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

Writ Appeal No.335 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 passed by the Learned Single Judge in W.P.No.41519 of 2017 dated 18.12.2017. The 1st respondent herein filed the writ petition seeking a mandamus to declare the action of the respondent authorities, in rejecting their tender while participating in the tender notification dated 18.10.2017 on the ground of non-submission of final income tax returns, even though the provisional income tax returns and the Solvency Certificates were uploaded, as not being in the prescribed format, and in not allowing them to participate in the bids, as arbitrary, unsustainable and against principles of natural justice. A consequential direction was sought to the respondents therein to permit the 1st respondent-writ petitioner to participate in the bid, and to consider their tender on par with other tenderers for the work of Reconstruction of HLB at Km 2/6 in Gandugulapally, Aswaraopeta road in Khammam District.

Facts, to the limited extent necessary, are that a notification inviting e-tenders was issued on 18.10.2017, and pursuant thereto tenders were required to be submitted between 26.10.2017 and 09.11.2017. The last date for submission of tenders was fixed as 09.11.2017. On the appellant being found successful in the tender process, an agreement was entered into with them on 14.12.2017. While the writ petition was filed on 06.12.2017, before an agreement was entered into between the appellant herein and the

Government, the order under appeal came to be passed, thereafter, on 18.12.2017.

In the order under appeal the Learned Single Judge noted the submission, urged on behalf of the respondent-writ petitioner, that, in so far as the current year is concerned, a copy of the provisional assessment returns was submitted; in so far as the earlier years are concerned, copies of the final assessment returns were submitted in the PDF format along with the application; and, therefore, disqualification of the 1st respondent-writ petitioner was not in accordance with facts and law. The Learned Single Judge also noted the submission put forth on behalf of the Learned Government Pleader, on written instructions, that the 1st respondent-writ petitioner had not submitted their bid, and necessary documents for the bid, by uploading the same online; the 1st respondent-writ petitioner was aware that hard copies would not be considered; except the 1st respondent-writ petitioner, all other bidders had uploaded the latest income tax documents (SARAL) i.e for the assessment year 2017-18; and, except the 1st respondent-writ petitioner, all others had participated, having uploaded the latest income tax documents also.

While the submission put forth by the learned Government Pleader was that neither the bid nor the bid documents were uploaded online by the 1st respondent-writ petitioner, though all the others had, the Learned Single Judge has, in the order under appeal, merely observed that all the necessary documents were submitted by the 1st respondent-writ petitioner. No finding has been recorded by the Learned Single Judge whether the bid, and the bid documents were submitted by the 1st respondent-writ petitioner online, or in a hard copy as contended on behalf of the Government. The Learned Single Judge, thereafter, observed that rejection of the 1st respondent-writ petitioner's case by the concerned authorities was, *prima facie,* untenable; and he was, therefore, of the considered view that the request of the 1st respondent-writ petitioner merited consideration.

After holding that rejection of the case of the 1st respondent-writ petitioner was *prima facie* untenable, the Learned Single Judge allowed the writ petition as prayed for, even without the respondents filing a counter-affidavit in the writ petition, and based merely on his *prima facie* satisfaction. While a *prima facie* satisfaction may have sufficed to pass an interim order, the writ petition could not have been allowed within two weeks of its being filed, without the respondents in the writ petition being given a reasonable opportunity of filing their counter-affidavit.

The order under appeal must be and is, accordingly, set aside. The writ petition is restored to file. The appellant herein shall stand impleaded as the 5th respondent in the writ petition. The writ petition may be taken up for admission by the Learned Single Judge any day after one week from today. It is open to both the appellant and the State Government to file their counter-affidavits, in the writ petition, in the meanwhile. It is open to Sri K.B.Ramanna Dora, learned counsel for the 1st respondent-writ petitioner, to request the Learned Single Judge to take up the writ petition for admission any day after one week from today. We have no reason to doubt that, on such a request being made, the Learned Single Judge would give such request its due consideration.

The Writ Appeal stands disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

12th April, 2018
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

<u>Writ Appeal No.335 of 2018</u>

<u>Date: 12.04.2018</u>

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