

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 1137 of 2023

Between:

Kancharla Karnakar

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 11.04.2023

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 : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 1137 of 2023

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M/s Kancharla Karnakar

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< Gist:

> Head Note:

! Counsel for the Petitioner : Sri P.Pandu Ranga Reddy

^ Counsel for Respondents 2 and 5: G.P. for Medical & Health

^ Counsel for respondent No.6 : Sri Jalli Narendar

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 1137 of 2023****ORDER:**

Heard learned counsel Sri P. Pandu Ranga Reddy for the Petitioner and learned Standing Counsel appearing on behalf of Respondent No.2 and the Counsel for the unofficial Respondent No.6.

2. The main prayer sought for by the Petitioner is as follows :

"to issue a writ, order or direction and more particularly one in the nature of writ of Mandamus declaring (i) the action of the 5th respondent in issuing the proceedings vide Rc.No.Plg/Diet/BCM/2022-23 dated 10.06.2022, as being illegal, arbitrary, unconstitutional and in violation of the terms and conditions of the Tender and set aside the said proceedings dated 10.06.2022 and (ii) consequently direct the respondents to award the contract in favour of the petitioner for supply of DIET menu services at Area Hospital, Bharachalam, Bhadrari Kothagudem, 200 beds."

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

a) The petitioner is engaged in the business of providing DIET contract services viz. procuring provision and stores, cooking/preparing, supply hygienic diet to the inpatients

of the hospital. The petitioner conducts most of its works/contracts for and on behalf of Government agencies and the petitioner is solely dependent upon the income earned through it.

b) The 4th respondent issued invited bids for providing DIET menu services. The selection and award of tender is through competitive bidding process and the contract is for a period of two years which can be extended by 4th respondent by not more than one year at its discretion.

c) The tender is a two cover bases process. Cover I representing eligibility, technical and financial criteria as envisaged under Clause 4. Cover II representing financial bid. The evaluation of those tenderers who passed at Covern I stage only will be opened and evaluated.

d) Clause 4 of the Tender Condition provides for Selection criteria. Sub Clause B of Clause 4 provides for criteria for evaluation of technical bid. In the Technical criteria a weightage of 50% is given to experience. Weightage 25% for IT returns and 25% for Annual Turnover. Only those bidder who score 70% marks will be qualified for financial bid.

e) Vide G.O.Ms.No.32, dated 12.03.022 16% reservation is provided for persons belonging to SC community in DIET contracts. In category A hospital with less than 100 beds 20 are reserved for SCs out of 122 hospitals. Accordingly, in Category B hospitals with a bed strength of 100 and above and upto 500 beds 8 are reserved for SC community out of 53 hospitals. The Area Hospital Bhadrachalam, Bhadradi Kothagudem with 200 beds is one amongst the 8 and is exclusively reserved for SC community.

f) The petitioner belongs to SC community and in the business of providing DIET services. As such the petitioner expected for award of bid. But the bid awarded to the 6th respondent, who is not eligible for the same. Therefore, the petitioner addressed letters to respondents 3 to 5, but there is no response from them. Hence, this writ petition.

4. **The case of Respondents 2 and 5, in brief, is as follows :**

a) As per the terms and conditions as contemplated in tender notification, diet committee had evaluate all process with regard to the qualifications and other eligibilities.

b) The award of contract in respect to Area Hospital Badradri – Kothagudem is reserved for SC category. The respondents are not aware whether the 6th respondent has produced two caste certificates vide bearing No.CNDO140779 and CNDO21708978354, and represented two agencies and participated in tender notification as one Arogya Services under the proprietor concern and the respondent No.6 under the partnership firm.

c) The Diet committee issued proceedings dated 10.06.2022 to the 6th respondent who had already fulfilled all conditions and started supplying services last nine months to the patients and duty doctors in the Area Hospital, Bhadrachalam. Therefore, the writ petition is liable to be dismissed.

