HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 27665 of 2009

Order:

Heard learned counsel for the petitioner and learned Government Pleader for the respondents.

This Writ Petition was filed challenging the Sub-clauses 2 and 3 of Clause 3 of G.O.Ms.No.516, Health, Medical and Family Welfare (M1) Department, dated 14.10.2005, issued by the first respondent.

The petitioner states that he entered into a lease agreement dated 21.05.2004 with the fourth respondent for running a medical shop recommended by the Andhra Pradesh State Co-operative Consumers Federation Limited, as per G.O.Rt.No.332, Health, Medical and Family Welfare (M1) Department, dated 27.03.2004. The lease period was fixed up to 31.12.2009 on payment of Rs.12,000/- towards monthly rent subject to enhancement of 20% every three years. As per Clause 2 of the said lease deed, the structure shall be handed over to the Lessor after expiry of the lease period on 31.12.2009. Thereafter, the Government issued G.O.Ms.No.604, Health, Medical and Family Welfare (M1) Department, dated 15.12.1998, and in modification of the same another G.O.Ms.No.516, Health, Medical and Family Welfare (M1) Department, dated 14.10.2005 was issued. The said GO provided comprehensive guidelines/instructions afresh for establishing/maintaining the medical shops effectively in all Government Hospitals in the State. Sub-clauses 2 of Clause 3 of the said Government Order stipulates the concerned authorities to issue notification 45 days before expiry of the existing lease period of each facility, calling for tenders from eligible bidders for each kind of facility separately and finalise the bids well before the date of

expiry of current lease. As per Sub-clause 3 of Clause 3 of the said Government Order, the bids shall be called for a lease period of two years with an escalation of 10% per year. Challenging the said Sub-clauses 2 and 3 of Clause 3 of the said GO, the present Writ Petition was filed.

This Court, by order dated 18.12.2009, while posting the matter for admission, allowed the respondents to go ahead with the tender process pursuant to the notification issued on 10.12.2009, but opening of the tenders was stayed. The said order was extended up to 25.01.2010. Thereafter, the opening of the tenders was not stayed, but the interim order was held to continue until further orders.

Now a counter affidavit is filed by the respondents stating that pursuant to the tender notification, six applications were received and highest bidding price was Rs.15,12,000/- made by one bidder, but in view of the order passed by this Court on 30.12.2009 the tenders were not finalised.

After filing the Writ Petition and counter affidavit, the State is bifurcated and it is clear from the averments that the petitioner is continuing by paying a monthly rent of Rs.12,000/- with enhancement of 20% every three years, whereas tender value pursuant to the tender notification was Rs.15,12,000/-. The petitioner got undue benefit by virtue of the pendency of the present Writ Petition. Sub-clauses 2 and 3 of Clause 3 of G.O.Ms.No.516, dated 14.10.2005, reads as follows.

> "2. The Hospital Development Societies for Teaching Hospitals and Medical Colleges and the Advisory Committees for Andhra Pradesh Vaidya Vidhana Parishad Institutions shall issue a notification 45 days before the expiry of existing lease period of each facility, calling for tenders from eligible bidders for each kind of facility separately and finalise the bids well before the date of expiry of current lease.
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> 3. The bids should be called for a lease period of two (2) years with an escalation of 10% per year, i.e., in the second year; the lease amount will be 10% in excess of the bid for the first year."

A reading of the above clauses cannot be said to be violative of any provisions of law and it is within the authority of the Government to issue the said Government Order with the above clauses.

In the Circumstances, the Writ Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

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A. RAMALINGESWARA RAO, J

Date: 25.07.2017
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