



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 8902 OF 2022 (GM-TEN)

BETWEEN:

1. RAJATH R,
S/O S RAJU,
AGED ABOUT 27 YEARS,
PROPRIETOR OF R. R. ENTERPRISES,
R/O NO.99/3, 4TH CROSS,
WIDIA LAYOUT, VIJAYANAGAR,
BENGALURU – 560 040.

...PETITIONER

(BY SRI. D. S. HOSMATH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS COMMISSIONER,
HEALTH AND FAMILY WELFARE DEPARTMENT,
AAROGYA SOUDHA,
MAGADI ROAD,
BENGALURU – 560 023.
2. THE DIRECTOR,
HEALTH AND FAMILY WELFARE DEPARTMENT,
AAROGYA SOUDHA, MAGADI ROAD,
BENGALURU – 560 023.
3. THE DISTRICT SURGEON,
DISTRICT HOSPITAL,



RAMANAGARA TOWN,
RAMANAGARA DISTRICT – 562 159.

...RESPONDENTS

(BY SRI. M. VINOD KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH MODIFICATION ORDER VIDE ANNEXURE - C PASSED BY THE R-3 VIDE DATED 08.04.2022; AWARD COSTS IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question the corrigendum issued on 08.04.2022 to the Notice Inviting Tender dated 31.03.2022, by which, the right of the petitioner to participate in the tender is taken away.

2. Heard Sri. D.S. Hosmath, learned counsel appearing for the petitioner and Sri. M. Vinod Kumar, learned AGA appearing for the respondents.



3. *Sans* details, facts germane are as follows:

The petitioner claims to be a registered firm dealing with supply of food articles in the name and style of '*R.R. Enterprises*' and is in the business of supply of readymade food and diet to the District hospital, Ramanagara from 2021.

3.1. Respondent No.2 - Health and Family Welfare Department, issues a Notice Inviting Tender ('NIT' for short) on 31.03.2022 calling the tenderers to submit their bids in terms of what was notified for the purpose of procurement of food and diet to the Government hospitals, Ramanagara.

3.2. The petitioner finding himself to be eligible applies pursuant to the NIT. Respondent No.1-State later issues a corrigendum concerning the production of GST certificate. The GST certificate earlier stood at one year, which is by way of said corrigendum is increased to 3 years. By this act of issuance of corrigendum, the petitioner is out of the race, as the petitioner had submitted a GST certificate of one year and does not possess a certificate for 3 years. It is the corrigendum dated 08.04.2022 that drives the petitioner to this Court in the subject petition. The petition having been entertained the



further proceedings pursuant to the tender are interdicted by grant of an interim order, which is subsisting as on date.

4. Learned counsel appearing for the petitioner submits that in terms of the Karnataka Transparency in Public Procurements Act, 1999 ('Act' for short), any alteration or modification of the tender conditions would be violative of law and would submit that the respondents could not have issued a corrigendum after issuance of the tender notification, which in effect takes away the right of the petitioner and would seek quashment of the corrigendum and his tender to be accepted.

4.1. On the other hand, the learned AGA appearing for the respondents would refute the submissions, and would contend Rule 14 of the Karnataka Transparency in Public Procurements, Rules, 2000 ('Rules' for short) permits any correction corrigendum to be issued prior to opening of the tenders. He would submit that corrigendum is issued prior to the last date of submission of the bids itself and therefore, there is no illegality committed by respondent No.1-State in issuing the said corrigendum. He would seek dismissal of the petition.



5. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

6. The afore-narrated facts, dates and link in the chain of events are not in dispute and are therefore not reiterated. The only issue that falls for consideration is:

"Whether the corrigendum issued would contravene the provisions of Karnataka Transparency in Public Procurements, Rules, 2000?"

The Notice inviting tender admittedly was issued on 31.03.2022. The timeline in the tender document reads as follows:

