**IN THE HIGH COURT OF ANDHRA PRADESH**

W.P. No. 19943/2012

Decided On: 19.11.2012

Appellants: **Walia and Co. (R& M) Group-A, Represented by its Authorized Representative M. Satyanarayana, Hyderabad**
**Vs.**
Respondent: **The Commissioner, Information & Public Relations Dept, Hyderabad and 2 Others**
[Alongwith W.P. No. 19977/2012]

**Hon'ble Judges/Coram:**
Hon'ble Sri Justice C.V. Nagarjuna Reddy

**ORDER**

**Hon'ble Sri Justice C.V. Nagarjuna Reddy**

1. These two Writ Petitions involve identical issues of both fact and law. Hence, they are heard and being disposed of together. Respondent No. 1 has issued short tender notice dated 7-5-2011 inviting sealed tenders from firms/agencies to organize film shows and Kalajatha programmes like street plays, puppet shows, mimicry and other cultural forms through mobile vans, on various schemes of the Government Departments as and when required through Information & Public Relations (I & PR) Department. The tender notice has inter alia mentioned that the Kalajatha programmes will be organized in rural and urban localities with cultural troops with the help of the Field Officers of the Department of I & PR. The tender notice envisaged technical and financial bids to be submitted by the firms/agencies in sealed tenders. It is further indicated in the tender notice that the eligible firms/agencies will be empanelled with the Department of I & PR for a period of three years.

2. In response to the said tender notice, nine agencies, including Janahitha Publicities Pvt. Ltd., Hyderabad and Walia & Co. (R& M), Group-A, Hyderabad, the petitioners herein, have submitted their tenders. After the technical and price bids were evaluated, three tenderers were short-listed and empanelled under Memo No. 19110/I & PR. I/A1/2011-1, dated 4-7-2011 of the State Government and the petitioners have been empanelled at Sl. Nos. 2 and 3.

3. While so, the Project Director, Communication Capacity Development Units (CCDU), Rural Water Supply and Sanitation Department/respondent No. 3 in these Writ Petitions, issued e-Procurement tender notice No. 05/RWSS/CCDU/IEC/12, dated 23-6-2012, inviting tenders for execution of the work relating to creating awareness in water supply, sanitation and hygiene through hired mobile vans along with Kalajatha artistes to conduct puppet show, mimicry, street play, video shots playable through DVD mounted on mobile vans with suitable speakers audible to gatherings of minimum 500 people and selected 2200 Gram Panchayats for a period of 12 months. In response to the said tender notice M/s. Chinmayananda Ads, which has filed implead petitions (hereinafter referred to as "the impleaded respondent") in these Writ Petitions, submitted its tender. Feeling aggrieved by the said tender notice dated 23-6-2012, the petitioners filed these Writ Petitions for issuance of a mandamus to set-aside the same. This court has granted interim order restraining respondent No. 3 from proceeding further in pursuance of the impugned tender notice.

4. The petitioners pleaded that the impugned tender notice issued by respondent No. 3 is illegal and the same was issued during the subsistence of the panel already finalized by respondent No. 1. The petitioners further pleaded that the I & PR Department being the Nodal agency, all the awareness and developmental programmes have to be mooted only through the said Department and that respondent No. 3 had no power and authority to call for tenders on his own and entrust the work in respect of which a panel was already in place.

5. Separate counter-affidavits have been filed on behalf of the I & PR Department and the Department of Rural Water Supply and Sanitation.

6. In his counter-affidavit, respondent No. 1 inter alia averred that the purpose of issuing the tender notice dated 7-5-2011 and the empanelment of the selected agencies was to organize Kalajatha programmes by street plays, puppet shows, mimicry and other cultural forms through mobile vans to create awareness among the public on the various welfare schemes of the Government; that the State Project Director, Rajiv Vidya Mission (RVM), Sarva Siksha Abhiyan (SSA), Hyderabad, vide his letter dated 26-3-2011 requested respondent No. 1 to engage Kalajathas and cultural troops through the I & PR Department for creating awareness on the Right to Education Act, 2009 ("the RTE Act") SSA activities etc., at the village level; that funds for the said purpose will be provided by the RVM (SSA); that the Principal Secretary to Government, Primary Education and SSA vide his letter dated 28-4-2011, requested for finalizing the tenders for empanelment of the agencies to organize Kalajatha programmes and that accordingly empanelment of three agencies, including the petitioners, was made. Respondent No. 1 referred to G.O.Ms. No. 37, General Administration (I & PR) Department, dated 22-1-1994, wherein the work of issuing advertisements was centralized with the I & PR Department only. Respondent No. 1 further averred that the said G.O. was reiterated in Government Memo No. 96929/I & PR/A1/2003-1, dated 12-9-2003, and that the Chief Secretary to the Government vide Memo No. 99109/I & PR. I/2003-4 dated 27-8-2004 issued instructions to all the Heads of Departments and functionaries of the Secretariat Departments to strictly follow the instructions given in G.O.Ms. No. 37, dated 22-1-1994 and that the said proceedings related to the advertisements of print media (newspaper ads), outdoor media (including bus panels, bus shelters, hoardings etc.) and electronic media, TV channels, Photo CCTV etc. Respondent No. 1 asserted that no specific orders of the State Government were issued to the effect that all the Departments should take up through the medium of I & PR Department only and that the petitioners cannot claim the work covered by the impugned tender notice only on the strength of their empanelment through Government Memo dated 4-7-2011. Respondent No. 1 denied his receiving any letter from respondent No. 3 asking for details of the empanelled agencies to offer rates for each category to take up the Kalajatha programmes. He has also denied having issued letter dated 22-9-2011 certifying the list of empanelled agencies along with rates.

