

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

Writ Appeal Nos.441 & 447 of 2018

COMMON JUDGMENT: *(per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)*

These two Appeals are preferred by the un-official respondents in W.P. Nos.44458 and 40009 of 2017 aggrieved by the order of the learned Single Judge dated 03.01.2018 granting suspension of G.O.Rt.No.477 dated 15.11.2017, until further orders.

Sri V.Ravikiran Rao, learned counsel for the appellant-sixth respondent would contend that the cause of action which resulted in W.P.No.44458 of 2017 being filed, is similar to that which resulted in W.P. No.40009 of 2017 being filed; and a second Writ Petition, seeking the very same relief as was sought for in the first, is not maintainable.

It is evident, from the reliefs sought for in W.P. No.44458 of 2017, that, apart from challenging the validity of G.O.Rt.No.477 dated 15.11.2017, the petitioners had also challenged the letter dated 04.12.2017, whereby the Government had asked the appellant to furnish information for an agreement to be executed between them. W.P.No.40009 of 2017 came up for admission on 27.11.2017, and notice was issued to the respondents returnable in three weeks. It is only after notice was issued in W.P. No.40009 of 2017, that the letter dated 04.12.2017 was issued and this

proceeding could only have been challenged by way of a subsequent Writ Petition i.e W.P.No.44458 of 2017.

Even otherwise the learned Single Judge has, in the order under appeal, passed a common order in both the Writ Petitions suspending G.O.Rt.No.477 dated 15.11.2017. The learned Single Judge also took note of the fact that the 1st respondent had initially taken a decision on 19.11.2015 not to proceed further in the matter; and, thereafter, the Vigilance Department had submitted a report dated 28.09.2016 pointing out certain lapses in the tender notification. The learned Single Judge observed that the report dated 28.09.2016, of the Vigilance Department, was not at variance with the view taken by the Commissionerate of Tenders; G.O.Rt.No.477 dated 15.11.2017 proceeded as if the Director-General Vigilance had facilitated revival of the tenders closed by the 1st respondent; and, *prima-facie*, the award of work in favour of the appellant virtually amounted to awarding of a contract where the very tender was earlier cancelled by the 1st respondent.

While Sri V.Ravi Kiran Rao, learned counsel for the appellant, would contend that the findings in the vigilance report are erroneous since the information, which according to the vigilance report was not furnished in the tender conditions, was specifically stipulated in the tender documents, these are all matters which can be urged before the learned Single Judge by the appellant herein, filing their

counter-affidavit along with a petition to vacate the interim order. *Prima-facie*, the abstract of recommendations of the Vigilance Department highlights certain lapses in the tender documents which, according to them, vitiated the tender process. As these issues necessitate a detailed hearing, after counter-affidavits are filed by the respondents, it would be wholly inappropriate for us to undertake an examination of the contentions urged in the Writ Petition, on its merits, in an intra-Court appeal under Clause 15 of the Letters Patent, that too in an appeal preferred against an interim order in a pending Writ Petition. We see no reason, therefore, to interfere with the interim order passed by the learned Single Judge.

Leaving it open to the appellants herein to avail the remedy of filing a petition to vacate the interim order, both the appeals fail and are, accordingly, dismissed. Needless to state that the order passed by us shall not disable the appellant from requesting the learned Single Judge to take up the vacate stay petition for hearing at an early date. No order as to costs. Miscellaneous petitions, if any, pending in these writ appeals, shall stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 13.03.2018
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(per Hon'ble The Acting Chief Justice Ramesh Ranganathan)



Date: 13.03.2018

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