

SUPREME COURT OF INDIA

N.Ramachandra Reddy

Vs.

State of Telangana

C.A.No.6673 of 2019

(S.Abdul Nazeer and R.Subhash Reddy,JJ.,)

28.08.2019

JUDGMENT

R.Subhash Reddy,J.,

SLP(C)No.8185 of 2019

1. Leave granted.
2. This civil appeal is filed by the fourth respondent in Writ Appeal No. 153 of 2019, aggrieved by the order dated 13.03.2019, passed by the High Court for the State of Telangana at Hyderabad, allowing intra court appeal, filed under clause 15 of the Letters Patent.
3. The fourth respondent herein was the Writ Petition No. 23501 of 2018, on the file of High Court of Judicature for the State of Telangana at Hyderabad, wherein it has challenged the award of work of "construction of BT Road from Gujed to Buddaguda, in Mahabubabad District of Telangana State". Writ Petition filed under Article 226 of the Constitution of India was dismissed by the learned Single Judge, vide order dated 25.02.2019, against which, Letters Patent Appeal was preferred under clause 15 of the Letters Patent. The Division Bench of the High Court by order dated 13.03.2019 allowed the intra court appeal, which order is impugned in this appeal.
4. Necessary facts in nutshell, for disposal of this appeal are as under:

The Roads and Buildings Department of the First Respondent-State of Telangana, floated a tender notice dated 21.04.2018, inviting bids for construction of "BT Road from Gujed to Buddaguda, in Mahabubabad District of Telangana State". Tender is floated by Standard Bidding Document for Road Connectivity Project for Left Wing Extremism Affected Areas (RCPLWEA) for construction and Maintenance - issued by the National Rural Roads Development Agency, Ministry of Rural Development, Government of India. The appellant and the fourth respondent

participated in the tender process by submitting the requisite documents. As per the tender conditions, there is a requirement to furnish necessary certificates from the District Officers of R & B Department to exhibit proof of owning "Batch Type Hot Mix Plant" of capacity 100-120 TPH and that such "Batch Type Hot Mix Plant" shall be located within a distance of 100 kilometers from the last point of working reach, for which, bids are invited. The relevant clause in the tender document under Clause 4.4 B(b) reads as under:-

"Each bidder must demonstrate:

(i) "availability for construction work, either owned, or on lease or on hire, of the key equipment (except Batch Type Hot Mix Plant) stated in the Appendix to ITB including equipments required for establishing field laboratory to perform mandatory tests, and those stated in the Appendix to ITB; Note: For Batch Type Hot Mix Plant, as per G.O.Rt. No.211, T.R&B(R.1)Dept., Dt.21-04-2018

(a) The bidders shall exhibit proof of owning "Batch Type Hot Mix Plant" of capacity 100-120 TPH and such Batch Type Hot Mix Plant shall be located within a distance of 100 Kms from the last point of working reach for which bids are invited.

(b) The bidders to furnish necessary certificates from the concerned District Officers of R & B where such plants have been located and the District Officers of R & B shall inspect and certify with route maps on the (1) location (2) distance from last point of work reach and (3) ownership of such plants for which the bidders are intending to bid.

(c) The Superintendent Engineer of R & B concerned shall ensure the veracity of such certificate/documents uploaded by the bidders in support of the eligibility criteria on machinery before finalizing the technical evaluation of the bids."

5. The Bid Document consists of two parts, Part-I & Part-II i.e technical bid and price bid respectively.

6. Pursuant to tender notice, there were two offers by the bidders i.e the fourth respondent as well as the appellant herein. The technical bids were opened on 18.05.2018 at 04:00 P.M. and as the fourth respondent as well as the appellant were qualified in the technical bid, the Part-II bid i.e the price bid was opened on 31.05.2018 at 03:00 P.M.

