

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V. BHATT**

WRIT APPEAL Nos. 1122, 1128 and 1255 OF 2017

Common Judgment: (Per The Hon'ble The Chief Justice Sri Thottathil B. Radhakrishnan)

These three Writ Appeals arise from an order rendered in a Writ Petition filed by the appellant in W.A. No. 1255 of 2017. Writ Appeal No. 1128 of 2017 is filed by the State. Writ Appeal No. 1122 of 2017 is by the third respondent in the Writ Petition. Hereinafter, the parties would be referred to by their status in the Writ Petition.

2. The 1st respondent-State floated a tender for operation and maintenance of Mobile Medical Units. The writ petitioner and the third respondent were among the offerors. Both of them cleared the technical bid to the satisfaction of the State. In the commercial bid, the third respondent was the lowest tenderer and the writ petitioner was the second. The third respondent's offer was accepted and it was entrusted the work.

3. The writ petitioner filed the writ petition contending that the third respondent is a blacklisted entity and therefore, not eligible to be treated as a valid tenderer. Hence, the third respondent did not have the eligibility to cross the technical bid and go for the financial bid, it is contended. The learned Single Judge, during the hearing of the Writ Petition, called for the entire file and also looked into the Rules. It appears on the face of the Order, that there were certain deliberations in the Court in relation to some aspects of the files. The fact of the matter remains that the learned Single Judge was not satisfied with the floating of the tender and the consideration of the tender was in conformity with the statutory

rules that bound the Government in relation to the subject matter. The learned Single Judge, however, did not uphold the plea of the writ petitioner that the third respondent was liable to be blacklisted. Resultantly, the award of work to the third respondent was set aside by the learned Single Judge. The writ petitioner's plea that it may be declared as a successful tenderer was negated and consequently the State was directed to re-consider the tender for the contract within a period of two months. The third respondent filed a Writ Appeal and the Division Bench admitted that Writ Appeal and stayed the directions contained in the impugned judgment. The appeal filed by the State was also on board on the same day. Thereafter, the writ petitioner filed the Writ Appeal to the extent the finding in the judgment of the learned Single Judge was against its interest.

4. In terms of the directions of the learned Single Judge, the work was to be re-arranged through a re-tendering process within two months. The impugned judgment is rendered on 16.6.2017. That event has not happened till today, i.e., 17.12.2018. There is controversy between the parties as to whether the interlocutory order by the Division Bench was extended from time to time. It was not extended after a particular point of time. Be that as it may, the fact of the matter remains that even as of now, the third respondent, who is the appellant in W.A. No. 1122 of 2017, is continuing with the operations in terms of the contract awarded to it by the State. Its period under that contract will be over by efflux of time on 31.3.2019. This means that the next tender finalization should be done in such a way that there should be a legitimate competition to

identify the entity to which the work should be awarded in terms of such tenders which the State may fix. That should happen in such a way that by 1.4.2019, the only operator whoever it is; may be even among the third respondent or the writ petitioner; would be available as the contractor in the State. Ends of justice at this point of time, will be best secured by ensuring that this happens. This is so because at this distance of time, if we are to alter the decision of the learned Single Judge at the instance of the writ petitioner, no useful purpose will be served, by permitting the writ petitioner to continue for the remaining period of the contract, which is to end by 31.3.2019. We are also not inclined to carry on adjudication on the issues raised by the third respondent as regards certain other aspects of the matter because that may be purely academic; also in relation to the Rules governing the field.

5. In the result, these Writ Appeals are ordered directing that the 2nd respondent in the Writ Petition will issue a notification inviting offers and conclude the tender process in relation to the maintenance of the Mobile Medical Units, which is now carried on by the third respondent in such a way that the contract would be finalized and the eligible contractor could be able to take up work from 1.4.2019. It is clarified that we have not expressed any opinion about the rule position and all views expressed through the impugned order of the learned Single Judge will stand vacated to pave way for a wholesome consideration and application of the Rules by the State, in accordance with law.

6. It is also clarified that all pleas *inter se* the writ petitioner and the third respondent, in relation to disqualification etc, will remain open for consideration by the State in the subsequent round.

7. With this, the third respondent, namely, the appellant in Writ Appeal No. 1122 of 2017, would continue with the operations of the Mobile Medical Units till 31.3.2019.

Pending miscellaneous applications shall also stand closed.

No costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

17th December, 2018.

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S.V. BHATT, J