

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

Writ Appeal No. 506 of 2018

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

This appeal, under Clause 15 of the Letters Patent, is preferred by the 5th respondent in W.P. No. 37838 of 2017 aggrieved by the order passed by the learned Single Judge dated 15-2-2018 allowing the Writ petition. The 5th respondent herein filed the Writ Petition to declare the action of the 1st respondent in issuing memo dated 7.11.2017, and the decision of the 2nd respondent to award work in favour of the 5th respondent (appellant herein), as illegal and arbitrary.

The appellant herein had earlier filed W.P. No. 3202 of 2017 to declare the order passed by the tender committee of the A.P. Education and Welfare Infrastructure Development Corporation Limited, rejecting their bid, disqualifying them, suspending them from participating in the tender process, and forfeiting 1% of the EMD amount through memo dated 23.1.2017, as arbitrary and illegal.

The said Writ Petition was disposed of by order dated 4.7.2017 setting aside the earlier order blacklisting the appellant from participating in the tender process. The respondents were directed to issue a show cause notice to them fixing a time of at least of four days to file a reply thereto, and to pass appropriate orders after considering the reply, if any, given by them within the stipulated time. The learned Single Judge further observed that, as a consequence of the said direction, it must be treated as if the appellant's participation had not been suspended; and, as a corollary, the appellant (petitioner in W.P. No. 3202 of 2017) should be permitted to participate in the short tender process and to apply before finalization of the existing tenders, unless orders were passed in the meanwhile regarding blacklisting.

Curiously, the respondent-Corporation understood the said order (evidently erroneously) as requiring them to cancel the subsequent tender

issued on 27.1.2017, and to award the work to the appellant. As the subsequent tender was cancelled, and the work was awarded in favour of the appellant vide proceedings dated 7.11.2017, the 5th respondent-writ petitioner filed W.P. No. 37838 of 2017 which was disposed of by the learned Single Judge by his order in W.P. No. 37838 of 2017 dated 15.2.2018 setting aside the decision of the tender committee, in its proceedings dated 7.11.2017, as illegal. The consequential decision, rejecting the second call tender dated 27.1.2017, was also held to be illegal. The Writ Petition was allowed with costs of Rs.10,000/-, and the respondent-Corporation was directed to process the bids submitted pursuant to the tender notification dated 27.1.2017.

Pursuant to the earlier order, passed in W.P. No.3202 of 2017 dated 4.7.2017, the appellant was given an opportunity to submit their objections to the earlier show cause notice proposing to blacklist them from the tender process. On receipt of their reply to the show cause notice, they were imposed fine/penalty equivalent to 1/3rd of the EMD amount. Instead of permitting the appellant to participate in the tender process, pursuant to the tender notification dated 27.1.2017, the respondent-Corporation cancelled the subsequent tender notification dated 27.1.2017, and awarded the work to the appellant, evidently under the mis-conception that the earlier order of the learned Single Judge, in W.P. No. 3202 of 2017 dated 4.7.2017, obligated them to do so. As has been rightly held by the learned Single Judge, in the order under appeal, the order passed in W.P. No.3202 of 2017 dated 4.7.2017 did not permit the respondent-Corporation to revive the earlier tender process which commenced on a notification being issued on 5.11.2016.

While Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellant, would submit that, in terms of the order passed by the learned Single Judge in W.P. No. 3202 of 2017 dated 4.7.2017, the appellant should have at least been permitted to submit their bids pursuant to the tender notification dated 27.1.2017; and, in passing the order under appeal in W.P. No. 37838 of 2017 dated 15.2.2018, the Learned Single Judge erred in

not permitting the appellant to submit their bids in accordance with the directions issued by the learned Single Judge earlier in W.P. No. 3202 of 2017 dated 4.7.2017, Sri O. Manohar Reddy, learned counsel for the 5th respondent-writ petitioner, would submit that this contention has been urged for the first time across the bar during the hearing of the present appeal; and neither was any such contention raised in the counter-affidavit filed by the appellant before the learned Single Judge in W.P. No. 37838 of 2017, nor was any such contention even urged in the grounds of appeal filed in the present Writ Appeal.

We have gone through the counter-affidavit filed by the appellant in W.P. No. 37838 of 2017, and the grounds of appeal filed in W.A. No. 506 of 2018. On a plain reading thereof, it is evident that no such contention has been raised by the appellant any time before this appeal was taken up for hearing. The order under appeal only requires the respondents to process the bids in accordance with the tender notification dated 27.1.2017. The question whether the appellant should be permitted to submit their bids pursuant to the notification dated 27-1-2017, in terms of the order passed in W.P. No. 3202 of 2017 dated 4-7-2017, did not arise for consideration in W.P. No. 37838 of 2017. It is wholly unnecessary for us, therefore, to examine whether or not the respondent-Corporation is obligated, in terms of the order passed by the learned Single Judge in W.P. No. 3202 of 2017 dated 4.7.2017, to permit the appellant to participate in the tender process pursuant to the notification dated 27.1.2017. Suffice it to note that while the 5th respondent-writ petitioner had, in their reply affidavit filed in the Writ Petition, agreed to execute the work at the rate quoted by the appellant pursuant to the tender notification issued on 5.11.2016, the appellant has filed an affidavit before us today stating that they would also execute the work at the very same rate in case they are permitted to participate in the tender process pursuant to the tender notification dated 27.1.2017.

As the appellant's entitlement to submit their bid pursuant to the said notification dated 27.1.2017 did not arise for consideration in W.P. No. 37838 of 2017, and as the present appeal is preferred only against the order passed in W.P. No. 37838 of 2017, dated 15.2.2018, it is wholly unnecessary for us to express any opinion on whether or not the appellant should be called upon to participate in the tender process pursuant to the tender notification dated 27.1.2017. Suffice it to hold that we find no error in the order under appeal whereby the respondent-Corporation was directed to proceed and process the bids pursuant to the tender notification dated 27.1.2017.

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)

2nd April, 2018

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AND
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