7. In the price bid, the fourth respondent herein, offered to execute the work at the cost of Rs.31,51,27,865.82 whereas, the appellant offered the cost of Rs.31,31,69,427.04 for executing the work. As much as the offer made by the appellant was lowest, the Letter of Intent was issued to the appellant.

8. As per the tender conditions, the appellant herein has produced the document issued by the Executive Engineer, Roads and Buildings Department, Mahabubabad Division, showing distance from the "Batch Type Hot Mix Plant" to that of the site at 99.5

kilometers. Disputing correctness of such distance, the fourth respondent/ writ petitioner has on 18.05.2018, filed a complaint before the concerned authority i.e. the Chief Engineer. On such complaint, the Chief Engineer, called for a verification report from the Superintending Engineer, R & B Circle, Warangal. As per the report dated 30.05.2018 submitted by the Superintending Engineer, the actual distance between the Hot Mix Plant and the last point of working reach was shown at 101.50 kilometers. In the same report, the Superintending Engineer, Warangal, has also mentioned that the distance when measured from an alternate route, the actual distance from the Hot Mix Plant to the last point of working reach comes to 99.90 kilometers.

9. In view of the dispute raised by the fourth respondent again, about the correctness of distances mentioned in the report submitted by the Superintending Engineer, Warangal, the Chief Engineer vide his letter dated 11.06.2018, requested the Superintending Engineer, Karimnagar, to verify the distance between the location from the point of Hot Mix Plant, owned by the appellant, to that of the last point of working reach of the site in question.

10. Vide report dated 04.07.2018, the Superintending Engineer, Karimnagar informed the Chief Engineer that the distance between the Hot Mix Plant, owned by the appellant and the last point of working reach is 98.1 kilometers.

11. In the report dated 04.07.2018, filed by the Superintending Engineer, Karimnagar, addressed to the Chief Engineer, as the distance between Hot Mix Plant owned by the appellant and the last point of working reach was shown at 98.1 kilometers, same was accepted by the authorities and tender was finalized in favour of the appellant. The fourth respondent has questioned the same by way of Writ Petition filed under Article 226 of the Constitution of India.

12. The learned Single Judge of the High Court has held that in absence of any specific mala fides against any individual, the re-verification undertaken, about the distance, by the Chief Engineer, is not illegal. Learned Single Judge has observed that when the tender conditions permit the tenderer to make objection, which obviously, require consideration, by necessary implication, permit the tendering authority to re-verify and re-consider the material submitted before him. It is observed that when the fourth respondent has raised an objection against the certificate issued in favour of the appellant, no fault can be attributed to the authorities in getting the re-verification done and obtaining a report from an independent authority. Having found that there is no illegality or arbitrariness on the part of the authorities, in decision-making process, learned Single Judge dismissed the Writ Petition vide order dated 25.02.2019.

13. When the said order is questioned by way of intra court appeal under clause 15 of the Letters Patent, the Division Bench of the High Court has found fault with the report of the Superintending Engineer, Warangal, to the extent in giving distance particulars from the alternate route. Further, it is observed that when the report of the Superintending Engineer, Warangal, was not accepted, the Chief Engineer should not have sought a second report from the Superintending Engineer, Karimnagar. In the order it is stated that the

jurisdictional Engineer is Superintending Engineer, Warangal but not Superintending Engineer, Karimnagar. It is stated in the order that since the report submitted by the Superintending Engineer, Karimnagar was not legally justified, as such, it could not have been relied on to finalize tender in favour of the appellant.

14. On the aforesaid grounds, the Division Bench allowed the intra court appeal, by impugned order, with a direction to award the work in question, on the basis of a report submitted by the Superintending Engineer, Warangal.

15. Heard Sri B.Adinarayana Rao, learned senior counsel appearing for the appellant, Sri R. Basant, learned senior counsel appearing for the fourth respondent/ writ petitioner and Sri S.Udaya Kumar Sagar, learned counsel appearing for the State.

