

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.660 of 2018

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

This appeal is preferred, under Clause 15 of the Letters Patent, against the interlocutory order passed by the learned Single Judge in W.P. No. 1383 of 2018 dated 13.4.2018, whereby the learned Single Judge, taking note of the provisions of the Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilization of Financial Resources) Act, 2013 (hereinafter referred to as "the Act") and its object, observed that diversion of funds for laying roads by the appellant-municipality was, *prima facie*, impermissible. The learned Single Judge granted interim direction as prayed for, which was for a direction to the appellants not to allot work as per 'E' tenders for the ID works specified therein, contrary to the allocation of funds under the Scheduled Caste Sub-plan (SCSP), pending disposal of the Writ Petition.

A similar Writ Petition was filed earlier in W.P. No. 40445 of 2017 and, by the interim order dated 30.11.2017, the learned Single Judge had, while permitting the tender process to go on, however directed that the work order shall not be issued to the successful tenderer till 21.12.2017. This interim order is said to have been extended thereafter till 22.1.2018. However, during the interregnum, the petitioner in W.P. No. 40445 of 2017 is said to have withdrawn the said Writ Petition on 5.1.2018.

Learned Advocate General for the State of Andhra Pradesh would submit that, pursuant to the letter of acceptance, the works were awarded, and were in progress ever-since till they were brought to a

halt by the order under appeal dated 13.4.2018; the appellant has allotted the subject works only in areas where the number of members of Scheduled Castes living thereat is high; the Act does not obligate the works to be confined exclusively to places where members of the Scheduled Castes are living; and stopping these works midway would result in needless wastage of public money.

On the other hand Sri N. Nagaraju, learned counsel for the respondent-writ petitioners, would contend that there was an interim order in force in another Writ Petition, ie W.P. No. 4885 of 2018, where, by the order dated 26.02.2018, the learned Single Judge directed the contractors therein (respondents 3 and 4 in the Writ Petition) not to proceed further with the construction work entrusted to them; the Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilization of Financial Resources) Rules, 2013 (hereinafter referred to as “the Rules”) were notified in G.O.Ms. No.23 dated 20.04.2015; Rule 4 of the said Rules relates to the outlays of departments confirmed by the State Council for the Development of Scheduled Castes and Scheduled Tribes to be final; Sub-Rule (IV) therein stipulates that the Scheduled Caste Sub-plan/Tribal Sub-plan fund shall not be allocated to General Schemes, that are accessible to all including the Scheduled Castes and the Scheduled Tribes; and, consequently, the action of the appellants in utilizing sub-plan funds, for laying roads accessible to all including the Scheduled Castes, is arbitrary and illegal.

The relief sought for in W.P. No.4885 of 2018 has no connection with the SCSP. The contention raised therein is that the major work of laying and developing roads in the area, falling within the jurisdiction of the appellant, should be allotted in small parts to various small contractors, and not to big contractors alone. Even in W.P. No.4885 of

2018, an interim order similar to that passed in W.P. No.1383 of 2018 dated 13.04.2018, was passed on the very same day i.e., 13.4.2018. It is unnecessary to dwell on the scope of W.P. No.4885 of 2018 any further, as the interim order passed therein on 13.04.2018 is set aside by a separate order passed in W.A. No.661 of 2018 today i.e., 30.04.2018.

The provisions of the Act prescribe an elaborate procedure for allocation and utilization of funds ear-marked for the Scheduled Castes and the Scheduled Tribes, and Section 10 of the said Act requires a Nodal Agency to be appointed, and for the respective nodal agencies to follow the stipulated norms in allocation of funds to the Scheduled Castes Sub-plan and the Tribal Sub-plan. It also stipulates that the respective nodal agencies should evaluate and appraise the SCSP, prepare State Scheduled Castes Sub-plan/Tribal Sub-Plan; recommend re-allocation of Schedule Castes Sub-Plan/Tribal Sub-Plan funds from one department to another; review implementation and monitoring of the Scheduled Castes Sub-Plan/Tribal Sub-Plans; and facilitate annual social audit of the expenditure of the Scheduled Caste Sub-Plan and the Tribal Sub-Plan etc.

The complaint, in W.P. No.1383 of 2018, is that the funds, ear-marked for the Scheduled Castes Sub-Plan and the Scheduled Tribes Sub-Plan, are being diverted for other purposes, contrary to the provisions of the Act and the Rules made thereunder. While the question whether the diversion of funds from the SCSP for infrastructural facilities to be provided for others also, besides members of the Scheduled Castes and Scheduled Tribes, necessitates detailed examination in the Writ Petition after the State Government files its counter-affidavit, we are concerned, in this appeal, with the limited question whether funds allocated to the Scheduled Castes sub-plan can

be utilised for laying roads in Giddaluru Nagar Panchayat; and whether such diversion is contrary to the provisions of the Act and the Rules.

