

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.401 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.551 of 2017 dated 14.03.2017. The appellant herein is the petitioner in the Writ Petition. They filed the said Writ Petition to declare the action of the second respondent, in not selecting the petitioner in the Technical Bid with regard to the allotment of contract pertaining to providing of BT surface road from Kanaparthi Road to Konnali SC and ST Colony of Thettembedu Mandal in Chittoor District by proceedings dated 22.12.2016 and in opening the financial bid on the same day i.e., on 22.12.2016, as being contrary to law.

The dispute in the Writ Petition revolved around Clause 5 of the Tender document whereunder the tenderers were required to furnish documents to show that they have a hot mix plant within 70 km distance from the worksite (either own or on lease); and furnishing the said document, certified by the concerned Executive Engineer, was mandatory. The appellant-writ petitioner submitted a certificate from the Executive Engineer, R & B to show that the hot mix plant was located within 70 km from the site. On the ground that they ought to have produced the certificate from the Executive Engineer, Panchayat Raj, and not from the Executive Engineer R & B, their technical bid was rejected and the contract was awarded in favour of the fourth respondent who is said to have

furnished a certificate from the Executive Engineer, Panchayat Raj. The tender conditions do not specify who the concerned Executive Engineer is. The contention of the learned Government Pleader and Sri S.Lakshminarayana Reddy, learned counsel for the fourth respondent, is that, since tenders were invited by the Panchayat Raj Department, the concerned Executive Engineer can only mean the Executive Engineer, Panchayat Raj, and not the Executive Engineer R& B. This contention found favour with the learned Single Judge. We, however, find considerable force in the submission of Sri P.Sree Ramulu Reddy, learned counsel for the appellant, that, in the absence of the tender conditions specifying who the concerned Executive Engineer is, and as the certificate submitted by the appellant was obtained from the Executive Engineer R&B, who is also an Executive Engineer employed by the Government of Andhra Pradesh, the said certificate produced by the appellant sufficed, and their financial bid should have been opened for its comparative evaluation with that of the fourth respondent.

We would have, ordinarily, directed the respondents to do so. However the learned Government Pleader for Panchayat Raj, on instructions, would submit that the work was allotted to the fourth respondent; an agreement was entered into with him on 25.03.2017; and he has already commenced execution of the work. As a contract has been entered into with the fourth respondent, and he has already commenced execution of the work, we see no justification in now directing the respondents to open the financial bid of the appellant, and thereafter award the work to the lowest bidder. As the fourth respondent has already commenced

execution of work, we would not be justified in granting, the appellant-writ petitioner, the relief sought for by him in the writ petition.

The Writ Appeal is, accordingly, closed. Suffice it to observe that the authorities concerned should be more specific in prescribing tender conditions, and avoid the possibility of different bidders understanding the conditions differently. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

3rd April 2017
RRB

