

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION Nos.29565 of 2014, 54 and 5021 of 2015

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COMMON ORDER:

Heard the learned Counsel for the petitioners and the learned Standing Counsel for the Singareni Collieries Company Limited. These three Writ Petitions are being disposed of by this common order as they involve the award of transport contracts by the Singareni Collieries Company Limited.

The petitioner in W.P.No.29565 of 2014 is a successful bidder in respect of enquiry dated 02.12.2009 and it was awarded contract for a period of three and a half years with 12/16/24 hours availability per day. After expiry of the contract, it was extended by six more months on the same terms and conditions till 31.12.2014 by proceedings of the respondents dated 30.06.2014. When the respondents initiated enquiry by inviting fresh tenders, the Writ Petition was filed challenging the action of the respondents in issuing tender notice on 11.09.2014.

This Court, by order dated 26.09.2014, held that tender process may go on, but the finalization of tender process shall be subject to further orders. Another order was passed on 17.10.2014 as follows:

“Under Clause-C of the terms and conditions of the contract, respondent No.1 shall exercise sound discretion to decide as to whether the contract awarded to the petitioner should be continued for 1½ years. From the extension of the contract by six months, it is reasonable to presume that the respondents are satisfied with the condition of the vehicles belonging to the petitioner. This being so, without further examining the condition of the petitioner’s vehicles and being dissatisfied that the condition of the vehicles is not good for extending the term of the contract, the respondents ought not to have issued fresh tender notification.”

In the meanwhile, when the bid of the writ petitioner in W.P.No.39438 of 2014 was not considered, this Court passed a final order on 23.12.2014 disposing of the said Writ Petition giving liberty to the petitioner therein to make a representation to the second respondent therein and the second respondent therein was directed to consider the same and communicate the order to the petitioner therein.

The petitioner in W.P.No.39438 of 2014, accordingly, submitted a representation on 27.12.2014. Without considering the said representation, the price bids in respect of the 12 items of work were opened on 30.12.2014 and the petitioners in W.P.No.54 of 2015 had become successful bidders in respect of the 12 items of work. When the petitioner in W.P.No.39438 of 2014 filed a Contempt Case on the ground that its representation dated 27.12.2014 was not considered and the price bids were opened, the respondents noticed the representation, considered the same and found that, due to technical fault in the computers they have declared the petitioner in W.P.No.5021 of 2015 as successful tenderer in respect of the 12th item of work and rectified the same by holding the third respondent in W.P.No.5021 of 2015 as the lowest tenderer in respect of item No.12 of the works.

Now when the Writ Petitions are taken up for final hearing, learned Counsel for the petitioner in W.P.No.29565 of 2014 submits that by virtue of clause (1) of tender conditions of 2010, the petitioner is entitled for extension of time and without considering the representation dated 30.07.2014, the tenders are invited.

Clause (1) of the terms and conditions of the tender reads as follows:

“The Contract shall be valid initially for a period of 3½ years which may be further extended for 1½ years more based on condition of vehicle/deployment status/performance. The tenderer should deploy latest model i.e., vehicle should be first time registered after date of opening of the enquiry. Vehicles with permanent registration & valid fitness issued by Transport Authorities are only permitted for deployment and vehicles with temporary registration will not be accepted. The Vehicle documents must be available with the driver at

all times.”

Learned Standing Counsel for the Singareni Collieries Company Limited submits that the said clause in the terms and conditions cannot be read as a condition for renewal of the contract. But, the six months extension was granted by virtue of clause 47 of the terms and conditions of the contract. The petitioner in W.P.No.29565 of 2014 is not entitled for any renewal as a matter of right.

I have read clause (1) of the terms and conditions and do not find any right in favour of the petitioner in W.P.No.29565 of 2014 for automatic renewal of contract, and it is open to the respondents company to invite fresh tenders. In fact the petitioner in W.P.No.29565 of 2014 itself participated in the fresh tender process and having not become successful, it is not open to it to contend that the respondents company cannot invite tenders. Hence, W.P.No.29565 of 2014 is liable to be dismissed.

W.P.No.54 of 2015 is filed by taking advantage of the proceedings issued on 30.12.2014, under which the petitioners in W.P.No.54 of 2015 were declared as lowest tenderers in respect of all 12 items, when the representation submitted by the third respondent in W.P.No.5021 of 2015 on 27.12.2014, pursuant to the order of this Court in W.P.No.39438 of 2014 dated 23.12.2014, is pending consideration.

The respondent Company noticed the technical defect in the computers and rectified the same and issued proceedings on 24.02.2015 declaring the third respondent in W.P.No.5021 of 2015 as the lowest tenderer in respect of item No.12.

In the circumstances, the grievance of the petitioner in W.P.No.5021 of 2015, based on a mistake, does not survive. Hence, W.P.No.5021 of 2015 is also liable to be dismissed.

In view of the disposal of the above two Writ Petitions, the cause of action in W.P.No.54 of 2015 does not survive.

Now, it is open to the respondent Company to finalise the tenders and award the work in accordance with the provisions of the tender notice.

All the three Writ Petitions are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

09.06.2015

vs

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