

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT APPEAL No.468 OF 2017

JUDGMENT: (per 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.7036 of 2017 dated 08.03.2017. The appellant herein filed the said Writ Petition seeking a writ of mandamus to declare the action of the Superintendent, Niloufer hospital, Hyderabad in issuing tender notification dated 06.02.2017 calling for tenders to run the Diet Canteen, for supply of diet to inpatients and Duty Medical Officers in Niloufer hospital, as illegal, arbitrary, without jurisdiction, in violation of principles of natural justice, and violative of Article 19(i)(g) and 21 of the Constitution of India.

The validity of the tender notification was questioned before the Learned Single Judge on two grounds. Firstly that, in terms of Clause 11 of G.O.Ms. No.325 dated 01.11.2011, the contract is extendable by one year after completion of the two year period of contract, despite which the petitioner, who has the earlier contractor, was not granted extension beyond two years; secondly, that the Superintendent, Niloufer hospital lacked jurisdiction to issue a tender notification.

In the order under appeal the Learned Single Judge observed that Clause 11 of G.O.Ms. No.325 dated 01.11.2011 was only an enabling provision; it conferred no right on the petitioner to seek extension beyond two years; the Superintendent, Niloufer hospital was directed, by the Diet Committee, to invite tenders; and, consequently, there was no illegality in awarding the contract to

the proposed 5th respondent who had, admittedly, quoted a price lower than that of the appellant-writ petitioner.

G.O.Ms. No.325 dated 01.11.2011 stipulates, in Clause 9 thereof, that the District Diet Management Committee would be responsible for calling tenders, and to select the most competent Diet Contractor, as also to monitor the quality of food supplied to inpatient/duty doctors; and the Superintendent of the District hospital would be responsible for administering the Diet Contract without deviation of the conditions. Clause 11(d) of the General tender conditions requires tenders to be called by the District Diet Management Committee Hospital-wise. In the present case the Learned Government Pleader, submitted before the Learned Single Judge, that, on the directions of the District Diet Management Committee, the Superintendent, Niloufer hospital had invited tenders; there was no dispute that the tenders were finalised only by the District Diet Management Committee of which the Superintendent, Niloufer hospital was also a member; the power to call for tenders was delegated by the District Diet Management Committee to the Superintendent, Niloufer hospital; clause 11(c) stipulated that the Diet contract period would be for two years, and extendable for one year if the District Diet Management Committee was satisfied with the services of the Diet Contractor and, under any circumstances, fresh tenders must be called for the 4th year, well in advance; while the Diet contract period is for two years, the District Diet Management Committee has been conferred the power, if it is satisfied with the services of the Diet Contractor, to extend the contract for a period of one more year i.e., for a total period of three years; however Clause 11(c) prohibits any further

extension, and requires tender to be invited from the 4th year onwards; while the period of Diet contract is two years, it can be extended by the Committee for a period of one more year; and conferment of such a power on the District Diet Management Committee does not confer a corresponding right on the appellant-writ petitioner to claim that they should automatically be granted extension for the third year also.

As it is not in dispute that the tenders were finalised by the District Diet Management Committee of which the Superintendent, Niloufer hospital was also a member, the mere fact that the notice, inviting tenders, was issued by the Superintendent, Niloufer hospital, that too at the instructions of the District Diet Management Committee, would not render the notice inviting tenders arbitrary and illegal. As has been rightly observed by the Learned Single Judge, the appellant-writ petitioner cannot claim, as of right, that he should be granted extension of one more year on completion of their earlier contract period of two years.

The jurisdiction which this Court exercises, in an intra Court appeal under Clause 15 of the Letters Patent, is extremely limited, and it is only if the order under appeal suffers from a patent illegality would interference be justified. We find no such informity in the order under appeal. It is also not in dispute that the tender was awarded to a bidder who quoted a rate less than the rate which the petitioner had quoted.

Viewed from any angle, we see no reason to interfere with the order of the Learned Single Judge. The Appeal fails and is,

accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

Date: 04.12.2017

MRKR

