

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.42094 OF 2022

Between:

M/Praveen Electrical Engineering Works

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 31.01.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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M/Praveen Electrical Engineering Works

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> Head Note:

! Counsel for the Petitioner : Sri P.Venkanna

**^Counsel for Respondent No.4 : Sri G.Vidya Sagar
Learned senior counsel**

^Counsel for Respondent No.3: Sri Vijay Prashanth

? Cases Referred:

1. (2016) 16 SCC 818
2. (2007) 14 SCC 517
3. (2022) 1 SC 165

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 42094 of 2022****ORDER:**

Heard Sri P.Venkanna, the learned Counsel for the Petitioner the learned Senior Counsel Sri G. Vidya Sagar, appearing on behalf of the 4th Respondent and the Learned Standing Counsel Sri Vijay Prashanth, for the 3rd Respondent.

2. The Present Writ Petition is filed to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of 3rd Respondent, in issuing the impugned proceedings Rc.No.32/DHH-KMR/Plg/2022 dt.22.09.2022 to allot the contract and engage the service of 4th respondent, in respect of e-Tender No.Plg/32/IHFMS/2022 dated: 15.07.2022, providing integrated Hospital Facility Management services in TVVP Hospital (MCH, Banswada), though they are not eligible, as illegal, arbitrary and violative of principles of natural justice, consequently set aside the impugned proceedings Rc.No.32/DHH-KMR/Plg/2022 dated.22.09.2022 issued by the 3rdrespondent.

3. The case of the petitioner, in brief, is as follows:

a) The 3rd respondent i.e., Telangana Vidya Vidhana Parishad, had issued a e-Tender vide No.Plg/32/IHFMS/2022 dated 15.07.2022 for providing integrated Hospital Facility Management services in TVVP Hospital (MCH, Banswada) in Kamareddy District and the estimated value of the contract was Rs. 90,00,000/- (Rupees Ninety Lakhs). The bid started on 22.07.2022 and the closing date of the bid was 29.07.2022 and the said e-Tender contracts are reserved for SC Category.

b) Petitioner being promoted by its proprietor, who belongs to SC Category had bid for the e-Tender and Respondent No. 4 too have submitted their bid for the e-Tender even though they were not being promoted by the persons belonging to SC Category. The 3rd director of the 4th respondent had only been appointed on 27.04.2022, who belongs to SC category, for the purpose of participating in the e-Tender, as it had been reserved for SC Category only.

c) The action of respondent No.4 in appointing a director of SC Category is in violation of G.O.Ms.No.59 dated 21.05.2018 and hence, the tender of respondent no.4 should be rejected but the respondent no. 2 & 3 have accepted & opened their bids and put the petitioner under huge loss.

d) Instead of Section 4.2.3 (m) of E-Tender Document mandating submission of proof of SC Category, the respondent Nos.2 & 3 have issued the impugned proceedings Rc.No.32/DHH-KMR/Plg/2022, dated 22.09.2022 allotting and engaging the services of the 4th respondent for providing integrated Hospital Facility Management Services in TVVP Hospital (MCH, Banswada) in Kamareddy District.

e) The SC/ST Contractors Association, Telangana on 13.09.2022 have approached the 2nd respondent and have submitted a representation to comply with G.O.Ms.No.59 and decide the bids accordingly. Even then, the 2nd and 3rd respondents have allowed and opened the commercial bids of 4th respondent, which is in violation of Section 8.2.1. Even the petitioner had submitted their objections to the 2nd

respondent on the illegalities committed under Section 4.2.3 and 4.2 of E-Tender Document.

