

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.906 OF 2018

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

We have heard the learned Government Pleader for Transport, Roads and Buildings (AP) appearing for the appellants/officials of the Roads and Buildings Department. We have also heard the learned counsel appearing for the respondent-writ petitioner.

2. The issues arising for decision in this Appeal relate to Clause 3(iii) of the G.O.Rt.No.180, dated 19.06.2017, issued by the Transport, Roads and Buildings Department. It contained among other things, a provision that a contractor, who intends to bid for Roads and Buildings works involving Dense Bituminous Mixes/items should produce evidence at the time of submission of the bid, that he either owns or has on lease, Batch type Hot Mix Plant of 100/120 TPH capacity located within a distance of 100 kilometers from the site of work. The learned single Judge held that such provision requiring production of evidence at the time of submission of bid is violative of Article 14 of the Constitution and that it would be sufficient that bidders are permitted to either own or lease the Hot Mix Plant to be located within distance of 100 kilometers from the site of work. The resultant situation is that the bid requirement that the said equipment must be within 100 kilometers from the site of work even while submitting the bid stands nullified through the impugned Order.

3. On behalf of the appellants, the learned Government Pleader argued that the impugned Order results in modifying the terms and conditions of the bid and that such exercise is an excess of jurisdiction under Article 226 of Constitution. He further argued that on the facts, it is clear that the Department had taken an informed decision to insist on the availability of the Hot Mix Plant within a distance of 100 kilometers even while submitting the bid.

4. Per contra, learned counsel for the respondent-writ petitioner argued that the findings of the learned single Judge are founded on facts and interpretation of the terms of the contract. He argued that the Clause in the Government Order, which would be part of terms of the bid imposed without any factual foundation or basis and therefore, it impinges Articles 14 and 19(1)(g) of the Constitution.

5. We see that the learned single Judge has held that the provision that was impugned in the writ petition, to the extent it was interfered with through the impugned Order, is violative of the concept of fairness in contracts. It has also been found by the learned single Judge that it would be reasonable and rationale that the prescription as to the availability of the equipment within 100 kilometers need be insisted only if the competing contractor ultimately succeeds in the competitive bid and is awarded the contract.

6. We are of the view that the finding in the impugned order that the terms of the contract or bid require to be modified, as

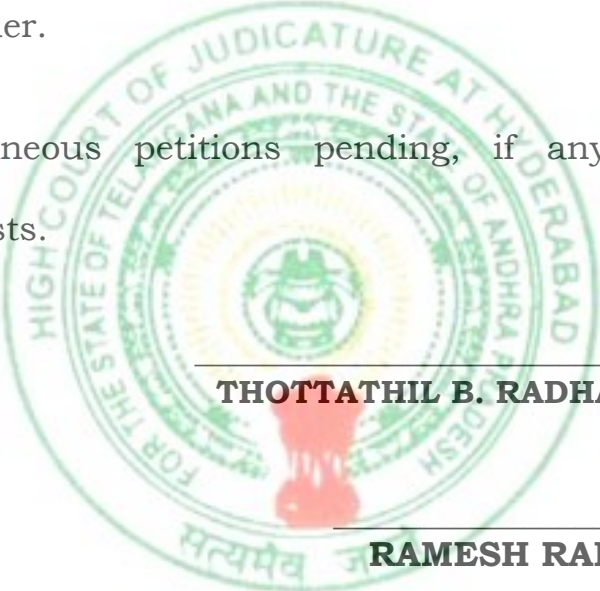
has been done by the learned single Judge, is not sustainable, for reasons more than one. It is entirely within the domain of the Government to prescribe conditions while inviting tenders. The learned single Judge did not find that the prescription of the particular condition is alien to the purpose for which the bids were being invited. We are dealing with a term of invitation of bids for laying public roads. That bidder should have the equipment within 100 kilometers from the proposed site or not, is a decision that the State Authorities have made, obviously, having regard to different practical issues, which would have a direct bearing on timely execution of work, by maintaining the qualitative and quantitative bench marks, regarding the progress of the work from time to time. We visualize for ourselves as to what would happen if a person whose equipment cannot be brought to the site within reasonable time is awarded the contract and then told to bring the equipment. Obviously, it is a matter, of which judicial notice can be taken; that in contractual matters in the civil sector, it is often the plea of the contractors that they are unable to move tools, plant and machinery to the site owing to various reasons attributed to factors which they would plead as beyond their control. Obviously, these are matters which would go into the decision making process of the Executive while determining the conditions of a bid. Balancing the public purpose involved in awarding contracts through the Roads and Buildings Department and the private interest of the petitioner as a competing contractor, we would not be justified, on the scales of justice, in holding that the action impugned in the writ petition

impinges either Article 14 or Article 19(1)(g) of the Constitution. In our considered view, the learned single Judge was also not correct in taking the view that the action of the respondents is not in conformity with the doctrine of Wednesbury reasonableness and it is not free from arbitrariness.

7. For the aforesaid reasons, the impugned order of the learned single Judge is unsustainable and the same is liable to be set aside.

In the result, the Writ Appeal is allowed setting aside the impugned order.

Miscellaneous petitions pending, if any, shall stand closed. No costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

19.07.2018
Pln/vs