

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE SEVENTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND**

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT APPEAL NO: 1182 OF 2024

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 03-10-2024 in W.P.No.18543 of 2024 on the file of the High Court.

Between:

Mohammed Saleem, S/o Mohd Ismail, aged 57 years, Occ ; Business Resident of 1-9-337/1/2, Nallakunta, Adikmet, Vidyanagar, Hyderabad.

.....APPELLANT

AND

1. State of Telangana, Rep. by its Secretary, Ministry of Animal Husbandry, Dairy Development and Fisheries, Secretariat Buildings, Secretariat, Hyderabad.
2. Telangana Sheep and Goat Development Company-operative Federation Limited, Hyderabad, represented by its Managing Director.

.....RESPONDENTS

I.A.NO:2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order to suspend the Order dated 08.07.2024 vide Proc. No. 648/T2/MAF/2021 passed by the second respondent.

**Counsel for Appellant : SRI KISHORE RAI, SENIOR COUNSEL REPRESENTS
Ms. DIVYA RAI SOHNI**

**Counsel for Respondents : SRI S.RAHUL REDDY, SPECIAL G.P, ADDL ADVOCATE
GENERAL**

The Court made the following Judgment : -

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT APPEAL No.1182 of 2024

JUDGMENT: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. Kishore Rai, learned Senior Counsel represents Ms. Divya Rai, learned counsel for the appellant.

Mr. S. Rahul Reddy, learned Special Government Pleader attached to the Office of the learned Additional Advocate General appears for the respondents.

2. This intra court appeal is directed against the common order dated 03.10.2024 passed by the learned Single Judge, by which Writ Petition No.18543 of 2024 preferred by the appellant has been dismissed.

3. Facts giving rise to filing of this Writ Appeal briefly stated are that Telangana Sheep and Goat Development Cooperative Federation Limited (hereinafter referred to as 'the Federation') had floated a tender on 01.09.2023 on e-procurement platform for the work of Redevelopment of Modern Abattoir Facility MAF, Chengicherla on "Redevelopment, Operate, Maintain and Transfer (ROMT)

basis in PPP mode". The estimated value of the contract was Rs.25.00 Crores and license was to be granted for a period of thirty (30) years. As per the tender notification, bids were to be submitted online as well as by way of hard copies within the stipulated time. Thereafter, the Federation was required to open the technical bids to evaluate the eligibility of the bidders. The Federation after shortlisting the bidders was required to select the highest bidder.

4. To the aforesaid tender notification, the appellant had submitted his bid through online as well as by way of hard copies. Upon opening of the tenders, the bid of one M/s. Star Light, Hyderabad, was not found to be technically qualified and the same was rejected. The bid submitted by the appellant was found to be technically qualified. The Federation informed the appellant that the appellant has passed the specified eligibility criteria.

5. Thereafter, the appellant was asked to attend the opening of the financial bids on 09.10.2023. The appellant thereafter submitted communications dated 15.04.2024 and 05.06.2024

to the Ministry of Animal Husbandry, Dairy Development and Fisheries and the Federation to expedite the process to conclude the execution of the agreement. However, by an order dated 08.07.2024, the Federation cancelled the tender on the ground that the bid quoted by the appellant was on the lower side and subsequently, had called for fresh tender by reviewing the tender conditions to ensure adequate competition. Being aggrieved, the appellant filed the aforesaid Writ Petition. The learned Single Judge by a common order dated 03.10.2024 has dismissed the aforesaid Writ Petition. Hence, this Writ Appeal.

6. Learned Senior Counsel for the appellant while inviting the attention to Clause XXV(ii) of the notice inviting tender submits that the Federation was required to issue a notice to the shortlisted bidders before cancellation of tender. It is further contended that without any notice/information to the bidder, the bid of the appellant has been rescinded. Therefore, the action of the Federation is not in consonance with the notice inviting tender. It is urged that the learned Single Judge has failed to appreciate the aforesaid aspect of the matter.

7. We have considered the submissions made by the learned Senior Counsel for the appellant and have perused the record.

8. It is well settled legal proposition that while exercising the power of judicial review, the Court does not sit as appellate court over the decision taken by the Government but merely reviews the manner in which the decision was taken. In **Tata Cellular vs. Union of India**¹, it has been held that there are inherent limitations in exercise of power of judicial review. It has further been held that the Government is the guardian of the finances of the State. It has further been held that the right to refuse the lowest or any other tender is always available to the Government, but the action of the Government in doing so has to be examined on the touchstone of Article 14 of the Constitution of India.

9. In **State of Jharkhand vs. CWE-SOMA Consortium**², the Supreme Court has held that the right to refuse the lowest

¹ (1994) 6 SCC 651

² (2016) 14 SCC 172

or any other tender is always available to the Government. In paragraph 13, it has been held as under:

“13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide *Laxmikant v. Satyawar* [*Laxmikant v. Satyawar*, (1996) 4 SCC 208] , *Rajasthan Housing Board v. G.S. Investments* [*Rajasthan Housing Board v. G.S. Investments*, (2007) 1 SCC 477] and *U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma* [*U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma*, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737]).”

10. In the backdrop of the aforesaid well settled legal principles, we may now advert to the facts of the case on hand. In the instant case, the Federation in the order dated 08.07.2024 has noticed that in pursuance of the notice inviting tender, only two bids were received and the other contractor, namely, M/s. Star Light, Hyderabad, was disqualified by the technical bid committee. It was further noted that only the appellant was left as the sole bidder and the bid submitted by

the appellant appears to be on the lower side. Therefore, in the interests of the institution, it was decided to cancel the notice inviting tender and to invite fresh tender by reviewing tender conditions to ensure adequate competition in the interests of the State exchequer. Thus, valid and cogent reasons have been assigned for cancellation of the notice inviting tender. The aforesaid order by no stretch of imagination can be said to be arbitrary or unreasonable. The appellant has no right to insist that he alone should be awarded the contract. Clause XXV(ii) does not obligate the Federation to issue a prior notice/information to the bidder cancelling the notice inviting tender. The intimation about the cancellation of the notice inviting tender has to be furnished to the shortlisted bidders. The violation, if any, of clause XXV(ii) of the notice inviting tender does not vitiate the action of the Federation in cancelling the notice inviting tender. In addition, the appellant is at liberty to respond to the fresh notice inviting tender.

11. For the aforementioned reasons, we do not find any ground to differ with the conclusion arrived at by the learned Single Judge.

12. In the result, the Writ Appeal fails and is hereby dismissed

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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SDI-M.MANJULA
DEPUTY REGISTRAR

SECTION OFFICER

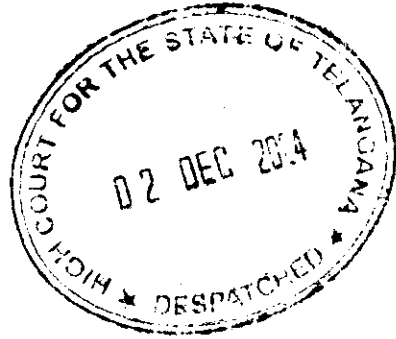
To

1. Two CC's to ADVOCATE GENERAL, High Court for the State of Telangana at Hyderabad. (OUT)
2. One CC to Ms. DIVYA RAI SOHNI, Advocate [OPUC]
3. One CC to SRI S.RAHUL REDDY, Advocate (OPUC)
4. Two CD Copies

SA
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HIGH COURT

DATED:17/10/2024



JUDGMENT

WA.No.1182 of 2024

**DISMISSING THE W.A
WITHOUT COSTS.**

PA
29/10/24.
7 Copies.