4. The case of the respondents, in brief, is as follows:

a) The 4th respondent herein is a company, which is owned by Schedule Caste individual, holding a majority of 65% of the entire share capital of the company and is "owned" by persons from SC Community.

b) Reliance of petitioner on G.O.Ms.No.59, Irrigation and CAD (Reforms) Department, dated 21.05.2018 is inapplicable to the present tender and the applicable G.O as notified in the Tender Document is G.O.Ms.No.32, Health, Medical & Family Welfare (C2) Dept. dated 12.03.2022 and that the 4th respondent had complied with the conditions specified therein.

c) Out of the 6 bidders, who have submitted their bids, for the 2 (Two) Tender notifications issued by the 2nd respondent vide E-Tender No.Plg./32/IHFMS/2022 dated 15.07.2022 and Tender Notification No.Plg./32/ IHFMS/2022, dated

15.07.2022, only 4 (Four) bidders including the petitioner and the 4th respondent have qualified in the technical bid evaluation.

d) While things stood thus, the petitioner had submitted representation dated 13.09.2022 alleging irregularities in awarding of the tender to 4th respondent.

e) The Petitioner having participated in the tender process and adhering to all the conditions laid out in G.O.Ms.No.32, Health, Medical & Family Welfare (C2) Dept. dated 12.03.2022 is estopped from applicability of conditions laid out in G.O.Ms.No. 59, Irrigation & CAD (Reforms) Dept dated 21.05.2018 solely because the petitioner was unsuccessful in procuring the works.

f) There is no deviation on the part of the 4th respondent in complying with the conditions specified in para 4.2.3(m) and has furnished the Community Certificate of the Managing Director and moreover, the Tender Inviting Authority had verified the technical bid of 4th respondent and after through verification had opened Financial bid of the 4th respondent.

g) The petitioner had purposefully filed the least viable bid and after being declared the unsuccessful bidder has resorted to filing multiple Writ Petition with the sole purpose of gaining unfair advantage at the expense of legitimate bidders. Hence, the Writ Petition/s is filed without any merit and hence is liable to be dismissed..

PERUSED THE RECORD :

5. Earlier orders dated 22.11.2022 of this Court in the present case WP No.42094/2022 are as follows:

“Heard learned counsel for the petitioners and learned Standing Counsel for respondent No.3.

Perused the counter-affidavits filed by respondent No.3 in WP.No.36294 and 36305 of 2022.

Prima facie, the subject work is reserved for SC category in terms of the tender conditions as well as in terms of G.O.Ms.No.59, Irrigation and CAD (Reforms) Department, dated 21.05.2018. In order to become eligible to participate in the bidding process in respect of works reserved in favour of SC category, the partners/Directors of the firm/company/proprietary concern are required to be the persons belonging to the SC

category and they should have 100% share in the said firm or company, as the case may be.

But, in the instant case, respondent No.4 is awarded the subject work on the ground that one of the Directors of respondent No.4 belongs to SC category by placing reliance on Clause 1.1.6 of the Tender Document. Such an interpretation or treating respondent No.4 as one eligible to participate in the bidding process, which is reserved for SC category, prima facie, appears to be not in consonance with the tender conditions.

In the circumstances, respondent Nos.1 to 3 are directed not to entrust the subject work to respondent No.4, until further orders. In case, if respondent No.4 has already commenced the work, no payment shall be released in favour of respondent No.4 till the next date of hearing."

6. Relevant conditions of the tender document No.Plg/32/ IHPMS/2002, dated 15.07.2022 issued by the 3rd Respondent herein in so far as the present case is concerned are as follows:

***1.1.6** Bidder should submit attested copies of documents related to the instruments such as constitution of the company/firm; Memorandum of Articles of Association, partnership deed, power of attorney, resolution of board etc. The merger/amalgamation/transfer of business/transfer of assets/share in sister concern/share in joint venture/spin off etc., of a firm which affect the bid condition relating to 'turnover' in preceding years. The eligibility of a bidder in such cases shall be ascertained by the Technical Evaluation Committee on the basis of the above stated agreement/BOD resolution/CA Certificate or any other supportive document(s) annexed with the tender documents and the Decision of the Technical evaluation Committee shall be final.*

***1.1.14** The tender document operates within the scope of G.O.Ms.No.9, dated 30.01.2017, G.O.Ms.No.31, dated 12.03.2022 and G.O.Ms.No.32, dated 12.03.2022 of HM& FW Department, Government of Telangana approved an amount of Rs.7500/- per bed/month.*

***2.2.9** L1 rate – means the lowest percentage of management service charges quoted by the bidders for the services mentioned in this Tender Document.*

***2.1.10** Matched L1 rate – means the lowest percentage of management service charges of the bidder who have consented, in writing, to match with the L1 rate and*

agreed to abide by the terms and conditions of the tender document.

