

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.7305 of 2017
and W.M.P.No.7967, 7968 and 16299 of 2017

Appollo Meters Pvt., Ltd.,
Rep. By Managing Director,
Mohamed Gany
E-8, Quayithe Millath Road
Industrial Estate,
Maraimalai Nagar 603 209
Chennai

....Petitioner

v.

1. Government of India,
rep. By the Controller General of Patents
Designs and Trade Marks,
Department of Industrial Policy and Promotion,
Ministry of Commerce and Industry,
Patent Office, Intellectual Property Building,
G.S.T. Road, Guindy, Chennai 32.
2. Government of Telangana,
Rural Water Supply & Sanitation Department,
Rep.by its Engineer-in-Chief,
RWS & S Department,
III Floor, SRTGN Bhavan, Erramanzil Colony,
Hyderabad 500 082.
3. Government of Telangana,
Rural Water Supply & Sanitation Department,
rep. By its Superintending Engineer,
RWS & S Circle,
R.R.District, Telangana.
4. R.Rajeswar Rao,
Executive Engineer,
RWS & S Department,
III Floor, SRTGN Bhavan, Erramanzil Colony,
Hyderabad 500 082.
5. AFS Traders,
21/2/350/350A, Lad Bazaar,
Charminar, Hyderabad, 500 002.

6. M/s AIVA Engineering Pvt., Ltd.,
78, Shivapur Gavthan,
Kodhanpur Road,
Off Pune Satara Road, Khed,
Shivpur, Pune 412 205.
7. Kimpla Piping Systems Ltd.,
No.703, VII Floor, Challa Mall Complex,
New No.17, Old No.II,
Sir Theagaraya Road,
T.Nagar, Chennai 600 017.
8. AI-Aziz Plastics
2, Nateline Industrial Estate,
Sakinaka Mumbai 400 072.
9. Georg Fischer Piping Systems Pvt., Ltd.,
Prabhat Bhavan, II Floor,
96, I.B.S. Marg, Vikhroli (West)
Mumbai 400 083 ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of declaration that Clause 3 of E Technical specifications of the Tender notice Reference No.5-2016/17 dated 01.03.2017 issued by the 2nd respondent is unconstitutional, discriminatory, violative and therefore void and further direct the respondents 2 to 4 or their men, agents and servants not to utilize/manufacture/sell/buy/offer to use/buy the Flow Control Valve as patented by the petitioner in Patent No.196432 or its imitations

For Petitioner : Mr.P.L.Narayanan for
Mr.Abrar Md Abdullah

For Respondents: Mr.A.L.Somiyaji,
Senior Counsel for
Mrs.Narmatha Sampath (R2 & 3)
Mr.Thriyambak J.Kannan (R7)
Mr.J.Ravikumar (R5&9)
Mr.Venkatreddy (R8) - NA
M/s RVR Associates for R4 - NA
R6-Not ready in notice

O R D E R

The petitioner has filed the above writ petition to issue a declaration to declar that Clause 3 of E Technical specifications of the Tender notice dated 01.03.2017 issued by the 2nd respondent is unconstitutional, discriminatory,

violative and therefore void and further to direct the respondents 2 to 4 not to utilize/manufacture/sell/buy/offer to use/buy the Flow Control Valve as patented by them or its imitations.

2. The 7th respondent in the writ petition has filed writ miscellaneous petition in WMP.NO.16299 of 2017 to dismiss the writ petition, since no part of cause of action has arisen within the territorial jurisdiction of this Court.

3. Heard the learned counsel on either side and perused the materials available on record.

4. In paragraph No.14 of the affidavit filed in support of the writ petition, the petitioner, has stated as follows:-

"14. The cause of action for filing the present writ petition against the respondents has arisen in 2002 when the patent application was made by me and when the same was granted in the year 2006. The further cause of action has arisen during April 2016 when the patented product was utilized by the respondent authorities in trial basis in various villages and also on 01.03.2017 by issuance of the tender notice Reference No.05/2016-17".

5. Mr.P.L.Narayanan, learned counsel appearing for the petitioner submitted that knowing fully well that the petitioner has got the patent, the 2nd respondent has issued the tender notification dated 01.03.2017 for the purpose of excluding the patented product belonging to the petitioner. The learned counsel further submitted that one of the products for which the tender was issued is the product patented in favour of the petitioner with slight modification in the design so as to specifically exclude the petitioner from participating in the tender.

6. On a reading of the averments stated in paragraph 14 of the affidavit, it could be seen that the first part of the said paragraph contemplates that the cause of action arose on account of the fact that the Governmental body located at Chennai, having granted a patent to the writ petitioner and the second part of the cause of action is that the writ petitioner has challenged the tender notice issued by the 2nd respondent, which is the Government of Telangana, which is located at Hyderabad and not the State of Tamil Nadu.

7. The learned counsel appearing for the petitioner, in support of his contentions has relied upon the following Judgments:-

(i) Nawal Kishore Sharma vs. Union of India and Others reported in (2014) 9 Supreme Court Cases 329, wherein, the Hon'ble Apex Court has held as follows:-

"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction".

(ii) Rajendran Chingaravelu vs. R.K.Mishra, Additional Commissioner of Income Tax and others reported in (2010) 1 Supreme Court Cases 457,

wherein, the Hon'ble Apex Court has held as follows:-

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction".

(iii) Navinchandran N.Majithia vs. State of Maharashtra and Others reported in (2000) 7 Supreme Court Cases 640, wherein the Hon'ble Apex Court has held as follows:-

"37. The object of the amendment by inserting Clause (2) in the Article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Subba Rao and to restore the view held by the High Courts in the decisions cited above. Thus the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'the cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area of reaching the writs issued by different High Courts".

