

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT APPEAL NO.1473 OF 2016

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

Heard Sri Kakarla Venkata Rao, learned counsel for the appellants and Sri O.Manohar Reddy, learned counsel for the respondents and, with their consent, the Writ Appeal is disposed of at the stage of admission. This appeal, under Clause 15 of the Letters Patent Act, is preferred against the orders passed by the learned Single Judge in WP.No.43670 of 2016 dated 23.12.2016. The relief sought for, by the petitioner in WP.No.43670 of 2016, was to declare the order of the third respondent dated 22.11.2016 as arbitrary and illegal.

In the order under appeal dated 22.11.2016, the appellants herein banned all business dealings with M/s. POA Offshore Private Limited, Hyderabad along with its allied concerns, Partners or Associates or Directors or Proprietors involved in any capacity, from participation in future tenders of ONGC for a period of three years, from the date of issuance of the order, for violation of the Integrity Pact of tender No.P76KC12007 for Bare-Boat cum Back to Back Charter (BBCB) for ONGC owned MSV SamudraSevak and DSV SamudraPrabha; and neither any tender enquiry shall be issued, nor offers of the firm or its allied concerns, Partners or Associates or Directors or Proprietor shall be considered in any of the ongoing/future tenders during the period the banning order is in force. The relief sought for in the WPMP is also to suspend the very same order passed by the appellants herein.

On a set of papers being handed over to the learned Standing Counsel as required under the writ proceedings rules, the appellants herein appear to have filed their counter-affidavit raising preliminary objections regarding the maintainability of the Writ Petition contending that no cause of action arises within the territorial limits of this Court.

In the order under appeal, the learned Single Judge noted the submission, urged on behalf of the petitioner, that they did not intend to commit any mistake while participating in the tender; they had only joined as a financial partner with M/s. POA Offshore Private Limited, Hyderabad; the petitioner had received the show cause notice dated 12.01.2016 seeking explanation of their having submitted fake, forged or fabricated documents; the petitioner had submitted a reply on 15.02.2016 stating that the documents, which were referred to in the show cause notice, were submitted by one of the constituents of the joint venture, the petitioner has nothing to do with the said documents, and they do not have any intention to commit any mistake while participating in the tender; and the petitioners were in the business field for a long period, they did not have any bad antecedents of this nature, and that banning of the petitioner company for a period of three years would affect the ongoing projects in which they were successful tenderers. The Learned Single Judge also noted the submission, urged on behalf of the appellants herein, that this Court had no territorial jurisdiction to entertain and adjudicate the writ petition as no cause of action, either in full or in part, had arisen within the territorial limits of this Court. The learned Single Judge observed that the Court had to consider all the points by hearing both the parties at length; and,

while posting the matter after Sankranthi Vacation 2017, directed that there shall be interim suspension as prayed for.

While Sri Kakarla Venkata Rao, learned Standing Counsel appearing on behalf of ONGC, would draw our attention to the instructions to bidders, more particularly to 7.13 thereof, as also to Annexure-VI which deals with the integrity pact and more particularly to clause (3) thereof, to submit that the petitioner, a member of the consortium which had submitted a bid, was jointly and severally liable for the acts committed by the bidder and the appellants were, therefore, justified in blacklisting them for submission of forged documents by one of the members of the consortium, Sri O.Manohar Reddy, learned counsel for the respondent-writ petitioner, would contend that the order, impugned in the Writ Petition, was liable to be set aside for violation of principles of natural justice, as no notice was issued to the respondent-writ petitioner but was only issued to M/s. POA Offshore Private Limited, Hyderabad.

While it does appear that the notice was issued only to M/s. POA Offshore Private Limited, Hyderabad, it does also appear that the notice was sent to the address where the petitioner alone is carrying on business, and the petitioner also appears to have forwarded their reply to the show cause notice to the consortium which, in turn, submitted a reply to the appellants herein. The appellants have passed a reasoned order, and it is only on its validity being considered and adjudicated, would the question, whether or not it should be suspended pending disposal of the writ petition, arise. The effect of the interim order under appeal is to allow the Writ Petition itself at the admission stage. While such an order can no doubt be passed in exceptional circumstances, the Court is bound to assign

reasons why it was, in effect, allowing the Writ Petition itself by way of an interlocutory order.

While the submissions, of learned counsel on either side, were noted, the learned Single Judge has not assigned any reasons for passing the interlocutory order under appeal. While the submission of Sri O.Manohar Reddy, learned counsel for the respondent-writ petitioner, that paucity of time resulted in such an order being passed, and the learned Single Judge had only posted the matter immediately after Sankranti Vacation, 2017, has considerable force, we are satisfied that an order which, for the reasons stated therein, has blacklisted the petitioner could only have been suspended after hearing both sides; and on assigning reasons for suspending such an order. On the short ground that no reasons have been assigned, before the order of blacklisting impugned in the writ petition was suspended, the order under appeal is set aside.

Sri O.Manohar Reddy, learned counsel for the petitioner, would express apprehension that the order of blacklisting would result in the petitioner being prevented from executing ongoing works, besides being barred from participating in the ongoing tenders/future tenders. Sri Kakara Venkata Rao, learned counsel for the appellants, would submit that, while a bare reading of the blacklisting order does not appear to preclude the respondent-writ petitioners from carrying on ongoing works, this contention could only have been urged based on pleadings in this regard in the Writ Petition and, in the absence of any such contention having been urged in the writ petition, he was not in a position to assert with certainty whether or not the petitioner was being prevented from executing ongoing works. The interests of the respondent-writ petitioner can be adequately safeguarded if the appellants herein are directed to put the respondent-writ petitioner

on notice, and give them an opportunity of being heard before, and in case, they decide to prevent them from executing ongoing works. Any order in this regard shall be passed by the appellants only after the petitioners are heard, and on assigning reasons therefor.

Subject to the aforesaid observations, the order under appeal is set aside. We make it clear that we have not expressed any opinion on merits, and the order under appeal is being set aside on the sole ground that the learned Single Judge has not assigned reasons for passing the interim order of suspension which, in effect, amounts to allowing the Writ Petition itself. Let the Writ Petition be listed "For Admission", as directed by the learned Single Judge, immediately after Sankranti Vacation, 2017 before which date, the appellants herein shall file their counter affidavit on merits also.

The Writ Appeal stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.



(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

2nd January 2017
RRB