4.2.3 *other valid supportive documents Eligibility for Technical qualification.*

(m) *If the work is reserved for SC category, Community certificate from competent authority (TAHASILDHAR) of the proprietor/partners/Directors of the firm shall be submitted as proof of SC category.*

8.3 Financial Bid Evaluation

8.3.3 *Subject to technical bid qualification and satisfying other conditions stipulated in the tender schedule. L1(who quotes lowest management service charges up to 5%) will be considered as successful bidder.*

7. G.O.Ms.No.32, dt. 12.03.2022 – Clause 2, Clause 3 and Clause 3(i) read as under :

2. In the reference 2nd read above, government has introduced 'Integrated Hospital Facility Management Services (HFMS) which envisages provision of patient care, sanitation, security and pest control services by an agency as amended in the reference 3rd read above.

3. To provide opportunities to entrepreneurs from Scheduled Caste (SC) community, it has been decided to provide reservation for agencies belonging to persons

from Scheduled Caste (SC) community, it has been decided to provide reservation for agencies belonging to persons from Scheduled Caste community in contracts related to provision of diet and integrated Hospital Facility Management Services (IHFMS) in government hospitals with following modalities:

i. 16% reservation shall be provided for agencies owned by persons from SC community."

8. Details of the commercial stage of the suppliers.

View supplier Bids

Supplier Name	Registration	EMD certificate	Commercial particulars
Praveen Electrical Engineering Works (excess)			9449100(4.99%
Babu Jag Jeevan Ram SC P B E P S LCCS Ltd.			---
Veerabhadra Infra And Facility Managements			9000900(0.01%excess)
G.P.Infotech			9000900(0.01% excess)
TYG Outsourcing Agency			---
TVT Contractors LLP			9000900(0.01% excess)

9. The contents of the letter dated 27.04.2022

pertaining to the Director/Signatory details :

Directors/Signatory Details

PAN	Name	Begin Date
07194856	RAJA SEKHARA REDDY KOLLY	13.05.2019
07663746	HANUMANTHA REDDY	13.01.2017
09587234	DARJPALLY MANISH	27.04.2022

10. The certificate of turnover of the 4th Respondent dated 21.03.2022 evidences as follows:

"This is to certify that M/s. VEERABHADRA INFRA AND FACILITY MANagements PRIVATE LIMITED with Income tax registration PAN No.AAFCV7264F has recorded the Annual Turnover during last four financial years.

Assessment Year	Financial Year	Annual Turnover (in Rs.)
2019-20	2018-19	9,34,657/-
2020-21	2019-20	36,24,876/-
2021-22	2020-21	32,58,245/-
2022-23 (provisional)	2021-22 (Provisional)	89,10,296/-

The above figures are based on the audited financials, records and books verified by us.

11. Few relevant paras i.e. paras 10(c) and 16 of the counter affidavit filed by the 4th respondent are as under:

"10(c) The Superintendent, District Headquarters Hospital, Kamareddy, vide Proc. Rc.No. 32/DHH-

KMR/Plg./2022, dated 22.09.2022 awarded contract to this answering respondent to engage the sanitation, patient care and security services for Integrated Hospital Facility Management Service at Area Hospital, Banswada, Kamareddy District for a period of three years commencing from 22.09.2022 to 21.09.2025. Further, by separate proceedings dated 22.09.2022 was issued awarding to contract to his answering respondent for Mother and Child Hospital, (MCH Hospital), Banswada for a period of three years commencing from 22.02.2022 to 21.09.2025. Accordingly, the answering respondent has been providing Integrated Hospital Facility Management Services to both the Hospitals from 01.10.2022 after complying with the necessary formalities. Thus, by the present writ petition, the petitioner herein seeks to set the clock back and seek for cancellation of tender dated 15.07.2022 as they failed to succeed in getting the contract.

