



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF JULY, 2023**

**PRESENT**

**THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR JUSTICE M.G.S. KAMAL**

**WRIT APPEAL NO. 691 OF 2023 (GM-TEN)**

**BETWEEN:**

H.K.S. SERVICES  
PARTNERSHIP FIRM  
NO 137, 4TH CROSS, 1ST MAIN,  
1ST BLOCK, VIII PHASE, J P NAGAR  
NEAR VINAYAKA THEATER  
BENGALURU - 560 062

BY ITS MANAGING PARTNER

K. HANUMANTHA RAJU  
S/O LATE KANNA MEDAPPA  
AGED ABOUT 39 YEARS.

...APPELLANT

(BY SRI. KANTHARAJ H. SR. ADVOCATE FOR  
SRI. RAVI H K.,ADVOCATE)

**AND:**

1. KARNATAKA COMMERCIAL AND  
INDUSTRIAL CORPORATION PVT LTD.,  
INCORPORATED UNDER COMPANIES ACT, 1956



HAVING ITS CORPORATE OFFICE AT  
NO NO.24, BELLARY ROAD  
R.K. TERMINUS, 2<sup>ND</sup> FLOOR  
BENGALURU – 560 032  
GANGANAGAR  
REPRESENTED BY ITS  
MANAGER-OPERATIONS  
MR KUMAR K.V.

2. STATE OF KARNATAKA  
REPRESENTED BY  
THE DIRECTOR OF HORTICULTURE  
DEPARTMENT OF HORTICULTURE  
LALBAGH BOTANICAL GARDENS  
BENGALURU-560 004.
3. THE DEPUTY DIRECTOR OF HORTICULTURE  
DEPARTMENT OF HORTICULTURE  
LALBAGH BOTANICAL GARDENS  
BENGALURU – 560 004.

...RESPONDENTS

(BY SRI. UDAYA HOLLA, SR. ADVOCATE FOR  
SRI. VIVEK HOLLA, ADVOCATE FOR C/R1  
SRI. S.S. MAHENDRA, AGA FOR R2 & R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS  
APPEAL BY GRANTING THE FOLLOWING RELIEFS a)SET-ASIDE  
THE ORDER DATED:16/05/2023 PASSED BY THE LEARNED  
SINGLE JUDGE IN WP NO.5449/2023 b). DISMISS THE WP  
NO.5449/2023 (GM-TEN) FILED BY THE RESPONDENT NO.1  
BEFORE THE LEARNED SINGLE.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,  
**M.G.S.KAMAL J.,** DELIVERED THE FOLLOWING:



### **JUDGMENT**

This writ appeal is against the order dated 16.05.2023 passed in W.P.No.5449/2023 (GM-TEN) by which, learned Single Judge while allowing the writ petition filed by the respondent No.1 herein quashed the request for Proposal dated 21.02.2023 issued by the respondent No.3 and further directed respondents to take request for proposal dated 05.12.2022 to its logical conclusion.

2. The above writ petition is filed by the respondent No.1 herein questioning the Notification dated 21.02.2023 issued by the respondent No.3 Deputy Director of Horticulture, Lalbagh calling for a fresh Request for Proposal to provide service for collection of entry fee and vehicle parking fee at Lalbagh gardens for a period of two years. The case of the petitioner is that on 29.09.2022, respondent No.3 has floated tender by issuance of Request for Proposal calling for bids to provide service for collection of entry fee and vehicle parking fee



at Lalbagh for a period of two years. The expected revenue for a year was Rs.3.49 crores. The respondent No.1 had submitted its bid and was declared technically qualified. As regards the financial bid, the petitioner had quoted Rs.7,62,60,000/- for a period of two years. As the Tender Scrutiny Committee did not find any other tenderers being technically qualified, the respondent No.1 become the sole bidder. However, the respondent Nos. 2 and 3 did not proceed with the tender notification. Again on 05.12.2022 second tender was issued for the same purpose. The respondent No.1 submitted its bid on 12.12.2022 quoting the price at Rs.7,69,60,000/- which was higher than the earlier quote. That four bidders participated, of which two bids were found to be responsive, one of them being respondent No.1 and other one Omega Enterprises. Between the two, bid of the respondent No.1 was the highest and as such it was declared to be H1. On 07.01.2023 a communication in this regard was issued calling upon the respondent No.1 for a meeting with the Tender Scrutiny Committee for



having negotiation for increase in the price quoted by the respondent No.1 and in the said meeting respondent No.1 agreed to increase price upto 11% more than what was quoted by him earlier. That after the said meeting, all that remained was awarding of contract to the respondent No.1. When things stood thus, respondent No.3 issued yet another tender notification dated 21.02.2023 for the third time on the premise that expected revenue to be more than Rs.9.00 crores for two years. Being aggrieved by the same, the above writ petition is filed by the respondent No.1 questing the said tender notification.

