

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.4120 of 2012

ORDER:

The order, impugned in this writ petition, is the proceedings issued by the Joint Collector & Ex-Officio Executive Director of the APSCSCL dated 30.12.2011 terminating the contract entered into with the petitioner with immediate effect; and in forfeiting his bank guarantee and security deposit for diversion of PDS stocks as per the terms and conditions of the agreement. The petitioner was barred from participating in future tenders of the APSCSCL, Hyderabad.

In so far as termination of the contract, and forfeiture of the bank guarantee and security deposit, are concerned, I find considerable force in the submission of Sri A.Jagan, learned Standing Counsel for the Telangana State Civil Supplies Corporation, that since the contract, which was terminated, is non-statutory in character, the petitioner should avail the remedy of approaching the arbitrator, in terms of the arbitration clause of the agreement, and not the jurisdiction of this Court under Article 226 of the Constitution of India.

To the extent the contract was terminated, and the bank guarantee and the security deposit was forfeited, I see no reason to entertain this writ petition as the petitioner can, instead, invoke the arbitration clause in the agreement. Suffice it to leave it open to the petitioner to invoke the arbitration clause of the agreement questioning the order of termination and forfeiture of the bank guarantee and security deposit.

In so far as the order, debarring the petitioner from participating in future tenders, is concerned its effect is to blacklist the petitioner without putting him on notice, and without giving him an opportunity of being heard. This, as has been held by the Supreme Court in **M/s.**

Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal¹, is illegal.

The impugned order, to the limited extent the petitioner was blacklisted, is therefore, set aside. It is made clear that this order shall not disable the APSCSCL from putting the petitioner on notice asking him to show cause why he should not be blacklisted from participating in future tenders, giving him an opportunity of being heard and, thereafter, passing orders afresh in accordance with law.

The Writ Petition stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

15th June, 2018
JSU



(RAMESH RANGANATHAN, ACJ)

¹ AIR 1975 SUPREME COURT 266

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Date: 15.06.2018

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