

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

Writ Appeal No.874 of 2018

JUDGMENT: (per Hon'ble the Acting Chief Justice Sri 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.1 of 2018 in W.P.No.19905 of 2018 dated 15.06.2018. The appellant herein filed W.P.No.19905 of 2018 seeking a mandamus to declare the action of the respondents, in not complying with the terms and conditions of Ex.P1 tender form and in not allotting and issuing work order to the petitioner in terms of the tender notification dated 21.05.2018 with respect to Circle-I, inspite of the petitioner complying with the terms and conditions as per the tender notification, as arbitrary, ultravires, and in violation of Article 21 of the Constitution of India. By way of interim relief, the petitioner sought a direction to respondents 3 and 4 to issue a work order in respect of the work of Circle-I in consonance with the notification dated 21.05.2018, and thereby forbear the respondents from allotting or issuing work order to the 5th respondent.

In the order under appeal, the Learned Single Judge noted the submission, of the Learned Counsel for the petitioner, that the petitioner had quoted Rs.16.45 ps; and while the petitioner had quoted Rs.16.45 ps, the 5th respondent had quoted Rs.18.54 ps. The Learned Single Judge noted the submission of the Learned Government Pleader for Civil Supplies that, as per tender condition No.10 of the terms and conditions of the subject tender, the quotation of any tenderer cannot be less than the minimum unit cost; and the said minimum unit cost had been fixed at Rs.17.50 ps by respondents 1 to 4 to ensure viability of execution of the work by a successful tenderer, and to avoid

formation of a cartel by the intending tenderers. The Learned Single Judge observed that, while the Learned Counsel for the petitioner had sought to contend that non-disclosure of the minimum unit cost fixed by respondents 1 to 4 to the intending bidders was arbitrary, prima-facie, he was of the opinion that submission of a quotation below the minimum unit cost, which was prescribed in the tender condition No.10, was not warranted since it may defeat the very purpose for which such minimum unit cost was fixed. While making it clear that it was only a tentative conclusion and, after counter-affidavits are filed, the matter may have to be reconsidered, the Learned Single Judge held that award, if any of the contract or work order to the 5th respondent, shall be subject to further orders in the Writ Petition.

Before us Sri Mir Masood Khan, Learned Counsel for the appellant, would submit that the Learned Single Judge had erred in holding that tenders quoted, below the minimum unit cost, should be rejected; the tender conditions did not even disclose the minimum unit cost to the tenderers; they were unaware of the minimum unit cost below which they could not submit their bid; and, therefore, the action of the respondents, in not disclosing the minimum unit cost to the tenderers, was arbitrary and illegal.

Condition No.10, of the terms and conditions of the tender, stipulate that the bid price cannot be less than the minimum unit cost. The final rate, approved in the previous year 2017-2018 for Circle-I, was Rs.18.10 ps; and the petitioner had quoted Rs.16.45ps as his bid in the present tender process. It does not appear to be in dispute that the 5th respondent had quoted Rs.18.54ps which is far higher than the rate of Rs.16.45 ps quoted by the petitioner. The ground, on which the petitioner's bid appears to have been rejected, is that the Corporation

had fixed a minimum unit cost of Rs.17.50 ps, below which every bid would be rejected.

Clause 10 of the terms and conditions of the tender stipulated that the tenderers should quote their rate in a flat rate only i.e. per quintal, irrespective of the distance; and the rate should not be less than the minimum unit cost. The table furnished, in the tender notification, gives circle-wise details of the final rate quoted by the bidders in the previous year 2017-2018. The tender documents do not, however, disclose the minimum unit cost below which the tender, submitted by the tenderer, was liable to be rejected. Prima-facie, it is only if the tenderers are made aware of the minimum unit cost, below which any bid submitted by the tenderers would be rejected, can the tenderers ensure that the bid submitted by them does not fall below the minimum unit cost stipulated in the terms and conditions of the tender. Failure to furnish details, of the minimum unit cost in the tender notification, would render the very action of the respondents arbitrary and illegal, as the Corporation would have, thereby, retained to itself the power to determine the minimum unit cost, without even making the tenderers aware of it while submitting their bids. A fair and transparent mode of inviting tenders would require all tenderers to be informed of the minimum unit cost prescribed by the Corporation, and that any bid, which is below the prescribed minimum unit cost, was liable to be rejected.

We are unable to agree with the prima-facie conclusion, of the Learned Single Judge, that non-disclosure of the minimum unit cost was not per se arbitrary; and disclosure thereof, in advance in all circumstances, was not warranted since it may defeat the very purpose for such minimum unit cost was fixed. The order under appeal does not state how disclosure of the minimum unit cost, in the terms and

conditions of the tender, would defeat the very purpose for which such minimum unit cost was prescribed. Prima-facie, we are satisfied that failure, on the part of the respondents, to disclose the minimum unit cost, in the tender notification, vitiates the entire tender process.

We consider it appropriate, therefore, to set aside the order under appeal and, instead, direct the respondents to suspend the work order issued to the 5th respondent. This order shall be the interim order in the Writ Petition, and it is open to the respondents to file their counter-affidavit in the Writ Petition, and thereafter seek vacation of the said interim order. It is also made clear that this order shall not disable the respondent-Corporation from inviting tenders afresh, and in finalising the same in accordance with law. The respondent-Corporation is also entitled to make necessary interim arrangements to ensure that public distribution of essential commodities is not hampered, in the interregnum, till fresh tenders are called for. Needless to state that on a petition being filed by the respondents herein, to vacate the interim order now passed by us in the Writ Petition, the Learned Single Judge shall consider the rival contentions on its merits uninfluenced by the observations made by us in this order.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J.

Date:03.07.2018.

Note: Issue CC by tomorrow

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