



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3331]

**TUESDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 331/2025

Between:

G Venkata Ramana

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. KINTALI DHARMA RAO

Counsel for the Respondent(S):

1. GP FOR ENERGY

2. V V SATISH

The Court made the following:

ORDER

The above Writ Petition is filed to declare e-procurement tenders for carrying out operation & maintenance including watch & ward, house-keeping & gardening, MRT Assistance & assistance for Telecom of E.H.T Sub-stations and lines and CBD & SM Gangs for lines & sub-stations on works Contract basis vide Bid document Nos.

(1) APT-e-37/CE/Zone/Kadapa/2024-25-Tender ID.776815; (2) APT-e-33/CE/Zone/Kadapa/2024-25-Tender ID.776781; (3) APT-e-36/CE/Zone/Kadapa/2024-25-Tender ID.776809; (4) APT-e-34/CE/Zone/Kadapa/2024-25-Tender ID.776793; (5) APT-e-35/CE/Zone/Kadapa/2024-25-Tender ID.776800 and (6) APT-e-38/CE/Zone/Kadapa/2024-25-Tender ID.776823, issued by 3rd respondent as illegal, arbitrary and in violation of Article 14,19 and 21 of Constitution of India.

2. The averments in brief are that the 2nd respondent-Andhra Pradesh Transmission Corporation Limited called for tenders for carrying out aforementioned works on contract basis; that Clause No.5 (iii) of the bid document, specification issued by the 3rd respondent is illegal, void and arbitrary; that inserting Clause No.5 (iii) is against the equality; that without considering the financial viability and turnover of the contractor, imposing the lottery system in the tender notification amounts to arbitrary action of the respondents and it violates the fairness and equality and that the petitioner is having A Grade licence and authorized to carryout electrical installations.

3. A counter affidavit was filed on behalf of respondents 3 to 5. It was contended, *inter alia*, that under the tender conditions, the estimated contract value, which covers salaries of staff under contract is fixed, and the bidder has to quote bid only towards percentage of commission on Estimated Contract Value (ECV) for the purpose of Administrative/Supervision charges. The work that would be given under the present contract does not involve much complexity. Therefore, the condition was incorporated in Clause No.5 (i) and (iii) that if more than one bidder quotes the same percentage and they are

found to be the lowest tender, the bidder would be selected based on lottery. The said condition of lottery is stipulated as part of fairness in selecting the bidders in the contingency of tie, so as to see that selection of bidder is saved from any allegation of favouritism. The petitioner without participating in the tenders, filed the writ petition to hamper the tender process. Neither legal rights nor fundamental rights of the petitioners are infringed and eventually, prayed to dismiss the writ petition.

4. Heard Sri Mettu Chandra Sekhar, learned counsel representing Sri Kintali Dharma Rao, learned counsel for the petitioner and Sri V.V.Satish, learned standing counsel for respondents 2 to 5.

5. Learned counsel for the petitioner, while reiterating the averments in the affidavit, would submit that the bid documents issued by the respondents itself is illegal and void.

6. Sri V.V.Satish, learned standing counsel, on the other hand, would submit that the petitioner challenged Clause No.5 (iii) of the document, but he did not challenge the tenders. No pleading was made in the affidavit to that effect.

7. Now, the point for consideration is:

Whether Clause No.5 (iii) in the terms and conditions of the tender notification suffers from any arbitrariness?

8. Before delving into the rival contentions, it is apt to discuss the pleadings in the first instance. In Paragraph 3 of the affidavit, the petitioner specifically contended that the writ petition is being filed

challenging Clause No.5 (iii) of the bid document, as illegal, void and arbitrary. Clause No.5 (iii) of the bid document reads thus:

- iii. In case of one bidder is qualified as L1 for more than two works, award of two works will be on the basis of on lowest tender quoted percentage. In case of same percentage, based on lottery.

9. At the hearing, learned counsel for the petitioner canvassed that Clauses No. 4, 10, and 38 of the bid documents are illegal and arbitrary. This court reiterates that no such pleading was made in the writ affidavit. Since the learned counsel advanced arguments on that aspect, before proceeding further, let this Court examine the importance of pleadings in the writ petition.

