HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE TWENTY SEVENTH DAY OF MARCH TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL AND THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT APPEAL NO: 169 OF 2025

Writ Appeal under clause 15 of the Letters Patent Preferred Against the Order dated. 28-10-2024, Passed in WP.No.21971 of 2024. on the file of the High Court.

Between:

1. Telangana Mineral Development Corporation Limited TGMDC, A Telangana State Government, Undertaking Having office at 62915, HMWSSB premises rear block 3rd floor, Khairatabad Hyderabad 500004,

   Rep by its Managing Director.

2. The Vice Chairman and Managing Director, Telangana Mineral Development Corporation Limited TGMDC, Having office at 62915, HMWSSB, premises rear block 3rd floor, Khairatabad, Hyderabad 500004.

...APPELLANTS/RESPONDENTS NO.1 AND 2

AND

1. GKR Infracon India Private Limited., Having office at Plot No 43NIII, H No 82293/82/J III/43/N, Opp Jubilee Hills, Public School Road No 71, Jubilee Hills, Hyderabad 500033, Rep by its Authorized Signatory, Mr Lanki Reddy Gopi Krishna.

2. Mr. Lanki Reddy Gopi Krishna, S/o. Lanki Reddy Subba Reddy, Aged about 40 years, Occ. Business, R/o. 320/A. Road No.12, Banjara Hills, MLA Colony, Hyderabad.

...RESPONDENTS/WRIT PEITIONERS

3. Sirco Projects Private Limited., 4th floor PLOT NO 178/A, Lane No 7, above Treebo Trend Srico Hotel, Lane No 12, MLA Colony Banjara Hills, Hyderabad, Telangana 500034 Rep by its Managing Director.

...RESPONDENT/RESPONDENT

IA NO: 1 OF 2025

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 allow the Writ Appeal by setting aside the order dated 28.10.2024 of the Learned Single Judge in Writ Petition No. 21971 of 2024.

Counsel for the Appellants: SRI T. RAJINIKANTH REDDY,
ADDITIONAL ADVOCATE GENERAL

Counsel for the Respondent Nos.1 and 2: SRI TARUN G. REDDY

The Court Delivered the following: JUDGMENT

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE SMT. JUSTICE RENUKA YARA

WRIT APPEAL No.169 OF 2025

JUDGMENT: *(Per Hon'ble Smt. Justice Renuka Yara)*

Heard Sri T.Rajinikanth Reddy, learned Additional Advocate General appearing for the appellants and Sri Tarun G.Reddy, learned counsel for respondent Nos.1 and 2. Perused the record.

2. This is an intra-court appeal filed by the appellants/respondent Nos.1 and 2 aggrieved by the order dated 28.10.2024 passed in W.P.No.21971 of 2024 by the learned Single Judge of this Court declaring the action of the appellants/respondent Nos.1 and 2 in rejecting the tender bid of the respondents/writ petitioners in respect of tender No.TGMDC/S&M/DSLT/JB/2024/225, dated 14.06.2024 for de-siltation of 10,80,000 MT of sand from Brahmanapalli/2024/1 sand reach at Jayashankar Bhupalpally District as illegal for not assigning reasons, the award of tender No.TGMDC/S&M/DSLT/ JB/2024/225, dated 14.06.2024 in favour of respondent No.3 has been set aside and the writ appellants are directed to call for fresh bids in respect of tender No.TGMDC/S&M/DSLT/JB/2024/225, dated 14.06.2024.

3. The background facts of the case are that the writ appellant No.2 floated tender No.TGMDC/S&M/DSLT/JB/2024/225, dated

14.06.2024 for de-siltation of 10,80,000 MT of sand from Brahmanapalli/2024/1 sand reach at Jayashankar Bhupalpally District and that the said tender was floated for a contract value of approximately Rs.10,47,60,531/-. Respondent No.1 represented by respondent No.2 and respondent No.3 participated in the bid. The bid was awarded in favour of respondent No.3 as per the award dated 19.07.2024. The bid submitted by respondent No.1 has been rejected as per the information provided in the Telangana eprocurement portal.

