

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

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WRIT APPEAL No.322 of 2016

Date:09.06.2016

Between:

M/s Thirumala Transport, a registered partnership firm
Vide registration No.364/2012, rep.by its Managing Partner,
Kore Ravinder, S/o Komuraiah, Aged about 40 years,
r/o H.No.11-13-353, "O" City, Warangal District.

.....Appellant/
writ petitioner

and

The Telangana State Civil Supplies Corporation Limited,
D.No.6-3-655/1/A, C.S. Bhavan, Somajiguda, Hyderabad,
Rep.by its Commissioner, Civil Supplies & Managing
Director and another.

.....Respondents/
respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

**AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

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PC: (*Per the Hon'ble Sri Justice P.Naveen Rao*)

Heard Sri Vedula Venkatana Ramana, learned senior counsel for appellant/petitioner, Sri A.Jagan, learned standing counsel for the Telangana State Civil Supplies Corporation Limited, and Sri Abhinand Kumar Shavili, learned counsel for 2nd respondent. Parties are referred to as arrayed in the writ petition.

2. First respondent corporation issued tender notification dated 14.03.2016 calling for tenders for awarding of contract for transportation of food grains, pulses or other commodities for the year 2016-17. In response to the above tender notification, petitioner as well as 2nd respondent participated in the tender process. It appears that 2nd respondent was found to be the L-1 tenderer and petitioner as L2. Accordingly, contract was awarded and work order was given to the 2nd respondent and 2nd respondent started the work of transporting food grains, pulses and other items in terms thereof. The instant writ petition is instituted praying to declare that the 2nd respondent is ineligible/unqualified for participation in the tender process since he was blacklisted and consequently direct the 1st respondent corporation to reject/disqualify the tender of 2nd respondent and to consider and award the tender to the petitioner.

3. Placing reliance on clause 18 of the tender notification, it was contended that once a person is black listed, he is prohibited from participating in the tenders for all times to come and, therefore, the 2nd respondent ought to have been disqualified. It was contended that 2nd respondent was black listed by proceedings dated 8.6.2009 and the

said proceedings operate against the 2nd respondent from participation in the tenders for all times to come.

4. On behalf of the 1st respondent corporation, the Court was informed that though the 2nd respondent was blacklisted for refusing to carry on the work of transportation for the year 2009-10 without specifying time, as a consequence to the directions issued by this Court in W.P.No.4139 of 2012 instituted by the 2nd respondent, the earlier orders were modified and black listing was confined to three years and by the time the contract was awarded, three years period was already over and there was no embargo in considering the 2nd respondent.

5. On construing clause 18 of the tender notification, learned single Judge rejected the contention of the petitioner and dismissed the writ petition. The operative portion of the order impugned herein reads as under:

“The great emphasis has been placed by the learned senior counsel on the expression at any time (underlined for emphasis). The clause 18 as read would not suggest that an individual or an organization blacklisted at a given point of time would be ineligible to participate for all times. The clause reads as the individuals/firms/companies who are blacklisted are indicating that the black listing should be current and subsisting. As otherwise, the clause would have been who were blacklisted. Giving any other interpretation or meaning to clause 18 would be unreasonable and arbitrary thereby violating the rights guaranteed to an individual or entrepreneur under Article 14 and 19(1)(g) of the Constitution of India. In that view of the matter, once it is not in dispute that as on the date of 2nd respondent participated in the tender, the taint of blacklisting is not present and it cannot be said that allowing the 2nd respondent in any way in violation of the tender conditions. The blacklisting of an individual / contractor being a serious punishment virtually putting an economic embargo on individual or an enterprise, the blacklisting cannot be for eternity and at any rate in the case on hand admittedly the taint of blacklisting which was attached to the 2nd respondent came to be removed by virtue of the decision taken in 175th Board meeting of the corporation as communicated to the petitioner through letter No.PDS2/Movt/FG 5(24)/ 991/2009-2010, dated 04.1.2013.”

6. Learned senior counsel reiterated his contention that the language employed in clause-18 makes it clear that once a person is black listed, he earns disqualification from participation in the tenders floated by the 1st respondent corporation for all times to come and modifying earlier order of blacklisting to three years has no significance and that view expressed by the learned single judge is erroneous.

7. Learned standing counsel submits that as the period of blacklisting was already over in the year 2012, 2nd respondent was validly considered and there is no illegality in awarding contract to the 2nd respondent.

8. Learned counsel for the 2nd respondent submits that on the representation of 2nd respondent and in pursuant to the direction of this Court in W.P.No.4139 of 2012, earlier orders were modified restricting the period of blacklisting to three years and, therefore, by the time the 2nd respondent floated the tender, there was no embargo against him in participating in the tenders. It is further asserted that he participated in the tenders floated by 1st respondent corporation from the year 2013 and at no point of time, his tender was rejected on this ground. He being lowest tenderer, similar contract was awarded to him for the years 2014-15 and 2015-16 for Hyderabad district. No objection was raised when the said contracts were awarded to him.

9. Tender notification contain different clauses. Learned senior counsel placed strong emphasis on clause 18 of the tender notification to buttress his contention. Clause 18 of the tender notification reads as under:

“18. The individual/Firms/Companies who are BLACKLISTED by Andhra Pradesh State Civil Supplies Corporation Limited or Telangana State Civil Supplies Corporation Limited at any time are prohibited from participating in the tenders (Annexure VIII). Even Contractors who are

involved in 6-A case under Essential Commodities Act or in diversion of stocks are prohibited from participating in the Tenders.”

10. On closer look at provision in clause 18, we are not persuaded to agree with the contention of the learned senior counsel. Clause 18 refers to annexure-VIII. Clause 18 has to be read in conjuncture with Annexure-VIII. Annexure-VIII appended to the tender notification (which is filed by the petitioner at page 101 of the material paper book) includes the list of blacklisted contractors. The list contains 52 names and starts from the year 1996-97. It is not in dispute that the 2nd respondent was blacklisted during the year 2009-10. In the list of blacklisted contractors for the year 2009-10, three names of the contractors were shown and it does not contain the name of the 2nd respondent. Reading of clause-18 along with annexure-VIII makes it clear that prohibition applies only to contractors whose names are shown in Annexure-VIII. Since the name of the 2nd respondent is not shown in that list, it cannot be said that the 2nd respondent continues to suffer disqualification from participation in the tenders. Intention of the employer is clear and categorical. The fact that the 2nd respondent was considered and was awarded transport contracts for the years 2014-15 and 2015-16 for the Hyderabad district makes it amply clear that the 2nd respondent is not treated as person blacklisted after 2011-12 on account of the subsequent orders confining the blacklisting to three years vide orders dated 04.01.2013.

11. Furthermore, as rightly held by the learned single Judge, if contention of the learned senior counsel is accepted, it would amount to permanent blacklisting of contractor for life time and would fall foul of the mandate of Article 14 read with Article 19(1)(g) of the Constitution of India. It would be contrary to the decision of 1st respondent vide proceedings dated 04.01.2013

Miscellaneous petitions if any pending stand dismissed. No costs.

P.NAVEEN RAO, J

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