10. It is a trait law that to declare any Rule or clause as ultra vires, specific pleading to challenge the Rule/clause and asking for such relief should be made. It is a settled legal position that the relief not founded on the pleadings should not be granted. The decision in the case should not be based on grounds outside the pleadings of the parties. In the absence of pleadings, evidence, if any, produced by the parties, it may not be considered. No party should be permitted to travel beyond its pleadings, and the parties are bound by the necessary material facts regarding the case set up by them. A pleading ensures that both sides are fully aligned and aware of the questions that are likely to arise and the opportunity of placing relevant evidence before the Court for its consideration.

11. In **Union of India Vs. Manjurani Routray**¹, the Hon'ble Apex Court while considering the importance of pleadings, held thus:

"11. ... It is a trite law that for striking down the provisions of law or for declaring any rules as ultra vires, specific pleading to challenge the rules and asking of such relief ought to be made, that is conspicuously missing in the present case. In the absence of such a pleading, the Union of India did not have an opportunity to rebut the same. The other side had no opportunity to bring on record the object, if any, behind the Rules that were brought into force. We are also of the considered view that, in the writ petition seeking a writ of certiorari challenging the order of CAT, the High Court ought not to have declared Rule 4(b) as ultra vires in the above fact situation. Therefore, the High Court was not justified to declare Rule 4(b) as ultra vires."

12. In **Chinta Lingam Vs. Govt. of India**², the Apex Court emphasized the importance of pleadings and observed thus:

"3. ... No foundation was laid in the pleadings either before the High Court or in the writ petition before us as to how the restrictions which were imposed by the Control Orders were not in the public interest. It is significant that even on the point of preference to one State over another or discrimination between one State and another State there is complete absence of pleading in the writ petition filed before us. The High Court adverted to the matter but we have not been shown that any proper or firm foundation was laid in the writ petitions before the High Court on the question of preference or discrimination within Article 303(1). No argument, therefore, can be entertained on these matters..."

13. In **Bharat Singh v. State of Haryana**³, the Hon'ble Apex Court reiterated regarding importance of pleadings, observed thus:

¹ (2023) 9 SCC 144 : 2023 SCC OnLine SC 1088

² (1970) 3 SCC 768

³ AIR 1988 SC 2181

"when a point, which is ostensibly a point of law, is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point that in this regard there is a distinction between a pleading under the Civil Procedure Code and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. "

14. Keeping in view the expressions of the Hon'ble Apex Court, let this Court examine the pleadings and grievance of the petitioner in the writ petition.

15. As narrated *supra*, the grievance of the petitioner is that Clause No.5 (iii) of the bid document is unreasonable and it violates the principles of natural justice. Clause No.5 (iii), extracted *supra*, would indicate that in case one bidder is qualified as L1 for more than two works, the award of two works will be based on the lowest tender quoted percentage. In case of the same percentage, based on the lottery. Except for stating that said clause is arbitrary, nothing was pleaded as to how said clause is arbitrary and how it violates the principles of Natural Justice. No pleading is averred in the affidavit in this regard. In the absence of pleading, the contention of the learned counsel for the petitioner vis-à-vis the alleged arbitrariness of the other clauses in the tender document, in the considered opinion of this court, cannot be adjudicated.

16. In fact, at the time of arguments, learned counsel for the petitioner would submit that the said clause is not newly incorporated in the bid document. In the counter affidavit, it was explained that the said condition of the lottery is stipulated as part of fairness in selecting the bidders in the contingency of a tie, to see that the selection of the bidder is saved from any allegation of favouritism. Thus, the said clause, impugned in the writ petition, by no stretch of imagination can be termed as arbitrary. In fact, the said clause was incorporated as part of fairness in the selection process. It is pertinent to mention here that the petitioner, even without participating in the tender process, approached this Court. The petitioner, in the opinion of this Court, resorted to 'chance litigation' and invoked the extraordinary jurisdiction of this Court.

17. Given the discussion *supra*, this Court does not find any merit in the writ petition and hence, it is liable to be dismissed.

18. Accordingly, the Writ Petition is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

PVD