

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.565 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri K.S. Murthy, learned counsel for the appellant, the learned Government Pleader for Endowments and Sri V.Surendra Reddy, learned counsel for the 1st respondent-writ petitioner.

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 9382 of 2017 dated 11.4.2017 whereby the contract awarded in favour of the appellant-4th respondent was set aside though he was the lowest tenderer, and instead the contract was awarded to the 1st respondent-writ petitioner, who was the second highest bidder. Collection of broken coconuts, at the Sri Kalahasti Temple, was put to auction. The appellant herein submitted a bid for Rs.50.00 lakhs, while the 1st respondent-writ petitioner submitted a bid for Rs.46.00 lakhs. The tender conditions required the highest bid to be accepted, and half the bid amount to be deposited within 48 hours. As the bid was finalised on 10.2.2017, the appellant was required to deposit half the bid amount by 12.2.2017. He, however, deposited half the bid amount only on 17.2.2017. The respondent-authorities granted relaxation of deposit of the said amount to the appellant, and permitted him to pay half the bid amount by 17.2.2017. Aggrieved thereby, the 1st respondent-writ petitioner invoked the jurisdiction of this Court.

In the order under appeal, the learned Single Judge observed that Condition No. 11 did not confer any power on the Executive Officer to postpone/stop/cancel/alter the tender conditions,

without assigning any reasons; the said Clause empowered the Executive Officer to take action before the auction was conducted and not thereafter; if there was any power to relax the conditions specified in Condition No.8, the same was required to be notified; not notifying, that a power of relaxation vested in the Executive Officer, was fatal as there may be a large number of intending bidders who would have participated, if they were aware that the bid amount was not required to be deposited within 48 hours; providing an opportunity to the appellant-4th respondent was in violation of Condition No. 8; and the award of licence in favour of the appellant was liable to be set aside.

The learned Single Judge thereafter observed that Condition No. 9 itself provided for a contingency under which the second highest bidder could be given an opportunity to be awarded the licence subject to the condition that such a tenderer was willing to match the offer made by the successful bidder; and, in the present case, the 1st respondent-writ petitioner was ready to offer Rs. 55.00 lakhs per annum. Since condition No. 9 mandated that, if the first highest bidder failed to comply with the conditions in time, the licence could be issued in favour of the next highest bidder, and as the 1st respondent-writ petitioner was willing to fulfil the conditions, the writ petition was allowed directing the 4th respondent to enter into an agreement with the 1st respondent-writ petitioner.

The learned Single Judge further held that if a short tender notice was issued, it was only for one month, which would expire by 30.4.2017 and licence should be granted in favour of the 1st

respondent-writ petitioner only from 1.5.2017. The EMD of the appellant was directed to be returned to him.

Sri K.S. Murthy, learned counsel for the appellant, would submit that the exercise of demonetization undertaken by the Central Government prevented not only the appellant but three others who participated in the auction from depositing half the bid amount within 48 hours; relaxation was granted not only to the appellant, but also for three other bidders; the condition of deposit of half the bid amount is not an essential condition; it is only a condition which relates to the performance of the contract which would amount to an essential condition; even otherwise, the 1st respondent-writ petitioner was ineligible for being awarded the work as he had violated Clause 6 of the tender conditions which disqualified any person who is due of any amount to the Devasthanam; the counter affidavit filed by the Devasthanam before this Court shows that the 1st respondent-writ petitioner suffered such a disqualification; and, in such circumstances, there was no justification in awarding the contract to the 1st respondent-writ petitioner.

While Sri V.Surendra Reddy, learned counsel for the 1st respondent-writ petitioner, submits that half the highest bid amount of Rs.55.00 lakhs, ie, Rs.27.50 lakhs was deposited by the 1st respondent-writ petitioner on 26.4.2017, Sri K.S. Murthy, learned counsel for the appellant, states that the appellant, who has already deposited Rs.25.00 lakhs, is ready and willing to deposit the balance Rs. 2.50 lakhs and match the bid amount of the 1st respondent-writ petitioner of Rs.55.00 lakhs, if an opportunity is granted to him to do so.

We see no reason to interfere with the order of the learned Single Judge to the extent he held that the appellant could not have been awarded the contract as he failed to deposit half the bid amount within 48 hours. As has been rightly held by the learned Single Judge, in the order under appeal, no specific power, for relaxation of the time limit specified for depositing half the bid amount, has been conferred under the conditions of tender. Granting extension of time by a further five days was impermissible; and, therefore in terms of the tender conditions, the appellant's bid should have been rejected.

While Condition No.9 confers power on the authorities to award the contract to the second highest bidder provided he is willing to match the bid amount of the highest bidder, and the 1st respondent-writ petitioner had offered a bid of Rs.55.00 lakhs during the course of hearing of the writ petition as against the highest bid amount of Rs.50.00 lakhs, the fact remains that Condition No. 6 of the tender conditions disqualifies any bidder who is due any amount to the Devasthanam. In paragraph-3, of the counter affidavit filed by the Devasthanam, it is stated that the 1st respondent-writ petitioner was the highest bidder for collecting the broken coconut pieces for 2016-17; he had submitted the bid for Rs.40,05,001/-; the 1st respondent-writ petitioner had paid six months advance amount within six months; the remaining six months amount had to be paid by September and November, 2016; though payment was demanded, the 1st respondent-writ petitioner did not respond; he paid Rs.5.00 lakhs on 1.2.2017 against Rs.20,02,501/-; and till date the 1st respondent-writ petitioner has

not paid the balance amount as per the terms of the tender, but had collected the broken coconuts as on date ie, 31.3.2017.

Neither has this specific averment in the counter affidavit nor Condition No. 6 of the tender conditions been brought to the notice of the learned Single Judge, and the direction issued to the authorities to award the contract to the 1st respondent-writ petitioner was without examining the scope of Condition No.6 of the tender conditions. If, as is asserted in the counter affidavit by the Devasthanam, the 1st respondent-writ petitioner has defaulted in payment of dues and owes money to the Devasthanam, then Condition No. 6 disables the contract being awarded in his favour.

We consider it appropriate therefore, to set aside the order of the learned Single Judge to the limited extent the contract was awarded in favour of the 1st respondent-writ petitioner.

As the contract awarded, in terms of short tender notice, is due to expire on 30.4.2017, the 4th respondent may invite bids afresh and award the contract to the highest bidder strictly in accordance with the conditions stipulated in the tender.

The writ appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

26th April, 2017

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Date: 26.4.2017

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