16. In reply to averments made in Para No.9, as stated supra, the petitioner in this case has repeatedly filed writ petitions to obstruct the bidding process only because it was considered a losing bidder. The petitioner has utterly failed to demonstrate any exceptional circumstances justifying the use of writ jurisdiction in the present tender process. It is also pertinent to note that the petitioner has failed to demonstrate the violation of any rights that would make him eligible for the granting of any prayer. The

petitioner is not even the second-lowest bidder who should receive the contract instead of the fourth respondent. The petitioner has purposely filed the least commercially viable bid and after being declared the unsuccessful bidder, has resorted to filing multiple writ petitions with the sole purpose of gaining an unfair advantage at the expense of legitimate bidders. Therefore, the petitioner lacks good faith, rendering him ineligible for any order, and for this reason alone, the current writ petition is liable to be dismissed.

12. The specific contentions putforth by the learned counsel for the petitioner are as follows:

a) That as per G.O.Ms.No.59, dt.21.05.2018, "The team of SC/ST contractors include the individual contractors, proprietor firms, partnership firms and private limited companies promoted by the SC/ST's and the shareholders of the SC/STS in the proprietor ship firms, partnership firms and private limited companies should be 100%. But in the case of respondent No.4, one Scheduled caste person inducted as one of the partner/director, so, there is no 100% shareholders in case of Respondent No.4, as such these Respondent

No.4 is not eligible for participating in the above said e-Tenders.

b) As per the G.O, the respondents No.2 & 3 should have rejected the tender bid of R-4, instead of rejecting their tenders, the respondents No.2 & 3 are allowed their bids and opened their bids.

c) The petitioner suffered injustice, and deprived of its legitimate right.

d) If the official respondents are allowed to do so, the purpose of G.O.Ms.No.59, date 21.05.2018 will be defeated.

e) If the official respondents rejected the bids of Respondents No.4, petitioner will be a successful bidder.

f) As per Clause 4.2.3 (m) of the e-Tender Document "If the work is reserved for SC category. Community Certificate from Competent authority (Thasildar) of the Proprietor/Partners/Directors of the firm shall be submitted as proof of SC Category".

g) The official respondents allowed the tender bid of Respondent No.4 and impugned proceedings

Rc.No.32/DHH-KMR/PIg/2022 dt.22.09.2022 to allot the contract and engage the service of 4 respondent, in respect of e-Tender No.PIg/32/IHFMS/2022 dated: 15.07.2022, providing integrated Hospital Facility Management services in TVVP Hospital (MCH, Banswada), in favour of 4th respondent though the 4th respondent did not comply with Clause 4.2.3(m).

h) The writ petition has to be allowed as prayed for.

13. The learned Senior counsel Sri G.Vidyasagan appearing in behalf of the 4th Respondent specifically contends as follows :

(a) That the Petitioner failed to qualify in the financial bid and his tender had been rejected by the Tender Finalisation Committee.

(b) The Petitioner having participated in the Tender being an unsuccessful tenderer with an ulterior motive to stall tender proceedings and contract approached the Court with unclean hands.

(c) The 4th Respondent herein was selected as successful bidder on the strength of highest annual turnover for the Area Hospital, Banswada.

(d) The 4th Respondent is operating as Managing Director of Veerabadra Infra and Facility Management Private Limited since 28.04.2022.

(e) The 4th Respondent complied with the requirements of the tender dt. 15.07.2022 and the conditions specified in G.O.Ms.No.32, Health, Medical and Family Welfare (C2) Department, dt. 12.03.2022.

(f) The present Writ Petition needs to be dismissed as infructuous since the 4th Respondent being the successful tenderer was awarded contract by the Superintendent, District Head Quarters, Kamareddy vide Proc.Rc.No.32/DHH-KMR/Plg./2022, dt. 22.09.2022 to engage the Sanitation, Patient Care and Security Services for Integrated Hospital Facility Management Service at Area Hospital, Banswada, Kamareddy District for a period of 3 years commencing from 22.09.2022 to 21.09.2025.

(g) That the 4th Respondent was complying with the necessary formalities from 01.10.2022 itself and commenced the work and therefore, the Petitioner cannot seek cancellation of tender dt. 15.07.2022 at this point of time and hence the Writ Petition has to be dismissed in limini.

