

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Appeal No. 746 of 2017

Judgment: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard Sri P. Gangaiah Naidu, learned Senior Counsel for the appellant. We have also heard the learned Government Pleader for Medical and Health and Family Welfare for the respondents.

2. The second respondent-Special Commissioner of Health and Family Welfare, invited tenders on issuance of a notification on 23.2.2016 for providing Tele Ultra Sonography Services for a period of five years. The appellant-writ petitioner was found to be the lowest tenderer. It had furnished EMD of Rs.2.00 lakhs. The appellant-writ petitioner's quotation was accepted as per proceedings dated 14.3.2016. However, on 16.3.2016, the second respondent issued a decision cancelling the tender notice dated 23.2.2016. This was challenged by the appellant-writ petitioner before the learned Single Judge.

3. The learned Single Judge found that the exercise carried out by the 2nd respondent was on the basis of an informed decision at the level of the State Government that it would be more financially feasible to go for a different mode of Ultra Sonography Services and the proposal to have the Tele Ultra Sonography programme was decided to be modified and confined to transmission of images only, instead of video. According to the Department, that was found to be

more cost effective. It was in such situation that the tender itself was recalled.

4. The learned Senior Counsel impeached the decision of the learned Single Judge in refusing to uphold the concluded acceptance of tender and argued for the position which we see is something that would be ultimately available in the realm of contracts in cases where the concluded contracts are cancelled without any legitimate reason. However, on a deeper consideration of the pre-requisites to balance between the public interest to contain expenditure from the exchequer as well as the award of such contracts having relevance in the scientific domain, we are of the view that the Government appears to have re-visited the earlier decision and has taken an informed decision based on relevant factors and has thereby decided to give off the proposal to have transmission of video images and to confine the facility of Tele Ultra Sonography Programme to be one of transmission of images only. It may look to be a situation which could be criticized as one where the administration had simply turned around to give up the earlier proposal. But, the totality of the facts and circumstances as noted by the learned Single Judge and which are shown by the respondents clearly establish that the respondents could not have been found fault with for taking the ultimate decision to recall the invitation of tenders. However, the respondents ought to have been more responsible and cautious in going forward with such proposals with appropriate inputs which would guide the administration. We are of the view that ends of justice have been secured by awarding the appellant-writ petitioner the amount as costs while refusing to order automatic revival of the

letter of intent in favour of the appellant-writ petitioner in view of the long time gap and also the scope for the Government to take a policy decision in this matter.

5. At this juncture, the learned Senior Counsel appearing for the appellant submitted that there was a re-tender on 23.5.2018 and none had responded. That is not something on which we would state either in favour of or against the appellant-writ petitioner. We are also unable to accede to the request of the learned Senior Counsel for the appellant for a direction to the Government to negotiate with the appellant-writ petitioner simply on the ground that the second invitation of tender had failed. However, we clarify that we have not interfered with the statements in the impugned order with regard to the rights of the appellant-writ petitioner to seek damages in terms of law.

6. For the aforesaid reasons, this Writ Appeal fails and the same is, accordingly, dismissed.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 27.7.2018

GUDISEVA SHYAM PRASAD, J

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