3. It appears that during the pendency of the said writ petition, the appellant herein had submitted its bid to the impugned notification and had also filed an application under order 1 Rule 10 CPC seeking to implead itself as party to the writ petition on the premise that it had submitted its bid for Rs.11 Crores and was thus a necessary party.



4. Learned Single Judge on consideration of the facts, submissions and the provisions of law applicable in the matter, more particularly, Section 14 of the Karnataka Transparency in Public Procurement Act, 1999 (for short 'Act' 1999) allowed the writ petition granting the reliefs as noted above. Being aggrieved by the impugned order, the appellant is before this Court along with an application seeking leave to file the above appeal.

5. Sri. Kantharaj H., learned Senior counsel representing the counsel for the petitioner submitted that the impugned order is contrary to provisions of Section 14 of the Act, 1999 as the said provision provides that the Tender Accepting Authority before passing an order of acceptance under Section 13 of the Act, 1999 can reject all the tenders for the reason of failure of anticipated financial resource as one of the conditions. He submits that in the instant case since the bid quoted by the respondent No.1 was below the expected revenue of Rs.9/- crores, the authority was justified in calling for the



fresh proposal. That the respondent No.1 is not prevented from participating in the fresh proposal called for, which is challenged in the writ petition. That the impugned order would result in loss of revenue to the State. Hence, seeks for allowing of the writ appeal.

6. Sri. Uday Holla, learned Senior counsel for respondent No.1 justifying the impugned order passed by the learned Single Judge submits that once the respondents authorities declared the respondent No.1 to be the highest bidder they could not have resorted to calling for a fresh proposal without even communicating this decision to the Respondent No.1. That the provisions of Section 14 of the Act, 1999 are not meant to be exercised arbitrarily. He submits that the appellant has no subsisting cause in the matter. Hence, seeks for dismissal of the appeal.

7. Heard. Perused the records.



8. At the outset it needs to be noted that the present appeal is filed by the appellant who is not a party to the writ petition. Though it is contended by learned Senior counsel for the appellant that the application filed by the appellant seeking impleadment has not been considered by the learned Single Judge and thus the appellant had no opportunity to represent the case, as already noted, the writ petition is filed by the respondent No.1 challenging the third tender notification issued by the respondent authorities, after having declared respondent No.1 to be the successful bidder in the second tender notification dated 05.12.2022. As rightly taken note of by the learned Single Judge despite the respondent No.1 being the highest bidder, by communication dated 07.01.2023 respondent authorities had called upon the respondent No.1 to increase the bid amount which was accepted by the respondent No.1 by increasing 11%. The said communications are extracted at para 11 of the impugned order. Without even issuing any communication regarding the acceptance or rejection of the bid of the





Respondent No.1, respondent authorities proceeded to issue third tender notification dated 21.02.2023 only on the premise of the expected revenue was to be Rs.9/- crores for two years.

9. Section 14 of the Act, 1999 though empowers the Tender Accepting Authority to reject all tenders before passing the order of acceptance, as rightly taken note by learned Single Judge, sub-section (2) of Section 14 of the Act, 1999 mandates that the procurement entity shall communicate the fact of rejection to all the tenderers. Learned Single Judge has also taken note of the fact that no material was placed before the Court by the respondent -authorities regarding any deliberation or compliance with the requirement of Section 14 of the Act, 1999. Learned Single Judge taking into consideration of all facts situations of the matter come to the conclusion and rightly so, in allowing the writ petition and directing the authorities to take the proposal dated 05.12.2022 to its logical conclusion and this Court do not find any infirmity



with the reasoning and conclusion arrived at by the learned Single Judge.

10. As regards the contention that the appellant not having heard by specifically allowing its application for impleadment, at paragraph 6 of the impugned order learned Single Judge has noted having heard the respective counsel who appeared for the parties including learned counsel for the appellant/impleading applicant. Thus, the appellant cannot contend to say that it was not heard in the matter merely because no formal order was passed on the application filed by the appellant seeking to implead as a party in the writ petition. Needless to state that the appellant herein had admittedly submitted its bid in response to the third notification during the pendency of the writ petition. In any event this Court have permitted the appellant to file the present appeal, and having heard the appellant in detail, the said grievance of the appellant is cannot be accepted.



For the foregoing reasons and analysis writ appeal fails and the same is dismissed.

**Sd/-**  
**CHIEF JUSTICE**

**Sd/-**  
**JUDGE**

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