

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

Writ Appeal Nos.207 and 208 of 2017

COMMON JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Both these appeals are preferred against the order passed by the Learned Single Judge in W.P.Nos.5313 and 5303 of 2017 dated 15.02.2017 respectively whereby a challenge to the validity of the tender conditions, by the appellant-writ petitioners, was rejected holding that the circumstances which weighed with the employer, for imposing the condition, cannot be within the realm of the Court.

The challenge to the validity of the tender condition is on the touchstone of Article 14 of the Constitution of India. The Learned Single Judge was, therefore, not justified in holding that the validity of the tender condition is beyond the scope of examination in judicial review proceedings, even if it has been challenged on the touchstone of Article 14 of the Constitution of India.

The order under appeal must be, and is hereby, set aside on this short ground. That, however, does not justify an interim order being passed without the respondents being heard. The onus to establish violation of Article 14 of the Constitution of India lies heavily on the petitioner who has invoked the jurisdiction of this Court, and it is only if this Court were to record its satisfaction, that the tender condition violates Article 14 of the Constitution of India, would the question of the appellant-writ petitioners being permitted to participate in the tender process arise. The validity of the tender condition can only be examined after the respondents file their counter affidavit.

Learned Advocate General, appearing on behalf of the respondents, would submit that a counter affidavit would be filed by the respondents within two weeks from today. It is open to Sri Deepak Bhattacharjee, learned Senior Counsel appearing on behalf of the appellant-writ

petitioners, to request the Learned Single Judge to take up the writ petitions for admission, and for grant of interlocutory relief, any day after two weeks. Needless to state that, since the question whether the tender condition violates Article 14 of the Constitution of India necessitates examination in the Writ Petitions, the tender may be finalised subject to further orders either in the Writ Petitions or in the W.P.M.Ps.

The Writ Appeals are, accordingly, disposed of. 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)

17th February, 2017
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Date: 17.02.2017

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