

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

Writ Appeal No.428 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 interlocutory order passed by the Learned Single Judge, in I.A.No.1 of 2018 in W.P.No.3774 of 2018 dated 08.02.2018, granting stay of awarding the contract in favour of the third party and, if the same had already been awarded in favour of any third party, no further action should be taken pursuant thereto.

The respondent herein filed the Writ Petition seeking a mandamus to declare the action of the appellants herein (respondents in the Writ Petition), in disqualifying their bid contrary to the tender notification, in Tender Notice dated 22.11.2017, as arbitrary and illegal; to direct the respondents therein to declare them as fully eligible and qualified to participate in the tender process; and to direct the respondents therein to award the tender in their favour.

In the order under appeal, the Learned Single Judge noted that the respondent-writ petitioner was disqualified, though they had quoted less than 8% of the estimated value, on the ground that (i) they had failed to submit the experience certificate counter-signed by the Executive Engineer; and (2) the joint venture affidavit had not been filed; the Note below Clause (19.2) stipulated that, if the experience claimed was from other than the State Departments, the same could be counter-signed by the Executive Engineer of the Department concerned or an officer of equivalent

rank; in the case on hand, the experience certificate, which the respondent-writ petitioner had produced, was counter-signed by the Deputy Chief Engineer (Construction), North, S.W.Railways, Bangalore; and unless and until the appellants categorically found that the Deputy Chief Engineer was inferior to the rank of the Executive Engineer, the ground, that the experience certificate was not counter-signed by the Executive Engineer, could not be accepted.

On reliance being placed by the learned Government Pleader, on Para 2.4 of the tender notice, the Learned Single Judge observed that the said condition would not apply, for the certificate was produced in terms of the Note to tender condition No.19.2 which related to work experience certificate from other than the State Departments. As regards the other ground, that the joint venture agreement itself had to be filed, the Learned Single Judge observed that the requirement of filing the joint venture agreement was obviated; and, especially considering the fact that the respondent-writ petitioner had quoted much less than the competing bidder, ignoring their claim on some ground or the other, which otherwise was not justified, could not, *prima facie*, be countenanced.

It is only if the tender submitted by a participating bidder fulfils all the conditions stipulated therein, and the bidder is found technically eligible and qualified to be awarded the work, would the question of comparing the financial bids arise for consideration. In the present case, the question which necessitated examination was whether the experience certificate, submitted by the respondent-writ petitioner, satisfied the tender conditions.

Clause (2.4) of the tender conditions stipulated that, if the tender is made by a Corporation, it shall be duly signed by the authorised officer who shall produce, with his tender, satisfactory evidence of his authorisation; the experience and turnover certificate should be certified by the concerned Executive Engineer and counter-signed by the concerned Superintending Engineer; and copies may be produced duly attested by a person lower in rank than that of an Executive Engineer in the service of Government of A.P.

The certificate produced by the respondent-writ petitioner contains the signature of the Authorised Secretary of the respondent-writ petitioner, and the signature of the Deputy Chief Engineer (Construction), North, S.W.Railways, Bangalore. Clause (2.4) requires the certificate to be certified by the Executive Engineer, and to be counter-signed by the Superintending Engineer. In effect, the requirement is that two Government officials should certify the experience and turnover certificate. In the present case, the certificate contains the signature of only the Deputy Chief Engineer. Even assuming that the Deputy Chief Engineer is entitled, in terms of Clause (2.4), to affix his signature and that he is higher in rank than the Executive Engineer, the other requirement, of the document being counter-signed by the Superintending Engineer, is not satisfied.

The Learned Single Judge relied on the Note to Clause (19.2) to hold that the certificate of the Deputy Chief Engineer would suffice. Clause (19.2) stipulates the qualification criteria, and requires the tenderer to have good experience in execution as the original agency in similar works in State and Central Governments.

The Note below Clause (19.2) stipulates that the statement, showing the value of existing commitments and on-going works, as well as the stipulated period of completion remaining for each of the work listed, should be issued by the Engineer-in-charge of Government department/undertaking not below the rank of Executive Engineer or equivalent and counter-signed by the rank of Superintending Engineer or equivalent.

While Clause (19.2) relates to experience, Clause (2.4) relates to both experience and turnover. Be that as it may, even under the Note to Clause (19.2), the certificate is required to be signed by the an officer not below the rank of Executive Engineer or equivalent, and counter-signed by an officer of the rank of Superintending Engineer or equivalent i.e the certificate is required to be signed by two Government officials, and not one. Admittedly, the experience certificate produced by the respondent-writ petitioner contains the signature of only one official, and not two. It is evident, *ex facie*, that the said certificate does not satisfy the conditions stipulated in the tender notification. The order under appeal must therefore be, and is accordingly, set aside.

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

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

16th March, 2018
JSU

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Date: 16.03.2018

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