16. It is contended by Sri B.Adinarayana Rao, learned senior counsel, appearing for the appellant that as per the tender conditions, bidder must demonstrate proof of owning 'Batch Type Hot Mix Plant' of the capacity of 100-120 TPH, which shall be located within a distance of 100 kilometers from the last point of working reach, for which, bids are invited. As per the tender conditions, bidders are required to furnish necessary certificates, issued by the District Officers of R & B Department.

17. It is not in dispute that the appellant owns a Hot Mix Plant and at the request of the appellant, the District Officers have issued a certificate. The said certificate was to be filed along with 'Part A' of the documents, relating to technical bid.

18. It is submitted that, as per the tender conditions, the result of evaluation of Part-I of the bids shall be made public on e-procurement systems, following which, there will be a period of five working days, during which any bidder may submit complaint which shall be considered for resolution before opening Part-II of the bid.

19. It is contended that in this case, initially a certificate was furnished by the concerned District Officer of R & B Department, showing the distance below 100 kilometers but when a complaint is filed by the fourth respondent/writ petitioner, verification was done by calling a report from the Superintending Engineer, Warangal.

20. It is submitted that Superintending Engineer, on its own, has certified in his report dated 30.05.2018 that as per the original route, the distance is 101.50 kilometers and by alternate route, the distance is 99.90 kilometers, as per the Google map.

21. It is further submitted that apart from the said certification, an independent report is also called for from the Superintending Engineer, Karimnagar, which is reported vide report dated 04.07.2018, showing the distance between the 'Hot Mix Plant' owned by the appellant and the 'last point of working reach' of the work in question, at 98.1 kilometers. It is submitted that when a complaint is filed by the fourth respondent in terms of Para 22.6 of the Standard Bidding Document, it is always open for the authorities to call for a report from the independent authority other than the officers concerned in the circle/division in

question.

22. It is submitted by learned counsel that accepting the report submitted by the Superintending Engineer, Karimnagar, the price bid was opened and the appellant has offered to execute the work at a cost of Rs.31,31,69,427.04, as against the cost quoted by the fourth respondent which is Rs.31,51,27,865.82. In view of dispute raised by the fourth respondent, the Chief Engineer concerned has sought re-verification of the distance from the Superintending Engineer, R & B Circle, Karimnagar, who, vide report dated 04.07.2018, based on the Trip Meter of the vehicle, had categorically opined that the Hot Mix Plant of the appellant was located within 100 kilometers. It is submitted that there being no specific mala fides, tendering authority opened the price bid only after satisfying the distance being less than 100 kilometers.

23. It is submitted that as per the tender conditions, there is no prescribed procedure for verification, in the event of any complaint by one of the bidders, in terms of Para 22.6 of the Standard Bidding Document. It is submitted that the learned Single Judge has rightly refused to exercise the jurisdiction under Article 226 of the Constitution of India as much as there is no illegality or arbitrariness in the decision-making process. It is submitted that the well reasoned order of the learned Single Judge is interfered in the intra court appeal by impugned order, without assigning valid reasons and findings recorded in the impugned order run contrary to the tender conditions.

24. In support of his arguments, Sri B. Adinarayana Rao, learned senior counsel, has relied on the following judgments:

1. Tata Cellular v. Union of India.
2. Raunaq International Ltd. v. I.V.R Constructions Ltd.
3. Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited.
4. Consortium of Titagarh Firema Adler v. Nagpur Metro Rail Corporation Ltd. (NMRCL).
5. Municipal Corporation, Ujjain and Anr. v. BVG India Ltd. & Ors. and also judgment of this Court, in the case of The Silppi Constructions Contractors v. Union of India and Anr. Etc. Etc.

