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(1998) 5 ALD 671

Andhra Pradesh High Court

Case No: Writ Petition No. 17675 of 1998

Shri Ramakrishna Engineering Company		APPELLANT
	Vs	
State of A.P. and Others		RESPONDENT

Date of Decision: Aug. 20, 1998

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (1998) 5 ALD 671

Hon'ble Judges: B.S. Raikote, J

Bench: Single Bench

Advocate: Mr. M. Sivananda Kumar, for the Appellant; Government Pleader for Revenue, Mrs. Sumalini Reddy, SC for DRDA and Mr. Harender Pershad, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard.

This Writ Petition is filed for a Writ of Mandamus directing the respondents herein to strictly follow the tender conditions by placing the orders with the petitioner, since the lowest tender of the petitioner is accepted, and a further direction not to place orders with any one else, for the supply of the implements, for which tender was called for vide tender notification Rc.No.E/7 of 98, dated 3-1-1998.

2. The learned Counsel for the petitioner strenuously contended that as per the tender notification called for, the petitioner was the second lowest tenderer regarding the supply of all the items required under the tender notification dated 3-1-1998. But respondents 1 to 3 could not have placed the orders with other tenders and, therefore, the action of the respondents in placing the orders with other tenderers, whose tender rates are higher than the petitioner, is illegal and violative of Article 14 of the Constitution of India.

3. By filing counter affidavit on behalf of the Official respondents as well as the proposed respondent, the learned Counsel for the respondents contended that after submitting respective tenders in pursuance of the tender notification, all the tenderers were called for negotiations on 19-2-1998, 24-2-1998 and 5-3-1998. On all these occasions, the petitioner and other tenderers were present. The Official respondents confirmed the reduced rates of other tenderers and the petitioner''s lowest rates were also confirmed. All the tenderers, except the petitioner, have entered into agreements with the respondents as per the rates offered in the negotiations/meetings held before 8-4-1998. But in the meanwhile, the petitioner, instead of coming forward to enter into agreement, approached this Court by way of filing the Writ Petition No.6365 of 1998 alleging that before the stipulated date, all the tenderers have entered into agreement and Official respondents have placed orders with them. The said Writ Petition was dismissed by order dated 11-3-1998 as being premature. The respondents further contended that they issued office letter to the petitioner to confirm his rates quoted in his tender. The petitioner vide his reply dated 17-3-1998 confirmed the rales. Thereafter, Respondent No.2 issued letter dated 11-5-1998 vide Rc.No.E/7 of 1998 requesting the petitioner to attend the office for entering into agreement before 13-5-1998. But the petitioner did not turn up. The Official respondents, having no other alternative, placed orders with other tenderers regarding different makings and companies as per the choice of the beneficiaries, that is, marginal and small farmers for whom the scheme is sought to be introduced, by the Central Government. They further contend that since the petitioner did not turnup by 13-5-1998, to execute agreement in terms of the said letter, he could not complain of the action of the Official respondents in placing orders with other tenderers whose tenderers were accepted.

4. As against this contention, the learned Counsel appearing for the petitioner contended that regarding other parties, agreements were entered into much before the date 13-5-1998, fixed for the petitioner. The learned Counsel for the petitioner contends that the tender of the proposed respondent, M/s.Sravani Enterprises was already accepted on 8-4-1998 even before the letter dated 11-5-1998 was addressed to the petitioner. As against this, the case of the respondents is that the petitioner could not be communicated in view of the filing of the Writ Petition No.6365 of 1998 before this Court, which was dismissed later as a premature one. However, it is further contended by the Official respondents that even by 13-5-1998, the petitioner did not execute agreement in terms of the letter dated 11-5-1998.

5. In this writ petition, the fact of filing the earlier writ petition is not mentioned. The respondent both, official and proposed, contended that after executing the agreements with other tenderers, implements, machineries,. equipments of different makings as per the choice of the farmers beneficiaries were already supplied and as such interim order granted by this Court has become infructuous.