5. **The case of Respondent No.6, in brief, is as follows:**

a) The tender was finalized in favour of the 6th respondent by following due procedure as per the tender notification.

b) The 6th respondent has participated in the tender notification in the capacity of Sri Kanakadurga CWS CPSS Firm with reg.No.151 under Section 10(5) of AP MACS Act, 1995, dated 31.05.2006. As such, the activities undertaken by the 6th respondent in the capacity as a firm but not in the

individual. Whereas, the allegation attributed by the respondents that in the personal capacity of Pulla Kumara Swamy filed tender cannot be come into the way of finalization of Sri Kanakaurga Dalitha CWLCPSS. It is relevant to mention herein that the said Kanakaurga Dalitha CWLCPSS was registered by referring by constituting group of persons but not individual. As such, the firm is having a legal status and it cannot be attributed to Pulla Kumara Swamy that he has filed two tenders. As such, the allegations attributed by the writ petition that the contract was awarded by violating Clause B of Clause 10 of tender conditions. It is invented by the writ petitioner with an ulterior motive and to harass this respondent.

c) The petitioner submitted false and fabricated documents and obtained a diet contract. Thereby, the 6th respondent made an application with regard to the finalization of the tender in favour of the writ petitioner the official respondents informed to the 6th respondent that Khammam Government Hopital tender was finalized by the District diet committee as such, it cannot be re-looked. As such the claim made by the petitioner is to be established by him. Once the petitioner participated in

the tender process he does not have any locus to challenge the finalization of the tender. Until and unless the allegations are true.

6. PERUSED THE RECORD :

i) The order impugned of the 5th Respondent RC No.Plg/Diet/BCM/2022-23, dated 10.06.2022 reads as under:

“With references to the above subject cited, the process of the tender for supply of the DIET to inpatient and duty Doctors is considered to those ho offer LOWEST RATE IN THE FINANCIAL BID as per Point 3(A) and the Negotiation was refused as “IN CASE OF DIFFERENCE BETWEEN THE RATE OFFERED BY THE BIDDER AND THE RATE FIXED IS MORE THAN 10% OF THE FIXED RATE” as per the Point 3(C) II of G.O.Ms.No.325 HM & FW(MI) Department, dated 01.11.2011 and also in view of the quality supply of Diet.

Hence, permission is hereby accorded to the Medical Superintendent, Area Hospital, Bhadrachalam, Bhadradi Kothagudem District to allot the Diet Contract to M/s Sri Kanaka Durga Dalitha CWLCPSS, to supply diet to the inpatients and Duty Doctors of the Hospital for a period of (02) years i.e. upto 09.06.2024 i.e. the date of supply of Diet with immediate effect as per the diet schedule and rates prescribed in the reference 1st cited

without any deviation and the diet menu should be passed in all diet registers and diet should be supplied accordingly.

S. No.	Category	Your Offer
01)	All inpatients and attendants of tribal patients	Rs.72.00/- (Rupees seventy two only) per patients and attendants of tribal patients
02)	Inpatients (T.B/Mental and Therapeutic Patients)	Rs.112.00 (Rupees one hundred and twelve only) per patient
03)	Duty Doctors	Rs.160.00 (Rupees one hundred sixty only)per head
04)	JSSK Patients	Rs.100.00 (Rupees one hundred only) per patient

Provided that the above contract permission shall be terminated if the performance found to be unsatisfactory at any time during the contract period with immediate effect without any prior notice in the G.O. cited.

M/s Sri Kanaka DurgaDalitha CWLCPSSS is hereby requested to enter into the agreement with District Diet Management Committee, Bhadradi Kothagudem District along with Caution Deposit to this Office within a week without fail.

