

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.1149 of 2017

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

Heard Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the appellant-1st respondent, Sri Vedula Venkataramana and Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, and the writ appeal is disposed of at the stage of admission. This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in W.P.M.P. No. 32809 of 2017 in W.P. No. 26448 of 2017 dated 8.8.2017.

The respondent herein filed the writ petition seeking a mandamus to declare the action of the ONGC in its letter dated 31.7.2017 terminating the contract of the respondent-writ petitioner, relating to supply of service of gas dehydration operations at four installations at Rajahmundry in East Godavari District, as arbitrary and illegal. They also sought a direction to declare the action of the 2nd appellant, in blacklisting the respondent-writ petitioner for the purpose of future contracts in terms of letter dated 3.8.2017, as arbitrary and illegal, as also the direction to abide by the terms and conditions of the contract dated 16.6.2016 until expiry of the contract period.

In the order under appeal, the learned Single Judge expressed his *prima facie* view that either temporary suspension or permanent blacklisting could only be done by following the procedure established by law; the respondent-writ petitioner had not been issued a show cause notice, and, therefore, the impugned order dated 3.8.2017 was being suspended. The learned Single Judge made it clear that suspension of the order dated 3.8.2017 shall not be construed as preventing the appellants herein from taking any action against the respondent-writ

petitioner, if they desire to do so, by following the procedure established by law.

Facts, to the limited extent necessary, are that a contract was entered into between the respondent-writ petitioner and the appellant-ONGC on 16.6.2016 for a period of five years. Subsequently, order dated 31.7.2017 was passed terminating the contract with future effect from 27.5.2018. In terms of the order of termination dated 31.7.2017 the respondent-writ petitioner was required to continue to perform operations, under the contract, till 26.5.2018 whereupon the contract would stand terminated without any further notice. Termination of the contract was also without prejudice to any other rights and remedies available to the ONGC under the tender/contract. The reason why the contract was sought to be terminated with future effect from 27.5.2018 is evident from paragraph-8 of the order of termination dated 31.7.2017 wherein it is recorded that award of a new contract would take about 300 days, 120 days for tendering and 180 days for mobilisation. The learned Single Judge has interdicted the subsequent order dated 3.8.2017, the relevant portion of which reads as under:

“NOW THEREFORE, having carefully considered the findings arrived at by the Enquiry Officer in its Enquiry Report and also having considered all the facts and circumstances of the case, the Competent Authority (i.e. Executive Procurement Committee) has after due deliberation, decided to invoke the provisions of Integrity Pact (IP) and take action in accordance with the Undertaking submitted by the Contractor M/s. Deep Industries Ltd, Ahmedabad and decide that an Administrative action needs to be taken against M/s. Deep Industries Limited, Ahmedabad and business dealings are to be suspended with them with immediate effect.

Therefore, in future, neither any tender enquiry will be issued to M/s. Deep Industries Limited, Ahmedabad by ONGC against any type of tender nor will their bid be considered by ONGC against any on-going tender wherever contract between ONGC and M/s. Deep Industries Limited, Ahmedabad has not been finalized, till further orders.”

It is not in dispute that no notice has been issued to the respondent-writ petitioner before blacklisting them.

The submission of Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the appellants, is that the said order dated 3.8.2017 is interim in nature; as is evident from the order itself, the said order would remain in force till an administrative decision was taken against the respondent-writ petitioner; and, as any action which the appellants can take for blacklisting the respondent-writ petitioner in terms of the Integrated Materials Management Manual is four months, the appellants would take necessary action against the petitioner within the aforesaid period of four months.

On the other hand, both Sri Vedula Venkataramana and Sri S. Niranjan Reddy, learned Senior Counsel, would submit that the order dated 3.8.2017 prohibits the respondent-writ petitioner from participating in any type of tender, and enables ONGC not to consider their bid against any on-going tender; and such an order is, in effect, an order blacklisting the petitioner from participating in any tenders called for by ONGC which, in terms of the law declared by the Supreme Court in **M/s. Erusian Equipment and Chemicals Limited vs. State of West Bengal and another**¹, is impermissible.

While the last paragraph of the order dated 3.8.2017 is couched in wide terms, and does appear to prohibit ONGC from entertaining any bid from the respondent-writ petitioner for any type of tender as also for any on-going tender, it would be incongruous to direct the appellant ONGC to permit the respondent-writ petitioner to participate in the very same tender which is sought to be called for, as a consequence of termination of the existing contract dated 31.7.2017 for, if the respondent-writ petitioner were to be permitted to participate in the tender process for award of a fresh contract, consequent to termination of the existing contract by proceedings dated 31.07.2017, that would render the very

¹ AIR 1975 SC 266

action of the ONGC, in terminating the contract entered into with the respondent-writ petitioner, by proceedings dated 31.07.2017, redundant.

We consider it appropriate, therefore, to modify the order of the learned Single Judge and to pass the following order. Pending further orders in the writ petition, the respondent-writ petitioner shall be permitted to participate in all other tenders, other than the tender invited pursuant to the termination of the existing contract, between the appellants and the respondent-writ petitioner, by proceedings dated 31.07.2017. As the termination of the contract, by proceedings dated 31.7.2017, is put in issue in the writ petition, it is made clear that, in case the impugned proceedings dated 31.07.2017 were to be either set aside or suspended in the writ petition, the respondent-writ petitioner would be entitled to continue executing the work for the entire duration of the contract.

Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the appellants, would submit that the appellants would file their counter affidavit in the writ petition within three weeks from today. The respondent-writ petitioner may file their reply within two weeks thereafter. It is open to either parties to move the learned Single Judge, for the matter to be taken up for admission, any time after five weeks from today. We consider it appropriate also to record the submission of Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the appellant, that the respondent-writ petitioner would be put on notice, be given an opportunity of being heard on the proposed action to blacklist them; and final orders would be passed in this regard within four months from today.

We make it clear that we have not expressed any opinion on the validity or otherwise of the order of termination dated 31.07.2017, and it is always open to the respondent-writ petitioner to pursue the WPMP wherein they sought suspension of the order dated 31.7.2017.

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)

(J. UMA DEVI, J)

21st August, 2017

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI



Date: 21.08.2017

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