

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.802 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 ad-interim order passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.18301 of 2018 dated 06.06.2018. Respondents 1 to 3 herein filed the writ petition seeking a mandamus to declare the proceedings dated 29.05.2018 issued by the Executive Engineer, Peddapuram in favour of the appellant, permitting him to excavate and transport silt from Thammayya Tank, Kumarapuram Village, Pithapuram Mandal, East Godavari District, as illegal, arbitrary and in violation of principles of natural justice.

By proceedings dated 29.05.2018, the Executive Engineer permitted temporary excavation and transportation of 49000 cubic meters of silt by the appellant, at his own cost, from Thammayya Tank, Kumarapuram Village, Pithapuram Mandal subject to the conditions stipulated thereunder.

While the respondents-writ petitioners claim to have submitted an application prior in point of time, the appellant claims that it is he who submitted such an application earlier. Even if that be so, the order, impugned in the writ petition, does not disclose any fair and transparent mode of selection of the best available person to execute the said work. In any event, the order under appeal is an ad-interim order, and it is always open to the appellants herein to file their counter-affidavit, and seek vacation of the said order.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellant, would submit that the interim order

granted by the Learned Single Judge has, in effect, resulted in the writ petition itself being allowed.

The interim prayer sought for by the respondents-writ petitioners is not only to suspend the proceedings of the Executive Engineer dated 29.05.2018, but also to enable issuance of individual orders in their favour for de-silting of the Thammayya Tank. Grant of such a relief, even without an adjudication on the claim of the respondents-writ petitioners to be permitted to execute the work, may not be justified as that is the main relief sought for in the Writ Petition.

The order under appeal, to the limited extent it enabled the Executive Engineer, Peddapuram to issue individual orders in favour of the respondents-writ petitioners for de-silting of Thammayya Tank, is set aside. The interim order shall be confined only to suspension of the operation of the proceedings of the Executive Engineer dated 29.05.2018. This order shall be the interim order in the writ petition, and it is open to respondents in the writ petition to seek vacation thereof. Needless to state that the Learned Single Judge shall, during the hearing of the vacate stay petition, consider the rival contentions on its merits, uninfluenced by any observations made in this 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)

(KONGARA VIJAYA LAKSHMI, J)

18th June, 2018
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Date: 18.06.2018

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