

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Writ Petition No.27930 of 2019

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India being aggrieved by the Memo in Rc.No.P5/1497/2018, dated 09.12.2019 issued by the 5th respondent-District Panchayat Officer, Bhadradri-Kothagudem District, as being illegal, arbitrary, unconstitutional and contrary to the order issued by the 3rd respondent-District Collector (PW), Bhadradri Kothagudem District, vide Rc.No.P5/1497/2018, dated __.11.2019 (18.11.2019), with a consequential relief.

2. Heard Sri C. Damodar Reddy, learned counsel for the petitioner and Smt. Jyothi Kiran, learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents 1 to 5 and Swaroop Oorilla, learned counsel for the 6th respondent.

3. It is the case of the petitioner that pursuant to the short tender notice in Rc.No.P5/1497/2018, dated 04.11.2019 issued by the 5th respondent for supply of tractors, trolleys, tanks and battery autos in Bhadradri-Kothagudem District, the petitioner herein claims to have participated and stood as L-1 for supply of different capacities of tractors of Swaraj brand. It is also claimed by the petitioner that the 3rd respondent in acceptance of the tender and confirming the

tender of the petitioner as L-1, has issued proceeding dated __.11.2019, wherein the petitioner's name is shown against the procurement of swaraj tractors in the different capacity of 15 HP, 31 HP, 38 HP and 42 HP along with the rates.

4. The claim of the petitioner is that by the above said proceeding, the 3rd respondent permitted the Gram Panchayats in the Bhadradri-Kothagudem District to purchase the tractors from the agencies as mentioned in the said communication at the prices as fixed thereunder, depending upon the population, size and expected bulk of wastage generated in the Gram Panchayat. The petitioner also claims that the Sarpanch and Panchayat Secretaries are instructed not to procure the tractor exceeding the negotiated price shown in the said communication and it is made clear that any deviation in this regard will be viewed seriously and necessary action will be initiated against the concerned, as per the Telangana Panchayat Raj Act, 2018.

5. The grievance of the petitioner is that despite such communication being addressed wherein the petitioner's name is shown as L-1 in respect of the make and capacity of tractors as mentioned therein, the 6th respondent, who is another dealer dealing in the same make of tractors, by maneuvering the concerned Gram Panchayats, is taking orders, which is contrary to the proceeding issued by the 3rd

respondent, apart from violating the tender issued in favour of the petitioner.

6. The learned counsel for the petitioner, in support of the above submissions, draws attention of this Court to the payment released by the Dammapeta Gram Panchayat in favour of the 6th respondent, which is being claimed, as contrary to the tender issued in favour of the petitioner.

7. On the other hand the learned Government Pleader submits that having regard to the tender conditions, despite the name of agencies from whom such vehicles are to procure being mentioned in the proceeding issued by the 5th respondent, the authorities are free to place orders with any one firm or distribute the work to more than one firm. Further, the learned Government Pleader would submit that by the tender only rates in respect of each brand and capacity of the vehicle for which tenders has been called for has been fixed.

8. It is further submitted by the learned Government Pleader that, as the petitioner did not have necessary service support in some Mandals of the District, as the petitioner's area of operation of dealership excluded such areas, considering the request made on behalf of the company, the fifth respondent issued the impugned proceeding, whereby the vehicles of same make could be supplied by the 6th respondent, who is the dealer of the company operating in

such of the Mandals specified in the order having necessary service support.

9. It is submitted that having regard to the power being reserved to the authority to distribute the work, the authorities by taking note of the fact that the petitioner dealership coverage under the agreement with the company is being restricted to 18 Mandals of Bhadradri-Kothagudem District, have issued the impugned proceeding by which the supply of sale and service of tractors in Annapureddypalli, Chandrugonda, Gundala, Allapally and Yellandu Mandal of Bhadradri-Kothagudem District have been directed to be supplied by the 6th respondent as the sales and service in the five Mandals are covered under the 6th respondent dealership area of operation.

10. The learned Government Pleader submits that insofar as the reliance placed by the learned counsel in respect of an order for supply of tractor for the Dammapeta Gram Panchayat in favour of the 6th respondent is concerned, the same is being cancelled, since the area is assigned in favour of the petitioner, as per the dealership agreement entered into by the petitioner with the manufacturing company. Thus, the learned Government Pleader seeks to sustain the order.