Learned Advocate General would place reliance on Rule 3-I of the Rules which requires the Nodal Agency for SCSP to appraise the Scheduled Castes Sub-Plan Schemes, submitted by the departments, for ensuring its conformity with the provisions of the Act, namely:-

A. The schemes proposed should secure direct and quantifiable benefits to Scheduled Caste individuals or Scheduled Caste households or Scheduled Caste habitations and accounted for. The Nodal Agency, while indicating allocation of Scheduled Castes Sub-plan Fund to the Scheduled Castes Sub-plan Schemes shall follow the norms namely:

- i. For schemes exclusively benefiting Scheduled Caste individuals or Scheduled Caste households, 100% of Scheme Cost shall be allocated and accounted for under Scheduled Castes Sub-Plan Fund;
- ii. for schemes benefiting Scheduled Caste habitations, 100% of scheme cost shall be allocated and accounted for under Scheduled Castes Sub-plan fund. In case of other habitations, the cost shall be allocated and accounted for under Scheduled Castes Sub-Plan in proportion of the population of the Scheduled Castes;
- iii. for general schemes, included in the Sub-plans, benefiting Scheduled Caste individuals or Scheduled Caste households, along with others, the scheme cost shall be allocated and accounted for under Scheduled Castes Sub-plan in proportion to the Scheduled Caste beneficiaries covered or the actual amounts spent on Scheduled Castes; and
- iv. in respect of non-divisible infrastructures works, a portion of the scheme cost as may be determined by the Government shall be deemed to have been attributed for Scheduled Castes Sub-plan.

While Rule 3-I(A)(iv) of the Rules does appear to enable the Government, in respect of non-divisible infrastructure works, to determine a portion of the scheme cost as deemed to have been attributed for the Scheduled Castes Sub-Plan, there is no material on record to show whether the Government of Andhra Pradesh has, in respect of the subject works which are non-divisible infrastructure works, undertaken any exercise to determine which part of the scheme cost should be attributed to the Scheduled Castes Sub-Plan.

The conditions in Rule 3-I(A)(iv), when read in conjunction with Rule 4(iv) which stipulates that the Scheduled Caste Sub-Plan/Tribal Sub-Plan Funds shall not be allocated to general Schemes that are accessible to all including the Scheduled Castes and Scheduled Tribes, *prima facie*, require the State Government to examine and satisfy itself that, generally, the SC/ST Sub-plan funds are not allocated to general schemes which are accessible to all including the Scheduled Castes and the Scheduled Tribes; and, **even** in respect of non-divisible infrastructure works, to **determine** whether and to what extent a portion of the scheme cost should be attributed to the Scheduled Castes Sub-Plan. Neither has any material been placed on record, nor has the State Government filed its counter-affidavit till date, to show that it has examined or determined the aforesaid requirement.

As this appeal is preferred by the Giddaluru Nagar Panchayat, and not by the State Government, we see no reason to interfere with the order under appeal, except to the limited extent of permitting the road work in Ward No. 4 to be executed, since the SC population in the said ward is shown to be 3193 as against the total population in the ward of 3750, which means that the S.C population in the ward is approximately 80% of the total population of the ward. The interim

order under appeal, with respect to all other road works in Giddaluru Nagar Panchayat, shall remain in force until further orders. The order now passed by us shall not disable the State Government from filing its counter-affidavit before the learned Single Judge, and to seek vacation of the said interim order.

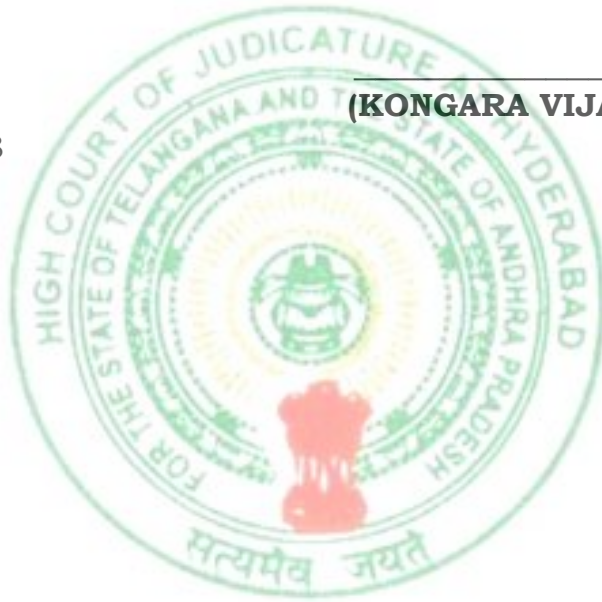
The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

30th April, 2018

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(KONGARA VIJAYA LAKSHMI, J)



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



Writ Appeal No.680 of 2018

Date:27.04.2018

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