bid.

10. At the first instance, the work had been assigned in favour of respondent 4 since the price as had been quoted by them was the least but was lesser than the minimum wage that was prevailing as on such date. The quote that had been made by the petitioner was marginally higher, as the minimum wage that was prevailing as on that date had been quoted by the petitioner.

11. Having taken note of these aspects, this Court had made an observation that if the contention of the respondents therein viz., respondent 4 herein is accepted,

injustice would be caused to the person who has complied the law while the one who does not adhere to the legal requirement would seek entry through the back door by quoting lesser than the amount which is required to be paid as per law. Such observation had been made since it is well-settled that the condition indicated in the tender documents will have to be complied as on the date the tender documents were to be submitted as per the last date provided therein. It is in such circumstance, this Court was of the opinion that the person who has complied with the law and on such compliance has also quoted the lesser amount will have to be considered for the purpose of awarding the work since it was noticed that respondent 4 herein had not complied with the legal requirements as on such date by quoting the minimum wage which was prevailing and directed that the matter be reconsidered.

12. In the background of such direction that was issued, the Tender Committee no doubt has considered the matter on 12-2-2016. While doing so, the minimum wage prevailing as on such date or reconsideration has been taken into consideration rather than the date of submission of the bids. Therefore has held the petitioner also as "not qualified" as the petitioner's quotation was lesser than the minimum wage that was prevailing as on the date of reconsideration. Only one of the tenderers viz., M/s. Vinayaka Manpower Consultant has been considered as qualified since their quote included amount other than minimum wage and as such was more than the minimum wage prevailing, but the price quoted has been considered as excessive and therefore abandoned the same.

13. Having earlier considered the matter, I am of the opinion that the nature of the consideration as made by the Tender Committee is not in accordance with the intention expressed by this Court. I am of the said opinion for the reason that this Court after taking note of all aspects of the matter relating to the last date for submission of the bids, the minimum wage prevailing as on that date and the person who would be qualified in such circumstance had directed reconsideration to be made by respondents 1 to 3 in that direction. The Tender Committee having taken the minimum wages prevailing as on the date of consideration to be made by it for the purpose of disqualifying any of the tenderers would not be justified since it was not as if the tenderers were given an opportunity to resubmit their tenders and thereafter a consideration was to be made.

14. As noticed, the direction was to redo the process and if that be the position, the situation as it existed at the time of submission of the bids pursuant to the tender notification dated 2-9-2014 was kept in view and a reconsideration was to be made. I am of the said opinion for one more reason that if at the first instance the consideration had been appropriately made as indicated in the earlier order and if the work order in that circumstance had been issued to the petitioner at that point in time, the work period was for two years i.e., it would have been valid up to 27-1-2017, even if the date on which the letter of acceptance at the first instance

which had been given to respondent 4 is taken into consideration. If that be the position, as on 12-2-2016, when the reconsideration was made by the Tender Committee, it was a period prior to the conclusion of the original period of two years and the reconsideration could not have been on fresh conditions. Therefore, a consequence because of the increase in the minimum wages subsequent to the award of the work would in any event have flowed, if at the first instance an appropriate consideration was made and the work was accordingly awarded as on 28-1-2015. Therefore, a subsequent event could not have been taken note to disqualify a tenderer who was otherwise qualified at the time of first evaluation.

15. Hence, when the very same tender notification was the basis on which reconsideration was ordered and such reconsideration was made by the Tender Committee, the Tender Committee once again taking into consideration the bids of the tenderers who had not qualified earlier was not justified and that by itself could not have been made a basis to qualify one of the tenderers, disqualify the others and come to the conclusion that the quote made is excessive and cancel the entire process. As already indicated, such right of cancelling the entire tender process and retendering is no doubt the right available under the tender documents but the question is, under what circumstance? In the present circumstance, the reconsideration had been directed by this Court after finding the fault committed in the earlier process. Even in that circumstance, if such conclusion being reached by respondents 1 to 3 is accepted, it would amount to over reaching the directions issued by this Court and a devious method adopted to over come the process of judicial review.

16. Therefore, in the present circumstance, I am of the opinion that the consideration as made cannot be accepted as being a fair procedure adopted. If that be the position, the decision relied on by the learned Counsel for the respondents in the case of **State of Uttar Pradesh and Another v. Al Faheem Meetex Private Limited and Another (2016) 4 SCC 716** cannot be of assistance as the Hon'ble Supreme Court in that circumstance had taken note of the manner in which the consideration has been made and had arrived at the conclusion.

17. Hence, I am of the opinion that keeping in view the nature of reconsideration that is made by respondents 1 to 3, it would not be appropriate for this Court to once again direct a reconsideration, but a positive direction will have to be issued to respondents 1 to 3 to issue the work order in favour of the petitioner herein with a rider that respondents 1 to 3 shall in any event ensure that the petitioner shall pay the minimum wages to its workers as prevailing from time to time till the work comes to an end. Such direction is also warranted herein since the work in any case does not involve work of technical nature but is only for house keeping and the quote is of minimum wage and no other evaluation is required.

18. In that view, the recommendation dated 12-2-2016 impugned at Annexure-M is quashed. A direction is issued to respondents 1 to 3 to issue the work order and

permit the petitioner to work for a period of two years. The period of two years is being granted by this Court at this juncture, since this Court has arrived at the conclusion that the reconsideration made is not justified and respondent 4 herein was not entitled to the work order at the first instance but had been permitted to work by adopting such process. Therefore, this Court in such instance in any event, will have to step in and remedy the situation. Since I have already indicated that respondents 1 to 3 shall ensure that the petitioner pays the prevailing minimum wages, the interest of the workmen in any event would be protected in that circumstance. The above order shall be complied by respondents 1 to 3 within a period of four weeks.

19. The petition stands disposed of accordingly.