1	ಟೆಂಡರ್ ಫಾರಂ ಅನ್ನು ಆನ್‌ಲೈನ್‌ನಲ್ಲಿ ಡೌನ್ ಲೋಡ್ ಮಾಡುವುದು	ದಿನಾಂಕ: 31-03-2022 ರಿಂದ
2	ಆನ್‌ಲೈನ್‌ನಲ್ಲಿ ಟೆಂಡರ್‌ಗಳನ್ನು ಸಲ್ಲಿಸಲು/ಅಪ್‌ಲೋಡ್ ಮಾಡಲು ಕೊನೆ ದಿನಾಂಕ	ದಿನಾಂಕ 11-04-2022 ಸಂಜೆ 5.30 ಗಂಟೆಯವರೆಗೆ
3	ಆನ್‌ಲೈನ್‌ನಲ್ಲಿ ಸಲ್ಲಿಸಲಾದ ಟೆಂಡರ್‌ಗಳ ಟೆಕ್ನಿಕಲ್ ಬಿಡ್ ತೆರೆಯುವುದು	ದಿನಾಂಕ 13-04-2022 ಬೆ. 11.00 ರ ನಂತರ
4	ಹಣಕಾಸಿನ ಬಿಡ್ ತೆರೆಯುವುದು	ದಿನಾಂಕ: 16-04-2022 ಬ.ವ. 11-00 ರ ನಂತರ
5	ಇ.ಎಂ.ಡಿ ಮೊತ್ತ(ಇ-ಪೋರ್ಟಲ್ ಮೂಲಕ) ಪಡೆಯುವುದು	ರೂ. 20,000/-
6	ಪಡೆಯುವ ಟೆಂಡರ್‌ನ ವಾರ್ಷಿಕ ಅಂದಾಜು ಮೊತ್ತ	ರೂ. 8,00,000/-



7	ಹಾಲು ಮತ್ತು ಬ್ರೆಡ್‌ಗಾಗಿ ಇ.ಎಂ.ಡಿ.	ರೂ. 10,000/-
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(emphasis supplied)

7. In terms of the chart quoted hereinabove which depicts the timeline of opening and closing of the tender what can be gathered is that the tender is open from 31-03-2022 up to 5.30 p.m. on 11-04-2022, last date for submission of bids was 11.04.2022. The technical bid scrutiny of the tenders was slated to be conducted on 13-04-2022 and later the financial bid was to be opened on 16-04-2022. By the very timeline, it depicts to be a two cover tender. The impugned corrigendum is issued on 8.04.2022 which is between the date of opening of the tender and last date for submission of tender. The corrigendum was to the effect that tenderers who were asked to submit their bids along with the GST certificate for one year were now asked to submit a GST certificate for three years, in place of one year.

8. The contention of the learned counsel appearing for the petitioner is that, by this corrigendum, he is put out of the race as he is not in possession of GST certificate for three



years, but is in possession of only for one year and had submitted the said bid enclosing a certificate for one year. According to the learned counsel it amounts to alteration of the tender conditions after issuance of tender which is impermissible in law. In the wake of the said submission, it becomes necessary to notice whether the Tender Inviting Authority had the power to amend the conditions of tender after issuing the tender notification. It is germane to notice Rule 14 of the Rules, which reads as follows:

*"14. **Clarification to tender documents** – At any time after the issue of the tender documents and before the opening of the tender, the Tender Inviting Authority may make any changes, modifications or amendments to the tender documents and shall send intimation of such change to all those who have purchased the original tender documents."*

A perusal at Rule 14 of the Rules what becomes evident is that at any time after issuance of the tender notification before opening of the tender, the Tender Inviting Authority may, make any change, modification or amendment to the tender document. The word 'may' make any change in Rule 14 of the Rules is unequivocal. At any time after the issue of tender and before opening of the tender the Tender Inviting authority is



empowered to issue any change. If the dates in the case at hand are considered *qua* Rule 14 of the Rules, the unmistakable inference would be that the action of the Tender Inviting Authority suffers from no illegality. Issue of tender notification was on 31-03-2022; the date on which corrigendum was issued was on 8.04.2022; the last date for submission of bids was on 11-04-2022 and opening of technical bid was on 13-04-2022. Therefore, in terms of Rule 14 of the Rules, before opening of technical bid, the change, modification or amendment to the tender document is a permissible exercise of power. The only rider is that the information should be given to all the tenderers. The information is required to be given to all the tenderers, if the changes are made after the last date of submission of bids, but before opening of technical bid or opening of any bid for that matter. In the case at hand, the corrigendum is notified on 8-04-2022 long before the last date for submission of bids even. Therefore, it is information to all the tenderers.

9. The act of the respondent in issuing a corrigendum is in consonance with the power available under Rule 14 of the



Rules. The submission of the learned Additional Government Advocate that corrigendum had to be issued, as stipulation of certificate of one year was itself contrary to the Government order which directed that in tenders three years of GST certificate is to be sought merits. Thus acceptance tumbles down the challenge to the corrigendum by the petitioner.

10. In the considered view of the Court, the change in the tender condition by way of impugned corrigendum, does not amount to changing rules of the game after the game had commenced. It was a permissible exercise of power in law. Merely because the petitioner is non-suited by way of the said corrigendum and is moved out of the race, would not make the corrigendum illegal.

11. For the aforesaid reasons, finding no merit, petition stands dismissed.

**Sd/-
JUDGE**

SJK
List No.: 1 Sl No.: 5