4. The rejection of their bid is challenged by respondent Nos.1 and 2 on the premise that the writ appellants did not conduct the tender process and awarding of the tender in fair and transparent manner by referring to the legal ratios laid down by the Hon'ble Supreme Court of India in ***Dharmapal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others***[1], ***PKF Sridhar and Santhanam v. Airports Economic Regulatory Authority of India (WP(C) No.12385 of 2021), Swadeshi Cotton Mills v. Union of India***[2] ***and Punjab State Power Corporation Limited and another v. EMTA Coal Limited and others***[3]. Respondent Nos.1 and 2 primarily questioned the action of writ appellants in rejecting the tender without assigning reasons and

[1] (2015)8 SCC 519
[2] AIR 1981 SCC 818
[3] (2022)2 SCC 1

without giving them hearing for giving clarification on their Work Done Certificate. The learned Single Judge allowed the writ petition referring to various judgments of the Hon'ble Supreme Court of India holding that decision making process adopted by the writ appellants is contrary to principles of natural justice and lacking in transparency in the tender process. It is held that no reason is assigned for rejecting respondent No.1's bid as failing to have fulfilled clause 3.2 tender conditions. In the light of the respondent No.1's specific case that it fulfilled the requirement under clause 3.2 of the tender conditions. It is held that as per the entry made in e-procurement web portal on 19.07.2024, the writ appellants have clearly observed that respondent No.1 has fulfilled the eligibility criteria referring to the contents of Remarks column which are extracted and produced below:

Remarks
As per Tender Document

5. Further, the learned Single Judge held that the writ appellants have failed to give an opportunity to respondent No.1 to give clarification in case of any ambiguity about the contents of the Work Done Certificate. Lastly, the learned Single Judge also referred to the writ appellants issuing Letter of Intent to respondent No.3 on 10.07.2024 and the award of tender to respondent No.3 took place on

19.07.2024. Thus, the writ petition was allowed leading to filing of the writ appeal.

6. The learned Additional Advocate General would submit that the Government followed correct procedure as spelled out in the procurement manual and the tender notification. It is emphasized that respondent No.1 failed to meet the tender condition No.3.2, which reads as follows:

> "The bidder shall have satisfactorily completed at least one work of Mining/Civil/Irrigation work of value not less than Rs.8,38,08,000/- (Rupees Eight crore Thirty Eight lakhs Eight thousand only) (80% of value of work) involving excavation and removal any Earth/mineral including sand in State/Central Government Undertakings during the last three (3) years."

7. In this regard referring to the Work Done Certificates *vide* Ref.Nos.KGM/JVR OC-II/2023/338C/608 and KGM/JVR OC-II/2023/338D/609, both dated 12/16.05.2023 submitted by respondent No.1, it is argued that said certificates clearly demonstrate that respondent No.1 did not complete the contracts but rather the work is still in progress in "Present status of work" column.

8. In that context, it is argued that any bidder has to produce certificate showing satisfactorily completed work of value not less than Rs.8,38,08,000/- during the last three years of the bid. It is argued that among 14 technical qualified bidders, 7 were rejected for

not complying tender clause 3.2 and the same was informed through e-procurement website on 08.07.2024. Respondent No.1 is one among 7 bidders whose tender was rejected for failing to meet the criteria. The learned Additional Advocate General argued that the Hon'ble Supreme Court in various judgments held that in contractual matters the scope of judicial review or interference under Article 226 of Constitution of India is available in exceptional circumstances, such as, on account of *mala fides*, arbitrariness and illegalities. Whereas, in the instant case, no specific instance of malice is made out. Only because respondent No.1 failed to satisfy the condition under clause 3.2 of tender condition its bid was rejected which is not arbitrary. The learned Additional Advocate General referred to the judgment of the Hon'ble Supreme Court in ***Agmatel India Private Limited v. Resourys Telecom and others***[4], wherein it is held that

> "The above mentioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."