The Medical Superintendent, Area Hospital, Bhadraram, Bhadradi Kothagudem District is requested to take necessary action accordingly and also requested that the Income Tax should be recovered from the diet bills before payment as per existing rules."

ii) Para 12 of the Counter Affidavit filed by Respondent No.2 & 5 read as under:

"With regard to para No.14, it is true that the award of contract in respect to Area Hospital Badradri – Kothagudem is reserved for SC category. The respondents are not aware whether the 6th respondent has produced two caste certificates vide bearing

No.CNDO140779 and CNDO21708978354, and represented two agencies and participated in tender notification as one Arogya Services under the proprietor concern and the respondent No.6 under the partnership firm.”

iii. The better affidavit filed by Respondent No.2 & 5 in particular Paras 4, 5 and 8 read as under:

“4. After perusal of material papers which is produced by the petitioner and ascertaining the list of documents which were produced by the respondent No.6, **it is true that the respondent No.6 had participated in the tender bids by way of individual name as well as in the name of partnership firm.**

5. As per the Clause 10(B) of tender notification is pertaining to prohibition of more than one tender. **It is clearly stated that the same tenderer should not submit more than one tender for the same hospital nor is it permitted to jointly submit with another tender for the same hospital, in all such cases the tender shall not only be rejected but also the EMD shall be forfeited.**

8. That the Diet Committee had selected the respondent No.6 as successful bidder by considering only proprietary concern without considering other application of partnership firm of Arogya Services which is produced by respondent No.6 as partner.”

iv. The information furnished under RTI Act, 2005 by the Telangana Vidya Vidhan Parishad, 2nd Respondent herein in RC No. /918/2022, dt. 01.11.2022 pertaining to Arogya Services at SI.No.2 and Sri Kanakadurga Dalitha C.W.L.C.P.S.S.S., at SI.No.3, giving details in respect of the caste certificate enclosed by the respective services is extracted hereunder :

“SI.No. 2 : Arogya Services – 7. Caste Certificate. CNDO 14079779 – Name Pulla Kumara Swamy, S/o. Komuraiah.

SI.No.3 : Sri Kanakadurga Dalitha C.W.L.C.P.S.S.S. – 7. Caste Certificate, CNDO 21708978354 – Name Pulla Kumara Swamy, S/o. Komuraiah.”

v. Para 11 of the Counter Affidavit filed by the 6th Respondent reads as under :

“It is respectfully submitted that in reply to para No.13 of the affidavit, that this respondent has participated in the tender notification in the capacity of Sri Kanakadurga CWS CPSS Firm with reg.No.151 under Section 10(5) of AP MACS Act, 1995, dated 31.05.2006. As such, the activities undertaken by the 6th respondent in the capacity as a firm but not in the individual. Whereas, the allegation attributed by the respondents that in the personal capacity of Pulla Kumara Swamy filed tender cannot come into the way of finalization of Sri

Kanakaurga Dalitha CWLCPSS. It is relevant to mention herein that the said Kanakaurga Dalitha CWLCPSS was registered by referring by constituting group of persons but not individual. As such, the firm is having a legal status and it cannot be attributed to Pulla Kumara Swamy that he has filed two tenders. As such, the allegations attributed by the writ petition that the contract was awarded by violating Clause B of Clause 10 of tender conditions."

DISCUSSION AND CONCLUSION :

7. Sub-Clause (B) of Clause 10 of the Tender Conditions is extracted hereunder :

Clause 10 of Sub-clause B – Prohibition of more than one tender :

"The same Tenderer should not submit more than one tender for the same hospital nor is it permitted to jointly submit with another tenderer for the same hospital. In all such cases, the tender shall not only be rejected but also the EMD shall be forfeited".

8. A bare perusal of Clause (g) of (I) dealing with other conditions reads as under :

"Clause (g) of (I)

Others : "(g) The Bid shall be evaluated as per the criteria specified in this Document. However,

within the broad framework of the evaluation parameters as stated therein, DDMC reserves the right to make modifications to the stated evaluation criteria, which would be uniformly applied, to all Tenderers”.

