

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

WRIT APPEAL No.765 of 2017

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

We have heard the learned counsel for the appellants quite in extenso in this appeal against the judgment of the learned single Judge refusing to interfere on a challenge levied against the eligibility condition of the annual average turnover in three previous years for the purpose of competing in competitive bids for empanelment of outdoor advertisement agencies.

2. We record the submission of the learned Government Pleader that the Writ Appeal has become infructuous with passage of time.

3. However, learned counsel for the appellants states that the issue raised is a matter of recurring importance and the same conditions, in all likelihood, are to be carried over to the subsequent years as well.

4. At the outset, we may notice that we are dealing with the realm of contract which cannot be treated as statutory. That apart, the power of the Government to fix the condition depending upon the prior performance as an eligibility condition cannot be challenged. The authority which invites offers is entitled to ensure that the offers are made only by those who have secured the requisite benchmarks which the authority

making the invitation treats as sufficient enough to be considered in a competitive bid. The question, therefore, would boil down to the issue as to whether the measure of competition in terms of the previous turnovers is to be treated palpably perverse or so unreasonable that it smacks arbitrariness and thereby infringing Article 14 of the Constitution of India, even in relation to Government contracts.

5. Learned counsel for the appellants argued that the measure of turnover for the previous years has to be differentially considered in the realm of advertising through the print media, electronic media and also advertisements in the form of hoardings in public places, than besides the roads. He points out that the yardsticks for determining the rates in the print media will depend upon the circulation while the yardsticks for the electronic media will depend upon yardsticks referable to the probable number of the viewers. He, therefore, points out that insofar as the hoardings are concerned, there ought to be an optimal assessment of the capacity of the advertiser depending upon the proposed advertisements in such strategic positions that it would lure the watchful eyes of the common man. We are not impressed to maintain such a classification in judicial review and sit in judgment on the wisdom of the Government, particularly commercial wisdom, that it has exercised in classifying the different categories and prescribing the previous turnover as a term of qualification.

This Writ Appeal, therefore, fails. In the result, the Writ Appeal is dismissed.

The miscellaneous petitions pending in this Writ Appeal, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

V.RAMASUBRAMANIAN, J

02.08.2018
vs