DISCUSSION AND CONCLUSION :

14. The Petitioner herein in the present Writ Petition is seeking a direction to set aside the allotment of tender to the 4th Respondent vide Proceedings Dt. 22-09-2022 and for consequential allotment to the Petitioner herein. This Court opines that the Petitioner herein is not entitled for the relief prayed for in the present Writ Petition for the following reasons :

A) Strictly in conformity with the conditions specified in Para 4.2.3(m) (extracted above) the 4th Respondent has furnished the Community Certificate of the Managing Director of the Company and in view of the same, the tender has been allotted to the 4th Respondent.

B) The plea of the petitioner that the community certificate should be submitted by all the heads of the firm is not sustainable because a bare perusal of Clause 4.2.3(m) extracted above clearly indicates the words as proprietary/partners/Directors of the firm either of them and not all of them as interpreted by the learned counsel for the petitioner and further the plea that the 4th respondent company should have 100% shareholders of the SC/STs is untenable.

C) As per Clause 1.1.14 of the Tender Document dt. 15.07.2022 the tender document operates within the scope of G.O.Ms.No.9, dt. 30.01.2017, G.O.Ms.No.31, dt. 12.03.2022 and G.O.Ms.No.32, dt. 12.03.2022 of HM&FW Department, Government of Telangana and not G.O.Ms.No.59, dated 21.05.2018 which admittedly as borne on record is a G.O. issued by Irrigation & CAD (Reforms) Department and the same is not relevant nor applicable to the present case.

D) A bare perusal of sub-clause (i) of clause 3 of G.O.Ms.No.32, Health, Medical & Family Welfare (C2)

Department, dt.12.03.2022 clearly indicates that 16% reservation shall be provided for agencies owned by persons of SC community and the 4th Respondent belongs to Schedule Caste and holds 65% of the entire Share Capital of the company and evidencing the said fact the 4th Respondent belongs to SC category the 4th Respondent had furnished the community certificate of the Managing Director of the Company in conformity with the conditions specified in Clause 4.2.3 (m) extracted above.

E) As per Petitioner's own affidavit the Petitioner submitted a bid for 4.99% excess to the estimated cost and a bare perusal of Clause No.2.1.9 and 2.1.10 of the Tender Notification (extracted above) clearly indicates that the bidder should quote the lowest percentage of Management Services Charges for the services mentioned in the Tender Document which is considered as a L1 rate, who are eligible for qualification in Financial Bid. Whereas the petitioner quotation was 4.99% excess considered as L4 rate and the Petitioner was therefore not qualified in the financial bid. So the

bid of the Petitioner was rejected rightly by the Tender Finalization Committee (TFC). The commercial stage details (extracted above) clearly indicate that the Petitioner quoted service charges as 4.99% excess and the 4th Respondent as 0.01% excess.

F) A bare perusal of Tender condition of 1.1.6 clearly indicates that turnover is also significant and the 4th Respondent herein was selected as successful bidder on the strength of highest annual turnover for the area hospital, applying Clause 1.1.6 of the tender documents (extracted above).

G) A bare perusal of Clause 8.3.3 pertaining to Financial Bid Evaluation (extracted above) clearly indicate that L1 who quote lowest Management Service charges upto 5% will be considered as successful bidder and admittedly as borne on record the 4th Respondent herein quoted the lowest Management Service charges i.e., @ 0.01% whereas the Petitioner quoted Service Charges at 4.99%. Hence this Court opines that there is no any illegality in awarding the

contract in favour of the 4th Respondent as alleged by the Petitioner herein.

H) In so far as the pleas raised by the Petitioner in para 6 and para 7 of the reply affidavit that the 4th Respondent is not even a Director at the time of filing the Tender Document and further that the 4th Respondent had not filed any document or certificate stating that he is Managing Director of the Company the said pleas are not sustainable. This Court on bare perusal of the material documents filed by the 4th Respondent along with the counter affidavit opines that as per the information furnished by the Ministry of Corporate Affairs dt. 12.04.2022, the 4th Respondent is the Managing Director as on 28.04.2022 and his original date of appointment in the said capacity of the 4th Respondent company is on 27.04.2022 i.e., much prior to the date of the present subject Tender Document i.e., 15.07.2022. A bare perusal of the content of the declaration form dt. 26.07.2022 also confirm the fact that the 4th Respondent is a Director

and Authorized Signatory of the 4th Respondent Company.