9. The contention of respondent No.1 about giving opportunity under clause 21 to provide clarification with respect to Work Done

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[4] (2022)5 SCC 362

Certificate, it is argued that the employer can seek clarification at its discretion. When the Work Done Certificate itself clearly reflected that respondent No.1 did not complete the work, there is no need to seek any clarification. Lastly, it is argued that the learned Single Judge erred in observing that the letter of intent dated 10.07.2024 was issued in favour of respondent No.2 and the same is contrary to the information on the web site which shows tender was awarded on 19.07.2024. According to the learned Additional Advocate General, after the bids were submitted by prospective bidders, the bids were evaluated by the Tender Evaluation Committee on 08.07.2024 to ascertain the conditions stipulated and successful bidder was issued the letter of intent on 10.07.2024 and said information was uploaded on 19.07.2024. In the entire process, there is no *mala fide* or lack of transparency. Learned Additional Advocate General referred to judgment in W.A.Nos.116 and 117 of 2025, dated 13.02.2025 wherein it was held that:

> "16. A careful reading of Clause 17.0 reproduced hereinabove shows that if bidder has been banned by any other body and has disclosed this fact clearly in his bid, as a rule of thumb, SCCL management will not disqualify him. The SCCL management reserves right to take appropriate decision in such eventuality. The language employed in the aforesaid clause shows that it enables the SCCL management to take an appropriate decision in such cases where disclosure of banning is there. The decision taken by SCCL management in the present case is to disqualify the petitioner. At this stage, we are not inclined to put the clock back and direct the Singareni Collieries Company Limited to undertake the entire exercise afresh. The Singareni Collieries Company Limited is serving public interest. For the smooth production and running of Singareni Collieries Company Limited, supply of bulk explosive is essential. Any interference by us at this juncture, will hamper the activity of the industry and consequently will have an adverse impact on public

interest. Thus, in the peculiar facts of these cases, we are not inclined to interfere in the matter. More-so, after passing of impugned order, third party rights are created and contracts have been granted to nine (9) contractors and they are not parties before us."

10. On the basis of above judgment, it is argued that this Court in similar cases on earlier occasions declined to interfere with the decision made by the Government while awarding tenders.

11. Learned counsel for respondent Nos.1 and 2 argued that it has fulfilled condition under clause 3.2 of tender conditions and therefore it was found to have qualified as per the entry in web portal dated 19.07.2024. It is argued that the learned Single Judge had assessed the tender process adopted by the writ appellants in proper perspective with respect to meeting the clause 3.2 of tender conditions, not providing opportunity under tender clause 21 for giving clarification about the Work Done Certificates and rejecting the tender without assigning reasons. In that regard, learned counsel for respondent Nos.1 and 2 referred to judgment of the Hon'ble Supreme Court of India in ***M/s. Kasturi Lal Lakshi Reddy, rep. by its partner Shri Kasturi Lal and others v. State of Jammu and Kahsmir and another***[5], wherein it is held that

"15.....Where the government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess. the Government cannot act arbitrarily at its, sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be

[5] (1980)4 SCC 1

arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance..."

12. Learned counsel for the respondents vehemently argued that no reasons are assigned for rejecting its bid and thereby there is violation of principles of natural justice. In that context, learned counsel for the respondents referred to judgment of the Hon'ble Supreme Court of India in ***Dharmapal***'s case (1 supra) and relevant portion is extracted and produced below:

> "The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'.

13. **Analysis by the Court**:

A perusal of the record and the arguments of both the counsel show that the crux of the dispute is with respect to whether or not respondent No.1 met the criteria under clause 3.2 of tender conditions, whether the writ appellants acted with *mala fides* in not providing an opportunity to respondent No.1 to give clarification about its Work Done Certificate and lastly whether the writ appellants did not give a reasoned order for rejection of bid submitted by respondent No.1 and thereby the tender process lacks transparency.