7. In the counter-affidavit filed on behalf of himself and respondent No. 2, respondent No. 3 explained in detail the objectives of Total Sanitation Campaign and the CCDUs. It is averred that the Information, Education and Communication (IEC) are important components of the said two programmes and that they are intended to create demand for sanitary facilities in rural areas for households, schools, anganwadies, balwadies and community sanitation complexes; that in order to create awareness in water supply, sanitation and hygienic conditions, the impugned tender notice was issued to conduct public shows, mimicry, street plays and video shots playable on the DVD screens mounted on hired mobile vans along with Kalajatha artistes; that as the estimated cost of the project was exceeding Rs. 10 lakhs, tenders have to be invited as per G.O.Ms. No. 20, Information, Technology and Communication Department dated 6-7-2004; that respondent No. 3 has addressed letter No. AEE3/SWSM/GOI/August 15th/2011, dated 17-11-2011 to respondent No. 1 and enquired whether the latter's Department is willing to take up the Kalajatha programmes in 2200 Gram Panchayats in the Districts and that in response to the said letter, respondent No. 1 has expressed his inability to take up the said work vide his letter No. 014889/S& D/2011, dated 2-1-2012, as their Department does not have the staff at grass-root level to supervise the same. Referring to G.O.Ms. No. 37, dated 22-1-1994, respondent No. 3 maintained that the said G.O. applies to releasing of advertisements with regard to the policies and programmes of the Government to the newspapers and periodicals only and that the same does not apply to the outdoor media as pleaded by the petitioners. Respondent No. 3 further averred that Memos dated 12-9-2003 and 27-8-2004 are mere requests issued by the General Administration (I & PR) Department to all the other Departments and that to his knowledge, the individual Departments in the Secretariat have not issued any separate instructions. Respondent No. 3 further averred that as per the tender notice dated 7-5-2011, only the lowest bid would be accepted and that therefore the empanelment of the petitioners under Memo dated 4-7-2011 is contrary to the said tender notice and the same does not create any right in the petitioners.

8. Detailed reply affidavits have been filed to both the counter-affidavits. At the hearing, Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioners, while reiterating the pleadings of the petitioners has submitted that that the scope of the short tender notice dated 7-5-2011 comprehends all the schemes of the State Government Departments and that the petitioners have filed their tenders with that understanding. That having thus held out to all the agencies that the selected tenderers will be empanelled for a period of three years for award of the works relating to various schemes of the Government Departments and having made the petitioners act on such assurance by procuring various equipment required for execution of the project works, it is not permissible for respondent No. 3 to select other agencies. The learned Senior Counsel further submitted that as per the policy of the State Government, all the advertisements of the Government Departments, public sector undertakings/Government companies should be released through the Director, I & PR Department and that respondent No. 3 has neither power nor authority to issue the impugned tender notice. He has further submitted that by intending to select other agencies for executing the works undertaken by respondent No. 3, the petitioners are put to serious financial loss as they have offered their rates in the legitimate expectation that they will be entrusted with the works relating to the programmes of all the Departments under the State Government.

9. Opposing the above submissions, the learned Government Pleader for Panchayat Raj and Sri P. Veera Reddy, learned counsel for the implead respondent in both the Writ Petitions, submitted that the programmes undertaken by respondent No. 3 have no nexus whatsoever with the RVM programmes for which the short tender notice dated 7-5-2011 was issued. They have submitted that the programmes undertaken by respondent No. 3 are funded by a different agency from the one which is funding the programmes of the RVM (SSA) and that the nature of publicity undertaken by respondent No. 3, namely, creating awareness in the rural and urban population on water supply and sanitation is different and distinct from the publicity campaign of the RTE Act under the SSA. The learned counsel sought to draw a distinction between 'awareness programmes' and 'developmental activities' of the State Government Departments. Sri P. Veera Reddy, learned Counsel for the impleaded respondent, submitted that while the petitioners' offers come to Rs. 13,700/- including taxes, the price offered by his client comes to Rs. 11,500/- with taxes and that if the works are entrusted to him, respondent No. 3 will save huge money for the public exchequer.

