

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

Writ Appeal No.520 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 W.P.No.37833 of 2015 dated 10.04.2017. The appellant herein is the petitioner in the Writ Petition wherein the action of the respondents, in disqualifying them at the pre-qualification/technical evaluation stage in respect of tender notice dated 23.09.2015, was questioned as being illegal and arbitrary.

The entire dispute revolves around the requirement of owning a Hot Mix Plant within a proximity of 70 kms from the proposed site. The notification, issued on 23.09.2015 inviting tenders, specified certain special conditions, among others, that the prescribed certificate, that the tenderer owns a hot mix plant located within a distance of 70 km from the site, should be issued by the Executive Engineer and counter-signed by the Superintending Engineer.

The appellant submitted their tender on the last date for submission of tenders i.e 03.11.2015 enclosing thereto a certificate issued by the Deputy Executive Engineer, Panchayat Raj Division and counter signed by the Executive Engineer, Panchayat Raj Division, Chittoor. While an interim order was initially passed, in W.P.M.P.No.48667 of 2015 in W.P.No.37833 of 2015 dated 23.11.2015, directing the Executive Engineer to respond to the appellant's representation dated 02.11.2015 for issuing a certificate with regard to their possessing a Hot Mix Plant after

giving prior notice to them and report the matter to this Court by 11.12.2015, the Writ Petition itself was dismissed, by order dated 10.04.2017, holding that the appellant had failed to fulfil the mandatory requirement of enclosing a certificate evidencing the existence of a Hot Mix Plant within a distance of 70 kms from the proposed site; and, while the appellant may have quoted an amount less than the successful bidder, that, by itself, could not be a ground to accept their request when they failed to submit a valid tender.

It does appear, from a reading of the order of the Learned Single Judge, that he was of the view that the certificate, evidencing existence of a Hot Mix Plant within a vicinity of 70 KMs from the site, was not submitted. The learned Special Government Pleader would fairly state that a certificate was enclosed along with the tender documents. The contention urged by him before us, however, is that the certificate, enclosed with the tender documents, does not fulfil the requirement of the tender conditions which stipulate a certificate to be issued by the Executive Engineer, and counter-signed by the Superintending Engineer. While absence of a specification in the tender notification, as to which Executive Engineer should issue the certificate, may render the conditions vague, and a certificate issued by any Executive Engineer of the Government of Andhra Pradesh may have sufficed, the subject tender conditions do not merely require the certificate to be issued by the Executive Engineer, but also to be counter-signed by the Superintending Engineer.

Admittedly the certificate submitted by the appellant, which formed part of the bid documents, was not counter signed by any

Superintending Engineer. While the appellant, no doubt, addressed a letter dated 02.11.2015 stating that the Executive Engineer had refused to issue a Hot Mix Plant certificate to them, without assigning any reasons, the letter does not state why the petitioner had failed to approach the Superintending Engineer earlier requesting him to direct the Executive Engineer to sign the certificate, and for him to counter-sign it. The Learned Single Judge has, in the order under appeal, observed that no explanation was forthcoming from the appellant why they kept quiet till the last date i.e 02.11.2015 before approaching the 5th respondent.

It is not as if the appellant was not aware about the conditions stipulated in the tender notice which was issued, more than one month earlier, on 23.09.2015. They could have requested the Executive Engineer soon thereafter to visit the site, and submit his report. As the appellant failed to fulfil the basic requirements of enclosing a valid certificate, signed by the Executive Engineer and counter-signed by the Superintending Engineer, along with their tender application, the action of the respondent-authorities in rejecting their tender cannot be found fault with.

The letter dated 02.11.2015 makes no reference to the dates on which the appellant claimed to have visited the Executive Engineer earlier, nor why they chose not to approach the Superintending Engineer earlier if, as claimed by them, the Executive Engineer had deliberately chosen not to grant them the certificate. While it does appear that the appellant has a Hot Mix Plant, as is evident from the record submitted to this Court pursuant to the interim order, the requirement was for a

certificate, in this regard to be issued by the Executive Engineer and counter-signed by the Superintending Engineer; and for such a certificate to be enclosed along with the tender, and to be submitted before the cut-off date of 02.11.2017.

In proceedings under Article 226 of the Constitution of India, this Court would neither prescribe conditions based on which the tenders should be invited nor would it sit in judgment over the conditions imposed by the authorities concerned, save for violation of Part-III of the Constitution of India. In the present case the validity of the tender conditions have neither been challenged nor put in issue on any such ground. As the appellant failed to submit a certificate, counter-signed by the Superintending Engineer, the respondents cannot be faulted for rejecting their tender, as the certificate submitted by them does not fulfil the requirement of the tender conditions. We see no reason, therefore, to interfere with the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

24th April, 2017
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Date: 24.04.2017

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