9. A bare perusal of paras 4, 5, and 8 of the better affidavit filed by Respondent Nos.2 and 5 and also para 8 of the counter affidavit filed initially by Respondents No.2 and 5 in February 2023 clearly indicates that as per G.O.Ms.No.32, dt. 12.03.2022, 16% reservation is provided for the persons belonging to Schedule Caste community in Diet contracts in respect of the services to the hospital covered under Respondent No.2 and further it is clearly accepted and admitted in the better affidavit filed by Respondents No.2 and 5, that admittedly as borne on record and as is evident even as per the information furnished under Right to Information Act by the concerned Authority vide RC No. /E/980/2022, dt. 01.11.2022, the 6th Respondent had participated in the Tender Bids on behalf of two agencies i.e., both Arogya Services and 6th Respondent herein as well i.e., Sri Kanaka Durga Dalitha CWLCPSSS, Badhrachalam,

Kothagudem District, in respect of Arogya Services it is evident even as per record that the SC caste Certificate is provided by one Pulla Kumara Swamy, S/o Komaraiah bearing Caste Certificate No.CNDO 14079779 and in respect of 6th Respondent the Caste Certificate is again provided by the very same Pulla Kumara Swamy, S/o Komaraiah although the Caste Certificate Number differs i.e., CNDO 21708978354.

10. It is submitted that the Sub-Clause B of Clause 10 of the tender condition prohibits participation of more than one tender and further that the same tenderer should not submit more than one tender for the same hospital nor is permitted to jointly submit with another tenderer for the same hospital.

11. In view of the clear admission at para 4 of the better affidavit filed by Respondent No.2 and 5 that the Respondent No.6 had participated in the tender bids by way of individual name as well as in the name of Partnership Firm in clear violation of Clause 10(B) of the Tender Notification this Court opines that the award of

the contract in favour of the 6th Respondent is clearly in violation of the terms and conditions of the tender notification and the same is liable to be set aside. The plea of the 6th Respondent that the 6th Respondent participated in the tender notification in the capacity of Sri Kanaka Durga Dalitha CWLCPSSS and the activities undertaken by the 6th Respondent are in the capacity of the firm but not as an individual is not tenable and is liable to be rejected in view of the clear admission at para 4, 5 and 8 of the better affidavit filed by Respondent No.2 and 5 and also the clear restriction as per Sub-Clause B of Clause 10 of the Tender Conditions which clearly prohibits that the same tenderer should not submit more than one tender for the same hospital nor it is permitted to jointly submit with another tenderer for the same hospital.

12. This Court opines that the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart beat of fair play and the Respondents herein are bound to act validly and not whimsically for any ulterior purpose, the

respondents cannot give a go by to their own tender conditions more so when clause (g) of (I) of the Tender clearly stipulates that the bid shall be evaluated as per the criteria specified in the Tender document.

13. Taking into consideration the above said facts and circumstances and also the prohibition imposed U/s.10(B) of the subject Tender Conditions and the averments made in para 4, 5 and 8 of the better affidavit filed by the Respondents No.2 and 5, the Writ Petition is allowed as prayed for and the proceedings of the 5th Respondent vide RC No. Plg/DIET/BCM/2022-23, dt. 10.06.2022 is set aside and the Respondents are directed to consider and pass appropriate orders awarding the Contract in favour of the Petitioner for supply of DIET menu services at Area Hospital, Bhadrachalam, Bhadradi Kothagudem District, 200 Beds within a period of two weeks from the date of receipt of the copy of the order, duly taking into consideration the fact that the Petitioner is the sole eligible tenderer and had been ignored by the Respondents intentionally only to favour the 6th Respondent malaifidely in clear

violation of Sub-clause B of Clause 10 of the Tender Notification and also Article 19(1)(g) of the Constitution of India. This Court however, is conscious of the fact that the patients should not suffer and therefore would however observe that the present order would be operational and be given effect to after a period of (2) weeks from the date of receipt of the copy of the order, to ensure that all the required services to the patients are provided by the respondents without any interruption.

14. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 11.04.2023

Note: L.R. copy to be marked

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