25. On the other hand, Sri R.Basant, learned senior counsel, appearing for the fourth respondent/writ petitioner states that there are no grounds to interfere with the impugned order passed by the Division Bench of the High Court. It is submitted that the Superintending Engineer, Warangal, in his report dated 30.05.2018, has shown the distance at 101.50 kilometers, and at the same time, on his own, also mentioned the distance to be at 99.90 kilometers measured from an alternate route. It is further submitted that the Chief Engineer has committed error in calling the report from the Superintending Engineer, Karimnagar, who is not the concerned jurisdictional Superintending Engineer. When it is found that, as per the initial certificate submitted by the appellant, which shows the distance to be more than 100 kilometers, there is no reason or justification either to go

by the distance, as measured from the alternate route in the report dated 30.05.2018, or to go by another report of the Chief Engineer, which is based on the information furnished by the Superintending Engineer, Karimnagar.

26. Finally, it is submitted by Sri R. Basant, learned senior counsel that there are no grounds to interfere in the impugned order in this appeal, filed under Article 136 of the Constitution of India.

27. In support of his arguments, Sri R. Basant, learned Senior counsel has also relied on the following judgments:

1. Poddar Steel Corporation v. Ganesh Engineering Works.
2. BSN Joshi & SWons Ltd. v. Nmair Coal Services Ltd. and Ors.
3. Bakshi Security and Personnel Services Pvt. Ltd. v. Devkishan Computed Private Limited and others.
4. Central Coalfields Limited and others v. SLL-SML and others. Further, he has also relied on the following judgments:
5. Pritam Singh v. State.
6. Penu Balakrishna Iyer & Ors. v. Ariya M. Ramaswamy Iyer & Ors.
7. Shaikh Ali Hossain & Ors. v. Shaikh Showkat Ali & Anr. wherein, the scope of interference by this Court is discussed under Article 136 of the Constitution of India.

28. Having heard the learned senior counsels on both sides, we have carefully perused the impugned order passed by the Division Bench of the High Court and the order passed by learned Single Judge and other material placed on record.

29. From a reading of the tender conditions relating to work in question, it is clear that the bidders shall exhibit proof of owning "Batch Type Hot Mix Plant" of capacity of 100-120 TPH and such plant shall be located within a distance of 100 kilometers from the last point of working reach, for which, bids are invited. In proof of owning such a plant within 100 kilometers, bidders are required to obtain necessary certificates from the concerned District Officers of R & B Department, where such plants have been located and the District Officers of R & B Department shall inspect and certify with route maps on the location; distance from the last point of work reach; and ownership of such plants, for which, bidders are intending to bid. It is clear from the aforesaid condition, which is to be construed as essential, that the bidder shall own a 'Hot Mix Plant' within a distance of 100 kilometers from the last point of working reach. As per clause 22.6 of the tender conditions, the result of evaluation of Part-I of the bids shall be made public on e-

procurement systems, following which, there shall be a period of five working days, during which, any bidder may submit complaint, which shall be considered, before opening Part-II of the bid. It is clear from the aforesaid clause under tender document, if any of the bidder disputes the distance quoted by other bidder, it is open for such bidder to make a complaint, which shall be considered, before opening of Part-II of the bid. Once a complaint is filed, there is no definite procedure prescribed as to how such complaint is to be dealt. In the case on hand, it is clear from the material on record that, when a complaint is filed by the fourth respondent/writ petitioner, after evaluation of Part-I of the bids, at first instance, a report is prepared by the Superintending Engineer, Warangal dated 30.05.2018, stating that as per the route given by the appellant, distance is 101.50 kilometers and if measured from the alternate route it comes to 99.90 kilometers. At this stage, it is to be mentioned that, it is the specific case of the appellant that it has not made any request for measuring the distance from the alternate route. In view of the variation in distance, from its earlier report, it appears, the Chief Engineer has requested the Superintending Engineer, Karimnagar, to verify and report. The Superintending Engineer, vide his report dated 04.07.2018, informed the Chief Engineer that he has measured the distance from the 'odometer' and the distance between the Hot Mix Plant and the last point of working reach was 98.1 kilometers. Accepting the said report, bid of the appellant was opened and it is clear from the record that the appellant has quoted offer to execute the work in question at Rs.31,31,69,427.04 whereas, the fourth respondent has quoted at Rs.31,51,27,865.82 to execute the work. The offer of the appellant is nearly Rupees Twenty Lakh less than the rate quoted by the fourth respondent/writ petitioner.

