

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.674 of 2018

And

Writ Petition No.1362 of 2018

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

The 5th respondent in W.P. No. 1362 of 2018 has preferred this appeal against the order passed in W.P. No. 1362 of 2018 dated 4.4.2018. The 5th respondent herein filed the Writ Petition seeking a mandamus to declare the action of respondents 1 to 4 in disqualifying the 5th respondent-writ petitioner at the technical bid evaluation stage pursuant to the impugned tender notice inviting bids for laying a concrete bed to the Molakalavagu storm water drain in Allagadda Nagar Panchayat under S.F.C. grant, and in processing the price bid of the appellant, though they were not qualified in the technical bid, as arbitrary and illegal.

In paragraph-4 of the Writ affidavit, the 5th respondent-writ petitioner stated that the Engineer-in-Chief had disqualified him on the sole ground that he had not executed similar work, as that of the subject works, as stipulated in the tender notice; the work to be executed was only an RCC work which the petitioner had executed in huge quantities during the previous ten financial years; on the other hand, the appellant-5th respondent had also not executed any similar work as seen from the experience certificates produced by them; but for reasons best known, their bid was declared as technically responsive, while ignoring the 5th respondent-writ petitioner's bid.

The work, for which the tender was called for, is to lay a concrete bed to the Molakalavagu storm water drain in Allagadda Nagar

Panchayat. This work required experience both in execution of road works and drainage works. While the 5th respondent-writ petitioner has admitted that they did not have any experience in drainage works, it was their case that the appellant-5th respondent also did not.

Sri Jandhyala Ravi Shankar, learned counsel for the appellant-5th respondent, would draw our attention to the letter addressed by the Executive Engineer, District Urban Development Cell, Raichur to the Superintending Engineer, Public Health Circle, Rajamahendravaram wherein it is stated that the Certificate for the work of “road and drain” (including retaining all improvement works in City Municipal Council) Raichur limits, Raichur under Mukya Mantri Nagarothana Phase-2 Project, was genuine as per their records; as per the work, both road and drains had been executed at the same time; they had, therefore, combined the quantities, and had issued the certificate of the work done; and the value of the roadside drains and storm water drains was Rs.10.73 crores out of Rs.14.52 crores in the year 2015-16, and Rs.4.02 crores out of Rs. 15.40 crores in the year 2016-17.

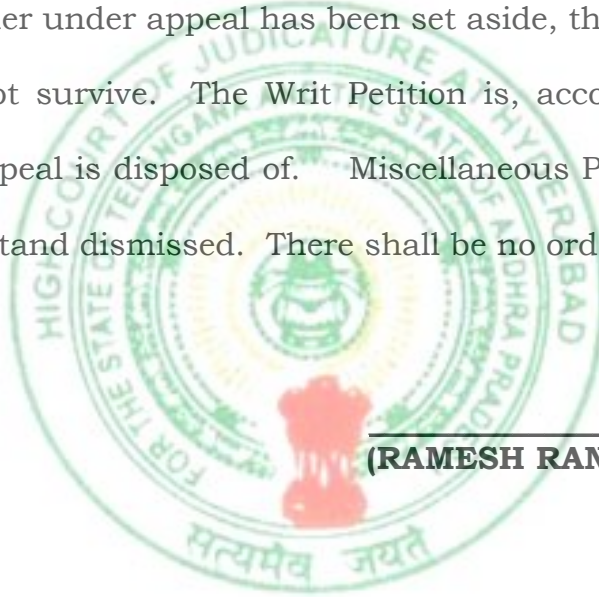
This Certificate, which the appellant claims to have filed along with their tender, was admittedly not filed by the 5th respondent-writ petitioner along with their Writ Petition, resulting in the interim order under appeal being passed. The appellant herein filed a counter-affidavit, and enclosed thereto this Certificate to show that they had fulfilled the condition of having executed similar work as the work for which the tenders were called.

Sri M. Sudheer Kumar, learned counsel for the 5th respondent-writ petitioner, would fairly state that this Certificate was, in fact, submitted by the appellant-5th respondent along with their tender, and later along with the counter-affidavit filed in the Writ Petition; the 5th respondent-writ petitioner was unaware of such a Certificate having been issued; and

it is in such circumstances, that a copy of the said Certificate was not filed.

In the light of what Sri M.Sudheer Kumar, learned counsel for the 5th respondent-writ petitioner has stated, it does appear that the appellant-5th respondent was eligible to participate in the tender, while the 5th respondent-writ petitioner was, admittedly, not eligible. In such circumstances, the authorities cannot be faulted in awarding the work to the appellant-5th respondent. The order under appeal is, therefore, set aside as award of work to the appellant-5th respondent is in accordance with the tender conditions.

As the order under appeal has been set aside, the cause in the Writ Petition does not survive. The Writ Petition is, accordingly, dismissed and the Writ Appeal is disposed of. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

26th April, 2018

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