I) This Court opines that the reliance of the Petitioners on G.O. Ms. No. 59, Irrigation and CAD (Reforms) Department Dt. 21-05-2018 for a tender issued by the Medical and Health Department is wholly irrelevant when specific directions have been issued by the Official Respondents vide G.O.Ms. No. 32, Health, Medical & Family Welfare (C2) Dept. Dt. 12-03-2022 for the present tender.

J) This Court is of the firm opinion that after having participated in the tender process and having adhered to all the conditions as laid out in G.O. Ms. No. 32, Health, Medical & Family Welfare (C2) Dept. Dt. 12.03.2022, the Petitioner is estopped from seeking conditions of G.O. Ms. No. 59, 1&CAD (Reforms) Dept. Dt. 21.05.2018 to be applied to the present tender solely because the Petitioner was unsuccessful in procuring the works.

K) A bare perusal of Clause 2, Clause 3 and 3(i) of G.O.Ms.No.32, Health, Medical and Family Welfare (C2) Department, dt. 12.03.2022 clearly indicates that specific directions have been issued by the Official Respondents for the present Tender vide G.O.Ms.No.32, pertaining to Selection of Agency to provide Diet to the Patients admitted in Government Hospitals with the approval of the Hospital Development Society. A bare perusal of Clause 2, Clause 3 and Clause 3(i) extracted above amply proves the said fact, therefore the Plea of the Writ Petitioner that the conditions mentioned in G.O.No.59, Irrigation & CAD (Reforms) Department, dt. 21.05.2018 need to be applied in the present case are unsustainable and untenable.

L) This Court opines that since the Petitioner has not raised any allegations of specific malafides with supporting evidence and in the absence of the same, the Petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India especially in matters pertaining to

Commercial transactions. Therefore, the present Writ Petition is liable to be dismissed.

M) The Apex Court in Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited reported in (2016) 16 SCC 818 held that the author of Tender Document is the best person to understand and appreciate its requirements, and that the Courts must defer to such understanding and appreciation of Tender Documents by the tender inviting authority, unless there be any allegation of malafide or perversity. At Para 13 of the said Judgment the Apex Court observed as follows:

"In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision".

N) The Apex Court in Jagdish Mandal vs. State of Orissa reported in (2007) 14 SCC 517 at Para 22 held as follows:

"Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides: Its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self,

and persuade courts to interfere by exercising power of Judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for or delay relief and succour to thousands and millions and may increase the project cost manifold."

O) In Uflex Ltd. Vs. Government of Tamilnadu, reported in (2022) 1 SCC 165 the Apex Court held that the enlarged role of the Government in economic activity and its corresponding ability to give economic 'largesse' was the bedrock of creating what is commonly called the 'tender jurisdiction'. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, beyond the issue of strict enforcement of contractual rights under the civil Jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

P) The Apex Court held at Para 2 of the said Judgment as follows:

"The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent principles of equity and natural justice have to stay at a distance".

15. Taking into consideration all the above referred facts and circumstances and the law laid down by the Apex Court in the Judgments referred to and discussed above, duly considering the specific averments made by the 4th respondent in his counter affidavit (extracted above), this Court opines that in the absence of any specific malafides against the Respondents herein, the Petitioner is not entitled for the relief prayed for in the present Writ Petition. In view of the fact as borne on record that the 4th Respondent was awarded the contract to engage the Sanitation, Patient Care and

Security Services for Integrated Hospital Facility Management Service at Area Hospital, Banswada, Kamareddy District for a period of 3 years vide proceedings Rc.No.32/DHH-KMR/Plg/2022, dated 22.09.2022 of the 3rd respondent commencing from 22.09.2022 to 21.09.2025 and the 4th Respondent already commenced the said work from 01.10.2022, this Court opines that the Writ Petition is devoid of merits and the same is accordingly dismissed in limini.

16. The interim orders of this Court dt.22.11.2022 stand vacated.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 31.01.2023
Note: L.R. copy to be marked
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