8. Countering the submissions made by the learned counsel for the petitioner, since questioning the maintainability of the writ petition, Mr.A.L.Somiyaji, learned Senior Counsel appearing for the respondents 2 and 3 submitted that since the petitioner had challenged the tender notification issued by the 2nd respondent viz., the Government of Telangana, Rural Water Supply and Sanitation Department, , the present writ petition is not maintainable before this Court for lack of territorial jurisdiction.

9. Mr.Thriyambak J.Kannan, learned counsel appearing for the 7th respondent and Mr.J.Ravikumar, learned counsel appearing for the respondents 5 and 9 also submitted that the writ petition filed by the petitioner challenging the tender notification issued by the Government of Telangana is not maintainable before this Court.

10. On a reading of the prayer sought for in the writ petition, it is clear that the petitioner has specifically sought for writ of declaration to declare Clause 3 of E Technical specifications of the Tender notice dated 01.03.2017 issued by the 2nd respondent is unconstitutional, discriminatory, violative and therefore void.

11. The contention of the learned counsel for the petitioner that the petitioner has got a patent within the jurisdiction of this Court and inspite of the same, the 2nd respondent has issued the tender notification and therefore this Court has got jurisdiction to enter the writ petition, cannot be accepted for the reason that so far as the tender notification dated 01.03.2017 is concerned, the whole of the cause of action arises only within the jurisdiction of the State of Telangana. Any inspection made by the 4th respondent at Chengalpet in the factory of the petitioner

cannot give rise to the jurisdiction for filing a writ petition before this Court. The petitioner has not questioned the inspection made by the 4th respondent, whereas, he has questioned the tender notification issued by the 2nd respondent. When no part of the cause of action had arisen within the jurisdiction of this Court, the filing of the writ petition by the petitioner, challenging the tender notification issued by the 2nd respondent viz., the Government of Telangana, cannot be entertained. That apart, even the consequential relief has been sought only as against the respondents 2 to 4, who are stationed at Hyderabad and Telangana.

12. That apart, though there is no dispute with regard to the ratios laid down by the Hon'ble Apex Court in the Judgments relied upon by the learned counsel appearing for the petitioner, since no part of the cause of action had arisen within the jurisdiction of this court, the writ petition is not maintainable and the same is liable to be dismissed.

13. Accordingly, the writ petition is dismissed as not maintainable. However, it is open to the petitioner to challenge the tender notification dated 01.03.2017, in accordance with law, before the High Court of Andhra Pradesh. No costs. Consequently, WMP No.16299 of 2017 is allowed and W.M.P.Nos.7967 and 7968 of 2017 are dismissed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

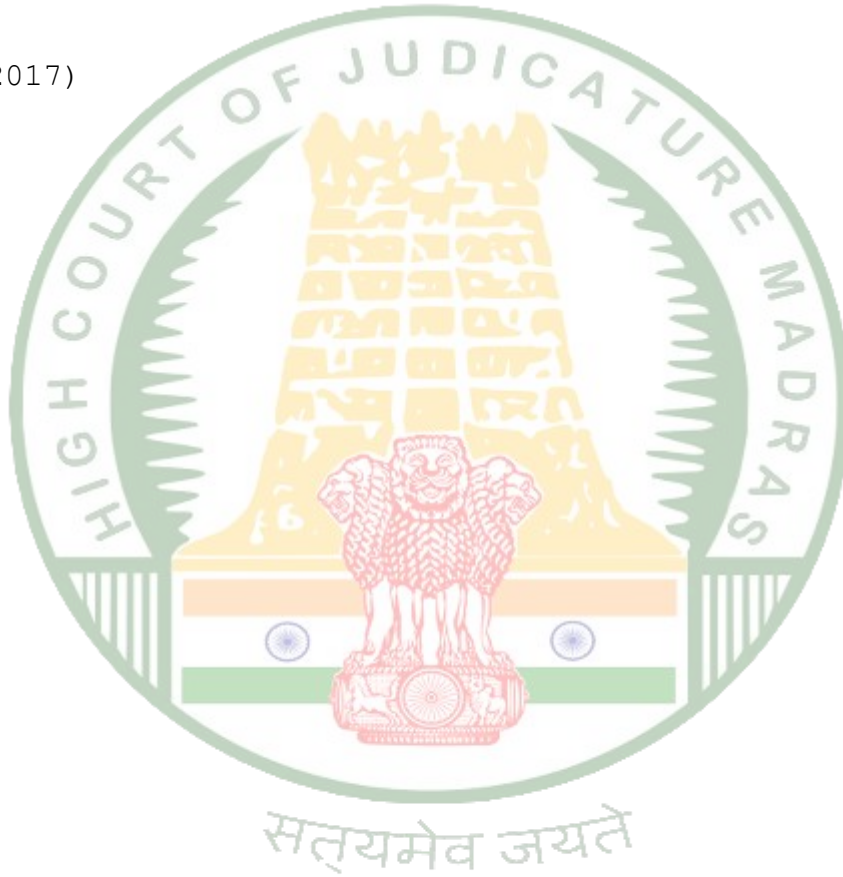
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+2 Ccs to Mr.I. Abrar Md Abdullah, Advocate sr 59585
+1 CC to Mr.Thriyambak J.Kannan, advocate sr 59583.

W.P.No.7305 of 2017

KGK (CO)
sp(18/08/2017)



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