10. I have carefully considered the submissions of the learned counsel for the parties with reference to the material on record.

11. From the uncontroverted pleadings of the parties, it is evident that the genesis of the short tender notice dated 7-5-2011 is traceable to letter dated 26-3-2011 issued by the State Project Director, RVM (SSA) whereunder he has requested respondent No. 1 to engage Kalajathas and cultural troops through I & PR Department for conducting awareness programmes on the RTE Act and the SSA's activities at the village level. But in the short tender notice, the scope of the work is not limited only to the said programmes. It has referred to the various schemes of the Government Departments as and when required through the I & PR Department. Memo dated 4-7-2011 issued by the State Government, General Administration (I & PR-I) Department, by which the three agencies including the petitioners were empanelled, referred not only to the publicity campaign under theRTE Act, but also to the developmental activities of the Government Departments in the State. That even respondent No. 3 has understood the scope of empanelment as not being confined only to the RVM (SSA) programmes under the RTE Act, is evident from her letter dated 17-11-2011 referred above, wherein she has requested respondent No. 1 as under:

With reference to the above subject, it is requested to allot all districts in the State to the empanelled firms in I & PR directly as per the approved rates, for conducting the IEC activity of Kalajatha programme during the Swachhata Utsav & Rachhabanda programme in 2200 GPs (100 GPs per each District) in the State. Funds will be released to I & PR for payment, after receiving of Certificate and bills from the I & PR Department.

(Emphasis added)

12. In reply to the said letter, respondent No. 1 vide his letter dated 2-1-2012 expressed his inability to take up the IEC activity as requested by respondent No. 3 as the former's Department does not have the staff at grass-root level to supervise the Kalajatha programmes proposed by the latter.

13. In this context, it is noteworthy that quite contrary to the stand taken by respondent No. 1 in his above mentioned letter dated 2-1-2012, in para-8 of his counter-affidavit he has stated that his Department cannot take up Kalajatha publicity campaigns of other Departments when the concerned Departments issue specific orders in this regard or whenever they approach him. It is thus clear from the above letters exchanged between respondent Nos. 1 and 3 that but for the reluctance of respondent No. 1 in allotting work to the already empanelled agencies, respondent No. 3 would not have issued the impugned tender notice inviting separate agencies. In this context Memo No. 2496/I & PR-1/A1/2012-1, dated 13-6-2012, issued by the Ex-officio Secretary to the Government, General Administration (I & PR-1) Department, is of much significance. A perusal of this Memo would show that after empanelment of the three agencies in pursuance of the short tender notice dated 7-5-2011 was made, two firms including the impleaded respondent, made a representation to the Government to include them also in the panel for publicity of the developmental activities and that one of the said two firms i.e., M/s. Sai Sadguru Ads, filed W.P. No. 28715/2011 questioning Memo dated 4-7-2011 empanelling the three firms and that this Court has dismissed the said Writ Petition. The Secretary has declined to permit calling for fresh quotations for empanelment of some more agencies as no work has been entrusted to the already empanelled agencies. The above mentioned Memo would reveal two crucial aspects, namely, (i) that the Secretary to the Government has clearly opined that no further addition of the agencies in the panel by calling for fresh quotations was necessary, and (ii) that the three agencies, including the petitioners, who were empanelled were not awarded any work till 13-6-2012. Here, it is useful to refer to the method prescribed for issuance of advertisements of the Government Departments. Under G.O.Ms. No. 572, General Administration (I & PR) Department, dated 10-8-1979, the State Government has taken a policy decision to release all the advertisements of the Government Departments, Public Sector undertakings/Government companies through the Director, I & PR Department only. This policy of centralized release of advertisements was done away with under G.O.Ms. No. 403, General Administration (I & PR) Department dated 21-7-1992. However, the earlier policy of the centralized release of advertisements was restored through G.O.Ms. No. 37, General Administration (I & PR) Department dated 22-1-1994. Paragraphs 4 and 5 of the said G.O. read as under:

Government have reviewed the policy of Decentralisation of advertisement and have decided that all advertisements of Government Departments/Public Sector Undertakings/Government Companies should hereafter be released only by the Commissioner, I & PR Department. The A.P.P.S.C. is, however, exempted from this arrangement. The Commissioner, I & PR, Hyderabad is requested to allocate, the advertisements on rotation to various big, small and medium newspapers and periodicals keeping in view the circulation and reach and with a view to disseminating information of policies and programmes of the Government and getting wide publicity for the Governmental activities.

All the Departments of Secretariat are requested to issue suitable instructions to the Corporations/Companies under their administrative control to send their advertisements to the Commissioner, I & PR Department for publication. Orders will be issued separately regarding the mode of payment of bills in respect of Companies/Corporations under the control of State Government.

