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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF NOVEMBER 2004

BEFORE

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

WRIT PETITION NO.48121/2003 (GM-TER)

BETWEEN:

SRI BALAJI ELECTRICALS
REPTD., BY ITS PROPRIETOR
SRI K.K.HONNE GOWDA
S/O. SRI KALE GOWDA
AGED ABOUT 35 YRS
R/AT KOTTAHALLI
KIKKERI
K.R.PET TALUK
MYSORE DISTRICT.

...PETITIONER

(BY SRI K.M.PRAKASH, ADV.,)

AND:

1. THE SUPERINTENDENT ENGINEER
CIRCLE OFFICE
WORK AND EXECUTIVE CIRCLE
MESCOM
SRI HARSHA ROAD
MYSORE-1.
2. THE EXECUTIVE ENGINEER
MESCOM
WORK AND EXECUTIVE BRANCH
PANDAVAPURA
MANDYA DISTRICT.

...RESPONDENTS

(BY SRI N.K.GUPTHA, ADV., FOR R2
R.1 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO QUASH VIDE ANNEXURE-E DATED 17.10.2003 I.E.,



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RE-TENDER NOTIFICATION BY DECLARING THE SAME AS NULL AND VOID, ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this petition, the petitioner has called in question the re-tender notification, dated 17.10.2003, issued by the respondent-authorities. It is the case of the petitioner that pursuant to the tender notification dated 31.7.2003, the petitioner offered his bid, which, when opened, in the presence of the applicants, on 13.8.2003, was the least. Although the petitioner was called for negotiation, it is his allegation that the respondent-authorities did not accept his bid but re-notified the tender, by notification, dated 20.10.2003, Annexure-E. In the premise of the aforesaid pleadings, the petitioner has presented this writ petition seeking to quash the said re-tender notification at Annexure-E.


2. I have heard the learned Counsel for the parties.



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3. Learned Counsel for the petitioner would advance twofold contentions. Firstly, that the re-tender notification suffers from the vice of violation of principles of natural justice, in not notifying the petitioner before the re-tender notification. Secondly, it is contended that the respondent-authorities have acted in an arbitrary manner, by causing the re-tender notification. Per contra, learned Counsel for the respondent-authorities would contend that the tender notification is in the realm of contract and does not attract the principles of natural justice, when re-tendering. In addition, it is contended that the respondents being the guardian of public funds, in public interest, the tender was re-notified.

4. It is not denied and in fact, cannot be denied that judicial review of administrative action in exercise of contractual powers by the state, is applicable only to prevent arbitrariness or favouritism, as observed by the Apex Court in the case of **TATA CELLULAR vs UNION**



: 4 :

OF INDIA (AIR 1996 SC PAGE 11) "that there are inherent limitations in exercise of that power of judicial review". In the said authoritative decision, it is held that the right to refuse the lowest tender, being a guardian of finances of the State, however such a refusal should not be in violation of Article 14 of the Constitution. The Apex Court further held that in the process of securing the best person or the best quotation, it cannot be said that there is infringement of Article 14 and that the right to choose cannot be considered to be an arbitrary power, but if such a power is exercised for any collateral purpose, should be struck down.

5. Keeping in mind the principles laid down in Tata Cellular's case and applying the same to the facts of this case, in my considered opinion, the petitioner has not made out a case of the respondent having exercised a power for any collateral purpose, firstly, because the contention advanced is violation of principles of natural justice in not notifying the petitioner



before the re-tender. Such a principle does not apply in the case of re-tender. Secondly, because the assertion that the petitioner had quoted the lowest price amongst all the other tenderers, the refusal to accept his bid is arbitrary and cannot be sustained. As observed by the Hon'ble Supreme Court, the State is the guardian of its finances and the right to refuse the lowest tender is always available to the State and such refusal cannot tantamount to violation of Article 14. So also, the re-tender cannot be termed to be arbitrary since the petitioner has not established any collateral purpose, by which the respondent-authorities were motivated, to notify the re-tender.

6. Although the learned Counsel for the petitioner would point out to the communication dated 26.9.2003 at Annexure-D when the decision to re-tender was taken, to submit that such a decision was arbitrary, the petitioner has alleged malafides, in the petition, in order to sustain such a contention. In any event, the

