

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

Writ Appeal No.631 of 2018

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

Heard the learned Advocate General for the State of Andhra Pradesh appearing on behalf of the Appellant and Sri Sai Sanjay Suraneni, learned counsel for respondent Nos.1 and 2-writ petitioners.

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in WP No.7630 of 2018 dated 14.03.2018. Respondent Nos.1 and 2 herein had filed the said Writ Petition seeking a *mandamus* to declare the action of the appellant, in issuing the letter dated 08.02.2018, as illegal, arbitrary, without jurisdiction and in violation of Article 14 of the Constitution of India, and to consequently set aside the letter dated 08.02.2018.

The Writ Petition was filed on 06.03.2018 and, in the interlocutory application filed in I.A.No.1 of 2018, Respondent Nos.1 and 2 herein sought a direction to suspend the letter dated 08.02.2018, and to consequently restrain the respondents from selecting a new agency for providing managed Wi-Fi services, pending disposal of the Writ Petition. By the order under appeal dated 14.03.2018, the Learned Single Judge granted interim suspension for a period of 12

weeks. As a result of the order under appeal, not only is the appellant disabled from giving effect to the letter of termination dated 08.02.2018, but is also precluded from selecting a new agency to entrust the work.

The main submission of the learned Advocate General, appearing on behalf of the appellant, is that the letter of termination was issued since Respondent Nos.1 and 2 had failed to abide by the terms and conditions of their agreement; the appellant had decided to change the scope of the work and, after the termination letter dated 08.02.2018 was issued, a fresh tender notification was issued inviting bids, for the actual work, from all eligible bidders; the change in the scope of work is that, while the person to whom the work was entrusted earlier could, in terms of the then prevailing terms and conditions, collect Wi-Fi charges from its users, the change, in the scope of the work, would now disable them from collecting any amount from the users, and they would be required to augment their revenue by advertisement charges alone; and the tender notification, inviting fresh bids for the new work, was issued on 09.02.2018, and thereafter on 26.02.2018, long before the Writ petition came to be filed before this Court.

On the other hand Sri Sai Sanjay Surineni, learned counsel for Respondent Nos.1 and 2-writ petitioners, would submit that the action of the respondent is illegal, and in

violation of the equality clause under Article 14 of the Constitution of India; the action of the appellant is also *mala fide*, as the entire exercise was undertaken only to benefit QuadGen, the next eligible bidder; failure on the part of Respondent Nos.1 and 2, to question the subsequent tender notification, was only because they were unaware that any such tender notification was issued; the moment they came to know of the new tender notification, they had informed the Learned Single Judge, during the course of hearing on 14.03.2018, that a fresh tender notification had been issued; and the interlocutory order, now under appeal, was passed by the Learned Single Judge on being fully conscious of a fresh tender notification having been issued.

Among the grounds, on which the termination letter is under challenge in the Writ Petition, is that the appellant intended of favour the bid of QuadGen, who was the next eligible bidder after Respondent Nos.1 and 2. While the Learned Single Judge may have been justified in granting interim suspension of the termination letter dated 08.02.2018, the interim relief granted in the Writ Petition disabled the appellant herein from selecting a new agency, even if it be through a distinct and fresh tender process. The very fact that a fresh notification was issued inviting bids from eligible tenderers, would mean that the apprehension of respondent Nos.1 and 2, that the termination letter dated 08.02.2018 was issued to award the work to QuadGen, is

unfounded. The order under appeal was passed even in the absence of a challenge to the new tender notifications dated 09.02.2018 and 26.02.2018.

The main relief sought for in this Writ Petition is to have the termination letter dated 08.02.2018 set aside, and to direct the appellant to execute a master service agreement with Respondent Nos.1 and 2-writ petitioners. It would be wholly inappropriate for us, in such a Writ Petition, to interdict the subsequent tender process.

Sri Sai Sanjay Surineni, learned counsel for Respondent Nos.1 and 2, would submit that it is only because of the pendency of this Writ Petition, that Respondent Nos.1 and 2 did not participate in the tender process earlier; and they should, therefore, be permitted to submit their bids, and compete with others, for being entrusted the new Work. On the other hand, the Learned Advocate General for the State of Andhra Pradesh would contend that the last date, for submission of the bids, has already elapsed; nothing prevented Respondent Nos.1 and 2-writ petitioners from submitting their bids; and it may not be appropriate to now permit them to submit their bids, after the last date for submission of the bids has elapsed, more so as such a benefit has not been extended to others. We see no reason to examine these contentions in proceedings under Clause 15 of the Letters Patent, as all these contentions can also be urged

in appropriate legal proceedings, wherein the validity of the fresh tender notifications are subjected to challenge. Suffice it to make it clear that the order now passed by us shall not disable Respondent Nos.1 and 2 from questioning the validity, of the tender notifications dated 09.02.2018 and 26.02.2018, in appropriate legal proceedings, and to raise all such contentions as are available to them in law, including those urged in WP No.7630 of 2018 also.

The order under appeal is set aside, to the limited extent the Learned Single Judge disabled the appellant from selecting a new agency for providing managed Wi-Fi services. (the effect of which is to grant stay of the subsequent tender notification).

The Writ Appeal is disposed of accordingly. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Appeal shall stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 23.04.2018
Note: Furnish CC by tomorrow.
(BO)
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URGENT

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



Date: 23.04.2018

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