11. Having regard to the submissions made, and perusing the material on record, it to be seen from the short tender notice issued by the 5th respondent, quotations were invited

from the interested companies for supply of tractors, trolleys, tankers and battery autos, in order to maintain and take up greenery and cleanliness in each of the Gram Panchayat by the Telangana Government, pursuant to which, the said tender has been issued calling for the quotations from the interested parties for supply of above mentioned vehicles in the Bhadradri-Kothagudem District. As per the tender document issued by the 5th respondent, the tenders were to be submitted during the period from 06.11.2019 to 13.11.2019 and thereafter, the said tenders would be opened on 13.11.2019 in the office of the 4th respondent-Joint Collector & Chairman, District Panchayat Committee, Bhadradri-Kothagudem District. By the proceeding though undated of November 2019 under the signature of the 3rd respondent in respect of supply of tractors, various agencies have been shown along with finalized L-1 rates for different capacity of tractors. From the said proceeding issued under the signature of the 3rd respondent, the petitioner's name is shown as having been finalized in respect of four capacities of tractors viz., 15 HP, 31 HP, 38 HP and 42 HP at the prices mentioned there against for each of the above tractors.

12. However, as seen from the tender document, one of the conditions for supply of tractors is also providing periodic services of such tractors procured. From the documents placed before this Court, it is clear that the petitioner who is an authorized dealer in respect of supply of Swaraj tractors

manufactured by Mahindra and Mahindra Limited is appointed as non-exclusive dealer for sale and distribution of the said company tractors in 18 Mandals of Bhadradi-Kothagudem District and 3 Mandals of Bhupalapally District in Telangana State. Though it is claimed by the petitioner that by virtue of the tender being finalized in favour of the petitioner, the petitioner is only entitled to supply the tractors in respect of all the Gram Panchayats of Bhadradi-Kothagudem District and no order can be placed on the 6th respondent, having regard to the conditions of the tender documents and in particular the post sale support i.e., Service, required to be provided in respect of supplies being an important criteria, the claim of the petitioner that only the petitioner is required to make such supplies is not sustainable. It is also for the reason that if such a claim is accepted, the same would amount to giving a go by to the tender condition of having necessary post sale support in respect of supplies made. The said view is also further fortified by the fact that the quotations for supply being called from the companies, by necessary implication would mean the manufacturers of such tractors, the claim of the petitioner that it is only entitled to supply the said tractors even beyond the areas which the petitioner is permitted to operate by the company cannot be accepted for the reason that the petitioner has no facilities of providing services in some of the

areas of Bhadradri-Kothagudem District other than for which the petitioner has been granted dealership.

13. Further, having regard to the emphasis in the tender document as to the quotations being invited from the companies, the tender submitted by the petitioner in respect of supply of tractors of a particular brand has to be considered, as on behalf of such company, since the benefit of such tender being accepted would accrue to the benefit of the company by undertaking such supply of tractors. Therefore, the claim of the petitioner that it is only the petitioner who is authorized to make supplies to all gram panchayats in the entire District, notwithstanding the fact that the area of operation of operation under the dealership agreement with the company being restricted only to 18 Mandals of Bhadradri-Kothagudem District, does not merit consideration by this Court.

14. Further, as seen from the impugned proceeding issued by the 5th respondent, the decision to issue direction to place orders with 6th respondent in respect of 5 Mandals, which are outside the area of operation of the petitioner dealership, is taken only at the request of the company in order to provide post sale service in the above areas, since the petitioner does not have any service facilities in the said Mandals. From the letter addressed by the company, who is the ultimate supplier, the areas covered by the 5 Mandals as specified in

the impugned proceeding dated 09.12.2019, fall under the area of operation of the 6th respondent who is providing sales and service in such areas, as per the dealership agreement. Thus, the challenge to the impugned proceeding issued by the 5th respondent, on this ground is liable to fail.

15. Though, arguments and counter arguments are made with regard to power of the government authorities to cancel the order placed by Gram Panchayats directly and not through the respondent Government Department, it is to be seen that each of the Gram Panchayat is being permitted to place/procure the tractor in order to maintain proper sanitation and watering to the saplings in the Gram Panchayat area pursuant to the directions of the Government and also necessary funds being released for such purpose, it cannot be said that the respondent government authorities lack power to take any action with regard to issuance of cancellation of order.

16. Taking note of the submission of the learned Government Pleader that the impugned proceeding is issued considering the request made by the manufacturing company having regard to the area of operation of the petitioner as per the dealership agreement, it is made clear that, if any order for purchase/procurement of tractor/trolleys by any of the Gram Panchayat is made on the 6th respondent other than those Gram Panchayats covered by the Mandals specified in

the impugned proceeding dated 09.12.2019, the same would be in clear contravention of the conditions specified in the proceeding dated __.11.2019 issued by the 3rd respondent and the authorities placing such order would be liable for action on being brought to the notice of the authorities.

17. Subject to the above observations, the writ petition is disposed of. However, there shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this writ petition shall stand closed.

T. VINOD KUMAR, J

Date: 31.01.2020
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