6. From the rival contentions, I find that there are few facts which are clearly admitted by both sides; that tenders were called for vide tender notification dated 3-1-1998 vide

proceedings Rc.No.E/7 of 98. In pursuance of the said tender notification, the petitioner and other eligible persons filed tenders. The petitioner and other tenderers were called for negotiations to be held on 19-2-1998, 24-2-1998 and 5-3-1998 and on all these occasions, the petitioner and others were present and they offered their reduced rales, item-wise. It is also not in dispute that on 16-3-1998, the second respondent sent a letter through FAX to the petitioner informing him to confirm their rates and for the same, the petitioner did confirm their rates vide her letter dated 17-3-1998. The petitioner received letter dated 11-5-1998 vide proceedings in Rc.No.E/7 of 1998 directing him to come forward to execute an agreement by 13-5-1998, but the said agreement was not executed within that date. The complaint of the petitioner is that by that date, other tenderers" offers, regarding items in question, were already accepted by the Department and such acceptance is discriminatory, since the petitioner"s offer is the second lowest than others.

7. It is to be noted that under Ganga Kalyana Yojana, the scheme sponsored by the Central Government with matching grant of the State Government is introduced for the benefit of small and marginal farmers, to purchase agricultural implements/machineries/ equipments like Oil Engines, Electric motors etc., Under this scheme, the beneficiaries, i.e.t farmers were required to pay 50% of the unit cost and balance amount would be given by the Government as subsidiary. The SC/ST and PH category farmers, have to pay only 25% of the cost and the subsidiary would be 75% subject to maximum cealing of Rs.12,500/-. From the entire scheme, it is clear that the beneficiaries have option to choose a particular brand and on such requirement of farmers, tenders were to be called for, from different authorised Distributors/Dealers for their products, Accordingly respondent No.2 called for tenders vide tender notification dated 3-1-1998. Since the argument of both sides in with reference to Clause 3 of the Tender Notification, I think it would be appropriate to extract the same, which reads as under.

"3. This tender is called for to short-list the Companies products and to finalise the lowest rates for each product. The work orders will be placed with the lowest tenderers/Companies basing on the requirement of the beneficiaries."
(Emphasis is supplied by me)

In pursuance of the said tender notification, as stated in the counter affidavit of the official respondents, 40 tenders were received for supply of petitioner"s brand, namely M/s. Shri Rarnakrishna Engineering Company, and accordingly letter dated 11-5-1998 was issued to the petitioner, stating that quotation of rates regarding 5 HP, 6 HP and Monobloc Electric Motors, as agreed to in the negotiations meeting held on 5-3-1998 were confirmed, and the said confirmation by the respondents was also received by the petitioner, and the petitioner was called upon to execute an agreement by 13-5-1998. But the fact remains that the petitioner did not execute the said agreement by 13-5-1998. It is the case of the respondents that when the petitioner did not turn up before 13-5-1998 for executing the agreement, the fanners have chosen some other brand, other than the petitioner"s brand, and whatever brand they have chosen, the Official respondents accepted the tenders of such particular brands and orders were placed. They have also

stated that as per the choice of the fanners regarding other brands, their respective tenders were accepted and such tenderers entered into agreement before their stipulated dates, and orders were placed and equipments were supplied to the beneficiaries as per their choice. From this fact it is clear that so far as the petitioner is concerned, he did not execute, agreement before 13-5-1998 as communicated by letter dated 11-5-1998. If the petitioners were to execute the agreement before 13-5-1998, the order would have been placed with the petitioner for supply of machineries, equipments etc., as per the choice of the beneficiaries. But the petitioner did not turn up for executing the agreement with second respondent. Only in those circumstances, the respondents have placed the orders with other tenderers. Hence, the petitioner has to blame himself in not turning up for executing the agreement before 13-5-1998 as per the letter dated 11-5-1998. In fact 40 tenderers had opted the petitioner''s brand. Moreover under Clause 3 of the tender notification terms in question, lowest rate of each tenderer would be accepted subject to the requirement of the beneficiaries. As per the said clause the requirement of the beneficiaries is the primary factor. Suppose, if it were to be the case, that, no beneficiary opted any product of the petitioner and consequently if the petitioner''s offer is not accepted, then also the petitioner would not have any case. But the fact remains in this case is that 40 applicants opted for the product of the petitioner. But the petitioner failed to execute the agreement in terms of letter dated 11-5-1998, before the stipulated date of 13-5-1998. In these circumstances, I do not find that the petitioner can ventilate any grievance before this Court. For the above reasons, I pass the order as under:

The writ petition is dismissed, but in the circumstances, without costs. Consequently the interim order granted by this Court stands vacated.