(Emphasis added)

14. G.O.Ms. No. 37, dated 22-1-1994, was reiterated in Memo No. 96929/I & PR/A1/2003-1, dated 12-9-2003. It is noted in the said Memo that despite specific instructions from the Government, many Departments and Agencies are releasing advertisements directly without taking into account the policy of rotation among big, small and medium newspapers and periodicals and without taking the circulation and reach in disseminating information of policies and programmes of the Government and that even in respect of outdoor media, the Government agencies are engaging the media with varied tariff rates resulting in unhealthy criticism. Paragraphs 4 and 5 of this Memo which are relevant for the present purpose read reproduced hereunder :

All the Departments of Secretariat are, therefore, requested to issue suitable instructions to al the Heads of the Departments/Corporations/Public Sector Undertakings including Government funded Agencies under their control except A.P.P.S.C. to release Advertisements of Press publicity and outdoor media through the medium of Information and Public Relations Department alone.

Where payments are being met by the concerned Departments/Organisations/Govt. funded Agencies etc., as per the existing rules, they shall obtain certification of the bills by the Information and Public Relations Department invariably before submitting them to the Pay and Accounts Office/District Treasury Offices/Pay and Accounts Office (Irrigation)/Agencies Drawing Officers.

(Emphasis added)

15. From the facts discussed above, the following conclusions emerge: (i) As regards the scope of the work allotted to the petitioners, the same is not confined only to the programmes undertaken by the RVM (SSA) under the RTE Act. They extend to all the developmental programmes of all the Departments of the State Government. Indeed, respondent No. 3 herself has sought for the assistance of respondent No. 1 to entrust the Kalajatha programmes proposed to be undertaken by the CCDU and RWS & S Department to the already empanelled agencies. It is therefore not permissible for the respondents to contend that the empanelled firms are not entitled to allotment of the programmes undertaken by respondent No. 3-Department; and (ii) Respondent No. 3 has violated the policy of the State Government in issuing the advertisements on her own without getting them published through respondent No. 1-Department. The stand taken by respondent No. 3 in the counter-affidavit that G.O.Ms. No. 37 dated 22-1-1994 reintroducing the centralized release of advertisements is confined only to the advertisements issued through Press and other media and that the same has no application to the programmes through outdoor media, is a plea raised in despair. Memo dated 12-9-2003 referred to above, which is clarificatory to G.O.Ms. No. 37 dated 22-1-1994, clearly included the advertisements through outdoor media also. Therefore, the issuance of the impugned tender notice by respondent No. 3 itself is in violation of the Government's policy.

16. The learned counsel for the impleaded respondent, submitted that no vested right is created in the petitioners to question the tender notice issued by respondent No. 3 as what is proposed to be undertaken by the latter is 'awareness programmes' as distinct from 'developmental activities'. I am afraid, I cannot accept this submission. In my opinion, as rightly contended by the learned Senior Counsel appearing for the petitioners, the phrase 'developmental programmes' is wider in its ambit which takes within its sweep the 'awareness programmes' as well. It is axiomatic that for the development of society, creation of awareness in the general public is the initial step. Without awareness, no development can be perceived. Therefore, when the petitioners are empanelled for undertaking the works relating to all the developmental programmes of the State Government Departments, it necessarily means that the awareness programmes are part and parcel of such developmental programmes. If respondent No. 3 had a different view on this aspect, she would not have addressed letter dated 17-11-2011 to respondent No. 1 seeking the latter's assistance and respondent No. 1 would have refused her request on the ground that the empanelled firms cannot be entrusted with the awareness programmes instead of refusing on the ground of lack of staff. As regards the submission of the learned counsel for the impleaded respondent that there is huge variation in the rates offered by his client from that offered by the petitioners, in my opinion, the same has no relevance. The impleaded respondent has not competed with the petitioners and its efforts to get included in the panel having failed, would have obviously quoted lesser rate to wrest the contract proposed by respondent No. 3. Hence, this Court is not impressed with the submission of the learned counsel that if the tender of the impleaded respondent is accepted, the respondents will be saving for the public exchequer.

17. For the above mentioned reasons, the impugned tender notice is set-aside. Respondent No. 3 is directed to entrust the works for which the impugned tender notice was issued, to the three empanelled firms as per the terms of empanelment. Respondent No. 3 shall approach respondent No. 1 in this regard and workout the modalities for entrustment of the work.

18. The Writ Petitions are accordingly allowed. As a sequel, interim orders dated 6-7-2012 are vacated and WPMP Nos. 25555/2012, 31630/2012 & WVMP No. 3197/2012 in W.P. No. 19943/2012 and WPMP No. 25591/2012 in W.P. No. 19977/2012 are disposed of as infructuous.