

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.688 of 2018

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in I.A.No.2 of 2018 in I.A.No.1 of 2018 in W.P.No.5337 of 2018 dated 23.03.2018.

The appellants herein are the petitioners in the writ petition. They filed W.P.No.5337 of 2018 seeking a writ of mandamus to declare the action of the respondent-corporation, in prescribing common eligibility criteria for evaluation of bids including for SCs/STs and the general category, pursuant to their tender dated 29.01.2018 for awarding the work of transportation of Indane LPG cylinders in vertical position on unit rate basis ex-Parwada LPG Bottling Plant, as arbitrary, illegal and violative of right to equality as enshrined in Articles 14, 15 and 16 of the Constitution of India. By way of interim order, they sought stay of the tender process, vide tender dated 29.01.2018 issued by the respondent-corporation, pending disposal of the writ petition.

In the order under appeal the Learned single Judge, after taking note of the contentions of Sri P.V.A.Padmanabham, learned counsel for the appellants-writ petitioners, and Sri Dominique Fernandez, learned counsel for the respondent-corporation, observed that the eligibility criteria in the tender notification dated 29.01.2018 was followed consistently by the respondent-corporation in awarding transportation contract; the appellants-writ petitioners could have a grievance, if the respondent-corporation acted contrary to the stated policy of reservation and/or discriminated in evaluation in a category and awarded transportation contract, arbitrarily; in the case on hand, the respondent-corporation is dealing with a commercial work; they had decided to treat

all the tenders alike as per the policy; the fact that all the tenders were treated alike itself was not a ground to complain against the conditions imposed in the tender notice; and as the appellants-writ petitioners had not made out *prima facie* case or that balance of convenience in their favour, the interim order granted earlier on 19.02.2018 was vacated and I.A.No.2 of 2018 was allowed.

Sri P.V.A.Padmanabham, learned counsel for the appellants-writ petitioners, would question the validity of the order under appeal on the ground of backlog posts reserved in favour of SCs are required to be carried forward; if no interim order is granted, the writ petition would be rendered infructuous; and, since the issue regarding providing reservation in favour of the members of SCs and STs necessitates examination, the order under appeal must be set side and an interim order should be passed granting stay of the tender conditions.

As has been noted by the Learned Single Judge in the order under appeal, the eligibility criteria prescribed in the tender notification dated 29.01.2018 have been consistently followed by the respondent-corporation in the past years also. The question whether the condition imposed in the tender notification violates the appellants-writ petitioners' fundamental right is a matter of examination in the writ petition. It is only if the appellants-writ petitioners' contention were to be accepted and failure to give preferential treatment is held to be arbitrary, does the question of cancelling the tender notification and issuing a tender notification afresh arise for consideration.

What the appellants-writ petitioners may be entitled, as a consequence of the writ petition being allowed, cannot be sought for or granted by way of an interim order. The submission that the writ petition would be rendered infructuous does not merit acceptance. The issue as to whether the respondent-corporation is required to give preferential treatment in awarding contracts to the members of SCs and

STs is not dependent on a particular tender. Even if this tender is granted, the larger issue would necessitate examination in the writ petition. In any event, exercise of jurisdiction, under Clause 15 of the Letters Patent, is limited and save patent illegality in the order under appeal no interference is called for. We are satisfied that the order under appeal does not suffer from any such infirmity.

The Writ Appeal fails and is, accordingly, dismissed.

Sri P.V.A.Padmanabham, learned counsel for the appellants-writ petitioners, requests that the Writ Petition be directed to be heard early. While it would be wholly inappropriate for us to determine the board of the Learned Single Judge, we have no reason to doubt that on a request being made by the learned counsel, the Learned Single Judge would give it its due consideration.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

06th June, 2018
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AND
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Writ Petition No.16010 of 2018

Date: 06.06.2018

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