

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

Writ Appeal No.853 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 W.P.No.14471 of 2017 dated 30.04.2018. The appellant herein filed the said writ petition seeking a mandamus to declare the action of the TTD in issuing a tender notice dated 10.04.2017 without taking further action pursuant to the earlier tender notice dated 28.02.2017, which was issued for the same purpose, as arbitrary and illegal.

The appellant-writ petitioner was the existing contractor whose term came to an end on 20.03.2017. A tender notice was issued on 28.02.2017 inviting bids. The appellant-writ petitioner participated in the said tender process. While matters stood thus, the TTD cancelled the earlier tender notice relying on a clause which conferred power on the Director to cancel the tender without assigning any reasons. The appellant-writ petitioner, however, did not participate in the subsequent tender dated 10.04.2017, which was finalised on 24.04.2017, on the ground that they had invoked the jurisdiction of this Court by filing the present writ petition on 19.04.2017.

A counter-affidavit was filed by the 3rd respondent, which had invited the bids, stating that the appellant-writ petitioner was not the lowest tenderer as claimed by them for the following reasons:

“(a) The service charges quoted for supply of manpower for sanitation was lowest with two agencies having quoted 0.01% (namely M/s.Indian Security Force and M/s. Chaitanyajyothi Welfare Society).

(b) The petitioner firm had quoted the service charges at 0.1% which was higher than the other two companies and was disqualified in the price bid.

(c) It is to submit that the second respondent had issued the tender notice vide BH2/38/B9T/Tpt/2017, dated 10.04.2017, for supply of manpower and material which are two different entities.”

While the judgment of the Supreme Court in **Star Enterprises vs. City and Industrial Development Corporation of Maharashtra**¹ requires reasons to be assigned, if the second lowest tenderer's bid is accepted ignoring the bid submitted by the lowest tenderer, such is not the case here. From the counter-affidavit, filed by the competent authority, it does appear that the appellant-writ petitioner's tender was not the lowest.

While Sri N.Chandra Shekar Reddy, learned counsel for the appellant-writ petitioner, would submit that the mode of computation by the 3rd respondent, regarding who was the lowest tenderer, was incorrect, the fact remains that the appellant-writ petitioner did not file a reply-affidavit rebutting the contents of the counter-affidavit. As the contents of the counter-affidavit of the 3rd respondent stood un-rebutted, the Learned Single Judge relied thereupon in holding that the appellant-writ petitioner was not the lowest tenderer. Further, the tender conditions empowered the Director to cancel the tender without assigning reasons. It is not as if the respondents had, ignoring the bid of the appellant-writ petitioner, awarded the work to a person who had submitted a higher bid. They had merely called for tenders afresh. Nothing

¹ (1990) 3 SCC 280

prevented the appellant-writ petitioner from participating in the second tender process. While it claims to have invoked the jurisdiction of this Court questioning the first tender process, and contends that it is for this reason that they did not submit their bid a second time, no order was passed by this Court, staying the tender process till 24.04.2017, by which date the tenders had already been finalised. The mere fact that the appellant-writ petitioner had invoked the jurisdiction of this Court questioning the first tender process would not justify their claim that they should be given an opportunity to participate in the second tender which they had previously failed to avail.

In the order under appeal the Learned Single Judge has observed that no right, vested in the appellant-writ petitioner, had been violated by the second tender notice being issued. In the absence of any requirement, either in the tender conditions or in any law in force requiring reasons to be assigned and communicated to the tenderers on the tender being cancelled, the respondents cannot be faulted for not doing so. Viewed from any angle, we see no reason to interfere with the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

25th June, 2018
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Date:25.06.2018

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