14. First and foremost tender under clause 3.2 makes it mandatory for the bidders to submit Work Done Certificate showing satisfactory completion of at least one work of mining/civil/irrigation of value not less than Rs.8,38,08,000/- (80% of value of work) involving excavation and removal any earth/mineral including sand in State/Central Government Undertakings during the last three years. The aforementioned condition requires that the bidder shall complete at least one work of required monitory value, complete satisfactorily that too within last three years of the date of the bid. While so, the Work Done Certificate submitted by respondent No.1 shows that the said company has taken up the work of Singareni Collieries through work order No.7600009282, dated 21.10.2022 and has completed certain work upto March 2023 and the status of the work is "work in progress". Similarly, respondent No.1 has taken up another work from Singareni Collieries Company Limited and the certificate shows that the work is still in progress. The contents of the Work Done Certificates submitted by respondent No.1 failed to meet two criteria, i.e. completion of work and completion of work satisfactorily. Only when the entire work is completed that too to the satisfaction of the employer, it can be said that respondent No.1 has successfully fulfilled the criteria under clause 3.2 of tender conditions and not otherwise. The contents of the Work Done Certificate speak for themselves and cannot be given any other

interpretation. The respondents would contend that the contracts awarded are for a period of 11 months and 17 months respectively and each component of work done is a separate piece work which is to be treated as completed satisfactorily. Such interpretation of the contents of the Work Done Certificates is not acceptable.

15. Coming to the aspect of seeking clarification from the bidder as per clause 21 of tender conditions, said tender condition itself clearly shows that the clarification may be sought at the discretion of the employer. In case, the employer after perusing the contents Work Done Certificate has come to the conclusion that the work is still in progress and that has not been completed, no fault can be found with the employer. A conjoint reading of clause 3.2 and 21 of the tender conditions together with the contents of Work Done Certificates does not make out a positive case in favour of respondent No.1.

16. Coming to the contention of respondent Nos.1 and 2 that as per clause 22.1, the eligibility criteria is as per definition ITB clause 3 and only when the eligibility criteria is met, the further evaluation takes place. To ascertain the case of respondent Nos.1 and 2, said entry in the web portal is produced below:

Technical parameters list:

Para meter name	Parameter Description	Operat or	Date Type	Min Value	Max value	Parameter value	Fulfill ed	Remarks	Evaluation comments
As per tender docu ment	As per tender document		Text	0.00	0.00	Yes	Yes	As per Tender Document	Clause 3.2 of Tender conditions not fulfilled

17. A reference is made to the contents of above award of tender dated 19.07.2024 to the "Remarks" column wherein it is entered as "As per Tender document". This entry in the Remarks column is mis-interpreted by respondent No.1 to mean that respondent No.1 has met the eligibility criteria as per 3.2. To the contrary, the meaning of the contents of "Remarks" column can be construed as that respondent No.1 qualified for further evaluation of the bid as it has met the eligibility criteria by filing all the required tender documents including the Work Done Certificate. The title of the column is "Remarks". Remarks with respect to whether the bidders have filed all the documents or not. Only such bidders who have filed all the documents are eligible for evaluation of their bids and further steps.

18. The next column is titled "evaluation comments", wherein it is clearly mentioned as "clause 3.2 of Tender conditions not fulfilled". Therefore, a close scrutiny of the contents of "Remarks" column and the contents of "evaluation comments" column shows that the contents of the Remarks column are meant for noting down the eligibility of a bidder *prima facie* on account to filing of required

documents as per tender notification and not on the basis of contents of said documents. Only after the documents filed for the evaluation of the bid are in order, the contents are examined and an evaluation is made as to the eligibility of the bidders and thereby respondent No.1 has been found to be lacking to have met the conditions under clause 3.2. However, respondent No.1 is mis-interpreting the contents of "Remarks" column and the "evaluation comments" column and the same has been erroneously relied upon by the learned Single Judge while passing the impugned order.

19. Coming to the aspect of observing principles of natural justice, about passing a reasoned order while rejecting an application, a reasoned order is passed when there is an adjudication process, where there are two or more rival contestants, each person is heard and an evaluation is made of the rival contentions and reasoned order is passed. In the instant case, the entire tender process took place online wherein the bids are submitted online and the result also has been declared online. A reason for rejection is the criteria for meeting the requirements of principles of natural justice. The said reasoned order could be one word, one line or a paragraph or more. In the instant case, the employer has given the reason for rejecting bid of respondent No.1 by stating that respondent No.1 failed to meet the conditions of clause 3.2 of tender conditions. The

said reason when written in one line or in an elaborate manner would convey the same meaning. Thus, there is no ground to accuse the writ appellants of not observing the principles of natural justice.