30. The learned Single Judge, by observing that there being no specific mala fides against any individual, has held that, no fault can be attributed to the Chief Engineer in getting the re-verification done, by obtaining a report from the independent authority. Further, by recording a finding that the scope of interference in the matter relating to tenders, in exercise of power conferred under Article 226 of the Constitution of India, is confined to decision-making process only, has dismissed the Writ Petition.

31. From a reading of the impugned order, it appears that the Division Bench has reversed the order of the learned Single Judge, only on the ground that the report received from the Superintending Engineer, Karimnagar, is not in accordance with the procedure. The Division Bench of the High Court has also held that the Chief Engineer had stepped out of his jurisdiction, when he called a report from the Superintending Engineer, Karimnagar.

32. We are not convinced, with such a view, as expressed above, by the Division Bench of the High Court. First of all, it is to be noticed that there is no dispute that appellant owns a 'Hot Mix Plant', as required in the tender conditions. It is his specific case that the location of such Hot Mix Plant is within 100 kilometers, as required. It is true that when a complaint is made by the fourth respondent/writ petitioner, it was found that the distance is 101.50 kilometers from one route and 99.90 kilometers from the other route. From the alternate route, shown in the report dated 30.05.2018, submitted by the Superintending Engineer, Warangal, it is at a distance less than 100 kilometers.

33. We find nothing wrong in the first report, mentioning the distance from the alternate route. In view of such discrepancy in the report, the Chief Engineer has further called for a report from the Superintending Engineer, Karimnagar, an independent authority, who has further, after re-verification, submitted a report dated 04.07.2018, stating that the distance is only 98.1 kilometers. To make sure whether the plant of the appellant is within the distance of 100 kilometers or not, in compliance of the tender conditions, in view of the dispute raised by the fourth respondent/writ petitioner and the report dated 30.05.2018, the Chief Engineer got re-verified from an independent authority by addressing to Superintendent Engineer, Karimnagar. In absence of any prescribed procedure for verification, it was fair on the part of the Chief Engineer to call for a report from an independent Superintending Engineer i.e. the Superintending Engineer, Karimnagar. There is no definite procedure for verification in the event of any complaint filed by any of the bidders, as contemplated under clause 22.6 of the tender conditions. The Division Bench has committed an error, in recording a finding that, calling for a report from the Superintending Engineer, Karimnagar, by the Chief Engineer, is not in accordance with the procedure.

34. Having regard to the nature of dispute, it was always open for the Chief Engineer to call for a report from an independent authority i.e. Superintending Engineer, Karimnagar. Such a procedure adopted by the Chief Engineer was fair and cannot be said to be either illegal or arbitrary. Such a report is made basis in the decision-making process, to open the bid of the appellant in Part-II.

35. In the case of *Tata Cellular v. Union of India*¹, while considering the scope of judicial review, in matters relating to Government contracts-tenders, this Court has held that the State's decision/action must be in consonance of Article 14 of the Constitution of India. The scope is confined to examine only the decision-making process and not the merits of the decision itself. It is specifically held that courts cannot sit as appellate court while exercising power of review in matters relating to contracts and tenders.

36. In the case of *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Another*³, this Court found fault in the High Court, in interfering with the decision of the authority in a matter relating to contracts and tenders, without there being any mala fides or irrationality or perversity in the procedure adopted by the authorities.

37. In the case of *Consortium of Titagarh Firema Adler v. Nagpur Metro Rail Corporation Ltd.*⁴, while considering the scope of judicial review, in matters relating to power of contracts, this Court has held that exercise of power of judicial review is called for, if the approach is arbitrary or mala fide or procedure adopted is meant to favour someone.

