

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No. 241 of 2018

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in W.P. No. 18950 of 2016 dated 23.11.2017. The appellant herein filed the Writ Petition seeking a mandamus to declare the action of the Superintending Engineer, A.P. Transco Ltd, Kadapa, in issuing the Letter of Indent on 1.6.2016 proposing to conclude an agreement in respect of 400 KV Sub-station at Talamanchipatnam Village and Post, Mylavaram Mandal, Kadapa District without calling for any tenders and based on the tender specifications, as arbitrary and illegal. A consequential direction was sought to cancel the Letter of Indent, and direct the respondents to award the contract only after calling for tenders in respect of the 400 KV Sub-station, Talamanchipatnam Village, Mylavaram Mandal, Kadapa District.

Facts, to the limited extent necessary, are that tenders were invited for carrying on operation and maintenance including watch and ward, house keeping and gardening, MRT assistance and assistance for Telecom of EHT Sub-stations and lines and CBD & SM gangs for lines and Sub-stations including conveyance with three (3) ton van for CBD gangs on works contract basis in the OMC and O&M Circle. The details of the work were specified in Annexure V to the tender specifications. Annexure V detailed the works mentioned in the table therein. Five works are referred to, which are the 220 KV Sub-station, Yerraguntla, the 220 KV Sub-station, Pulivendula, the 220 KV Sub-station, Kondapuram, the 220 KV Sub-station, Thimmapuram and the CBD

Gang, Yerraguntla. The work, relating to operation and maintenance of supply of man power to the 400 KV Sub-station at Talamanchipatnam Village, is not reflected in Annexure V.

While the 4th respondent was found to be the successful bidder of the work, the grievance of the appellant is that he was awarded the 400 KV Sub-station at Talamanchipatnam work even though the said work was not notified in the tender; and, if this work had been notified, then several others including the appellant-writ petitioner would have participated in the tender process. The subject work was awarded by the 1st respondent based on the general terms and conditions of the tender. Clause 3(c) thereof stipulated that the new works during the three year contract period, as and when added in the respective area of work, shall form a part of the work, and shall be awarded to the existing contractor at the same terms and conditions of the works awarded. It is on the basis of this Clause that the 1st respondent awarded the subject work to the 4th respondent.

In the order under appeal, the learned Single Judge referred to Clause 3(c) to hold that the 400 KV Sub-station at Talamanchipatnam Village was a new work; as the action was initiated as per Clause 3(c), and the work was allotted, there was no irregularity in such allotment since the scope of the work included watch and ward, house keeping and gardening; the 400 KV Sub-station work was a new work as per Clause 3(c); the appellant-writ petitioner had not challenged Clause 3(c); more over the appellant-writ petitioner had not participated in the tender process; and this Court had already upheld the action of respondents 1 to 3, in framing tender conditions regarding allotment of works, by its order in W.P. Nos. 13242 and 22362 of 2015.

While we find considerable force in the submission of Sri Chandraiah Sunkara, learned counsel for the appellant, that Clause 3(c) of the tender conditions is capable of being mis-used, and several other works could be allotted to the tenderer though they are not specified in the tender, the fact remains that the appellant-writ petitioner has not even participated in the tender process nor has he questioned the validity of the said condition.

In proceedings under clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. The learned Single Judge has dismissed the Writ Petition on the ground that the appellant-writ petitioner did not even participate in the tender process, and did not question the validity of Clause 3(c) of the general terms and conditions. The order under appeal cannot be said to suffer from a patent illegality warranting interference under Clause 15 of the Letters Patent.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

23rd February, 2018

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