20. Lastly, *mala fides* are attributed to the writ appellants on the basis of issuance of letter of intent dated 10.07.2024 while the information was made available by the writ appellants on e-procurement website indicated that respondent No.3 was declared the successful bidder and awarded the tender only on 19.07.2024. In this regard, it is seen that the said allegation was not made by respondent No.1 in the writ petition but was raised only at the time of filing a rejoinder to the counter filed by respondent No.3.

21. In this regard, as per judgment of the Hon'ble Supreme Court in ***Arti Sapru v. State of Jammu and Kashmir***[6], the allegations made for the first time in the rejoinder affidavit do not give scope for reasonable opportunity to the respondents to give reply and therefore cannot form basis for a finding in favour of the petitioner. Likewise in the matter of ***Ashok Lanka v. Rishi Dikshit***[7], the Hon'ble Supreme Court held that when the allegations are made in the rejoinder, when no new plea can be permitted in the rejoinder, without the leave of the Court, such allegations cannot be relied upon. While legal precedents do not support respondent No.1's

[6] (1981)2SCC 484
[7] (2006)9SCC 90

allegations made in the rejoinder for the first time attributing *mala fides*, we are of the considered opinion that the contents of the web portal dated 19.07.2024 are also mis-interpreted on account of the fact that the tender evaluation process has been completed by 08.07.2024 and the letter of intent was issued to the successful bidder on 10.07.2024 and said information was uploaded in the website on 19.07.2024. Last but not least, after the bids are evaluated, the eligible bidder has been selected by way of lottery in the presence of all the bidders. The learned Additional Advocate General pointed out that even respondent No.1 participated in the lottery process that took place on 10.07.2024 and therefore, no *mala fides* can be attributed to reference Nos.1 and 2, as the entire process has been conducted in transparent manner as per the tender process contemplated in the tender conditions as well as notification. When the successful bidder is selected through the process of drawing lots in the presence of all the eligible bidders, no *mala fides* can be attributed to the writ appellants in conducting the tender process in fair and transparent manner.

22. For the foregoing reasons, we are of the considered opinion that the learned Single Judge erred in reading the contents of the Work Done Certificates, the e-procurement award dated 19.07.2024 and the factum of issuance of letter of intent dated 10.07.2024 and

publishing said information on 19.07.2024 in the e-procurement online website and therefore the said impugned of the learned Single Judge is liable to be set aside.

23. In the result, the Writ Appeal is allowed setting aside the order dated 28.10.2024 in W.P.No.21971 of 2024 passed by the learned Single Judge. There shall be no order as to costs.

Miscellaneous applications, if any, pending in this appeal, shall stand closed.

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

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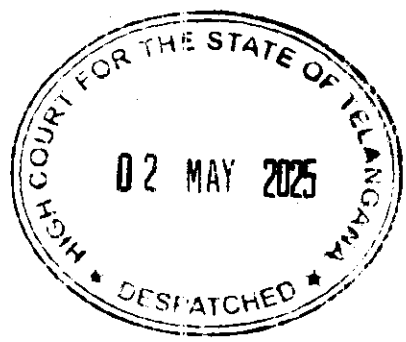
To,

1. The Authorized Signatory, GKR Infracon India Private Limited., Having office at Plot No 43NIII, H No 82293/82/J III/43/N, Opp Jubilee Hills, Public School Road No 71, Jubilee Hills, Hyderabad 500033, Mr Lanki Reddy Gopi Krishna.
2. The Managing Director, Sirco Projects Private Limited., 4th floor PLOT NO 178/A, Lane No 7, above Treebo Trend Srico Hotel, Lane No 12, MLA Colony Banjara Hills, Hyderabad, Telangana 500034.
3. Two CC to The Additional Advocate General, High Court for the State of Telangana, at Hyderabad[OUT]
4. One CC to Sri Tarun G. Reddy, Advocate [OPUC]
5. Two CD Copies

T J
LS PA

HIGH COURT

DATED:27/03/2025



JUDGMENT

WA.No.169 of 2025

ALLOWING THE WRIT APPEAL

WITHOUT COSTS

(8) PA 10/4/25