38. Further, in the case of *Municipal Corporation, Ujjain and Anr. v. BVG India Ltd. & Ors.*⁵, this Court has held that, while considering the scope of judicial review, in matters relating to contracts, it is held that the same is restricted to decision-making process but not the decision itself. It is held that the High Court cannot act as appellate court to review

tender evaluation and set aside the award of tender.

39. All the judgments referred above, support the case of the appellant, as much as, we are of the view that the procedure adopted by the tendering authority is fair, just and reasonable. In absence of any specific mala fides and grant of exemption from any essential conditions of tender, authorities have acted within their authority, as such, it cannot be construed either as a relaxation or violation of tender conditions.

40. The learned senior counsel, Sri Basant, appearing for the fourth respondent/writ petitioner, has relied on the judgments in the case of *Poddar Steel Corporation v. Ganesh Engineering Works*⁷, *BSN Joshi & SWons Ltd. v. Nmair Coal Services Ltd. and Ors*⁸ *Bakshi Security and Personnel Services Pvt. Ltd. v. Devkishan Computed Private Limited and Ors.*⁹; *Central Coalfields Limited and others v. SLL-SML and others*¹⁰, in support of his arguments that the essential clauses of a tender should be enforced strictly and no deviation is permissible under law.

41. We are of the view that the above said judgments have no application to the facts of this case, for the reason that, it is not a case of violation of any tender conditions. Further, pleading that no case is made out by the appellant for interference under Article 136 of the Constitution of India, learned counsel, in support of his argument, has relied on judgment in the case of *Pritam Singh v. State*¹¹; *Penu Balakrishna Iyer & Ors. v. Ariya M. Ramaswamy Iyer & Ors.*¹²; *Shaikh Ali Hossain & Ors. v. Shaikh Showkat Ali & Anr.*¹³

42. With reference to the same, it is to be noticed that the power conferred on this Court, under Article 136 of the Constitution of India, is the corrective jurisdiction to settle the law. Further, it is to be noticed that when the learned Single Judge of the High Court has found that the process of re-verification done by the Chief Engineer, on the dispute in question, is fair and acceptable for arriving at a decision, but the Division Bench has set aside such order, only on the ground that the report is called for from the Superintending Engineer, Karimnagar, who is not the concerned Engineer, as per the procedure. In absence of any prescribed procedure to deal with complaints, it was fair on the part of the Chief Engineer, in calling a report from the independent authority, other than the jurisdictional officers. As the issue does not relate to strict construction of territorial jurisdiction, it is always open for the decision-making authority, to have a report from the independent authority, to arrive at the just decision.

43. Further, in the case of *Management of Narendra & Company Pvt. Ltd. v. Workmen of Narendra & Company*¹⁴, while considering the scope of the intra court appeal, this Court has held that, unless Appellate Bench concludes that findings of the learned Single Judge are perverse, it shall not disturb the same.

44. For the aforesaid reasons, we allow this appeal and set aside the order dated 13.03.2019 passed in Writ Appeal No. 153 of 2019, by the High Court of Telangana at Hyderabad and confirm the order dated 25.02.2019 passed by the learned Single Judge in Writ Petition No. 23501 of 2018. No order as to costs.

Judgment Referred.

1(1994)6 SCC 0651
5(2018)5 SCC 0462

9(2016)8 SCC 0446
13(2008)8 SCC 0180

21991(1) SCC 0492
6 SLP(c) Nos. 13802-
13805 of 2019

10 (2016)8 SCC 0622
¹⁴(2016) 3 SCC 0340

32016(16) SCC 0818
7 (1991)3 SCC 0273

11 AIR 1950 SC 0169

⁴(2017)7 SCC 0486
8(2006)11 SCC 0548

12 AIR 1965 SC 0195