

HONOURABLE THE ACTING CHIEF JUSTICE

GHULAM MOHAMMED

AND

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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WRIT APPEAL NO. 241 OF 2011

Between:

K. Bala Narasimha Reddy

.....Appellant

AND

The Principal Secretary to Government of Andhra Pradesh, Transport,
R&B Department, Secretariat, Hyderabad and three others

.....Respondents

JUDGMENT :

(Per Honourable the Acting Chief Justice GHULAM MOHAMMED)

This Writ Appeal has been filed against the order dated 14.3.2011 passed in W.P.No. 14651 of 2010 by a learned Single Judge of this Court whereby, the petition was dismissed on the ground that the relief claimed cannot be granted.

Brief facts of the case are that the second respondent herein viz., The Engineer-in-Chief, R&B Administration and National Highways, Government of A.P., issued a tender notice dated 12.2.2008, published on 18.2.2008 inviting tenders for the work of construction of approaches to Rail Under Bridge (RUB) at Ghanpur, Warangal District. The appellant herein emerged as the successful tenderer by quoting 3.69% excess over the estimated value and an agreement was also entered into in that regard. However, further progress in the work was stalled, on account of a communication dated 30.4.2008, from the Railways pointing out that due to existence of Rocky Strata and Safety Hazard, the site is not favourable for construction of RUB and hence it was decided to construct Rail Over Bridge (ROB) instead of a Rail Under Bridge (RUB). Further the State Government passed orders in their GORT No. 1676 TR& B Department dated 12.11.2008 modifying their earlier orders in GOMS NO. 15 TR & B Department dated 25.1.2007 permitting the ENC

(R&B) to entrust the work of construction of ROB at the same place to the petitioner subject to the contractor not claiming revision of rates in future and satisfying the eligibility criteria. It is then examined as to whether the petitioner satisfies the eligibility criteria, as the nature of work of construction of ROB is entirely different from RUB. At that, the petitioner was found not satisfying the eligibility criteria. There is no sustainable dispute raised on this score by the petitioner. Therefore, the second respondent issued an e-procurement tender notice dated 27.5.2010 for the work of ROB at an estimated cost of Rs. 1506 lakhs and the petitioner also participated therein. But it is the 4th respondent herein was declared as the successful tenderer. Challenging the tender notice dated 27.5.2010, the appellant herein filed the Writ Petition which was dismissed by a learned Single Judge of this Court. Aggrieved by the same, the present Writ Appeal is filed.

The learned senior counsel appearing for the appellant submits that the learned Single Judge has failed to appreciate that the respondents had called for tender for construction of Road Under Bridge with a specific condition that the plans enclosed to the tender are liable to be altered during execution of the work as per exigencies of site condition. Therefore, merely because Road Under Bridge has since been altered into a Road Over Bridge, the tendering process initiated by the notification dated 12.2.2008 cannot be nullified. Further the State Government has agreed, in

principle to entrust the work of construction of ROB to the petitioner at the same rates quoted by him for RUB work and in breach of the said promise, the tendering process for ROB was initiated.

On the other hand, the learned Government Pleader for Roads and Buildings submits that the Railways have informed the State Government that it is not at all feasible to construct a Rail Under Bridge at the identified place and therefore, the option of construction of a Rail Over Bridge was considered and for that the second respondent issued an e-procurement tender notice dated 27.5.2010 as the petitioner lacked the necessary eligibility and the 4th respondent was declared as the successful tenderer. Hence, there are no grounds to interfere with the order passed by the learned Single Judge.

Heard the learned counsel appearing for both sides and also perused the material made available on record.

As seen from the record, the second respondent herein issued an e-procurement tender notice dated 27.5.2010 for the work of Rail Over Bridge at an estimated cost of Rs. 1506 lakhs and the 4th respondent herein was declared as the successful tenderer. One of the most important eligibility criteria set out now, specifies that, the tenderer should have satisfactorily completed as Prime Contractor similar nature of work relating to Major Bridges/ROB Works of cost not less than Rs. 246.50 lakhs during the last 5 financial years from

2005-06 to 2009-2010 and steel works of 212 MTs. The steel work component in ROB work is estimated to be of 50% quantity. Hence this criteria is chosen. The petitioner is found lacking this eligibility criteria.

As the technical specifications for construction of ROB/RUB are totally different, the first respondent has issued instructions vide Government Memo dated 19.3.2010 to the second respondent to call for fresh tenders for Rail Over Bridge and accordingly he has recast the estimate with SSR 2009-10 and has invited tenders for the Rail Over Bridge work. Therefore, we see no reasons to interfere with the order passed by the learned Single Judge and the learned Single Judge rightly dismissed the Writ Petition.

Accordingly, the Writ Appeal is dismissed. There shall be no order as to costs.

GHULAM MOHAMMED, HACJ

NOOTY RAMAMOohana RAO, J

1st November, 2011

K. AMMAJI

... REGISTRAR

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