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Object Technologies Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-09-2017

Judge : Dr. Vineet Kothari

Appeal No. : WP 28195/2017

Appellant : Object Technologies

Respondent : State of Karnataka

Judgement :

1/16 R IN THE HIGH COURT OF KARNATAKA, BENGALURU DATED THIS THE09h DAY OF AUGUST 2017 BEFORE THE HON'BLE Dr.JUSTICE VINEET KOTHARI WRIT PETITION No.28195/2017 (GM-TEN) BETWEEN: OBJECT TECHNOLOGIES A REGISTERED PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT No.11/39A, 1ST FLOOR BULL TEMPLE ROAD, BASAVANAGUDI BANGALROE - 560 054. REPRESENTED BY ITS MANAGING PARTNER SHRI. RAMAPPA RATHOD S/O SOMAPPA RATHOD AGED ABOUT47YEARS. ... PETITIONER (BY SRI. MANMOHAN P.N. ADV.,) AND:

1. STATE OF KARNATAKA DEPARTMENT OF HEALTH AND FAMILY WELFARE, VIKAS SOUDHA BVENGALURU560001 REPRESENTED BY ITS SECRETARY. DISTRICT HEALTH AND FAMILY WELFARE OFFICER CHIKKAMAGALUR 577 1012. DISTRICT HEALTH AND FAMILY WELFARE OFFICER2 3. Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies

Vs. State of Karnataka & Ors. 2/16 CHIKKAMAGALUR577102 REPRESENTED BY ITS MEMBER SECRETARY. (BY SMT. PRATHIMA HONNAPURA, AGA) ... RESPONDENTS THIS W.P. IS FILED UNDER ARTICLES226& 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OF CERTIORARI AND QUASH THE

ORDER
DATED1206-2017 IN2D No.DPMU/NHM/OS/Sec-2/11/2017-18 RESPONDENT (PRODUCED AS ANNEXURE J) & ETC. ISSUED BY THIS W.P. COMING ON FOR

ORDER
S THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER
Mr.Manmohan P.N. Adv. for Petitioner Mrs.Prathima Honnapura, AGA for Respondents 1. The Petitioner-Object Technologies has challenged the impugned cancellation of his work order given to him by the 3rd Respondent-District Health and Family Welfare Officer, Chikkamagalur, as an outsourcing agency for providing manpower to work in various Health Organizations in the District of Chikkamagalur, maintained by the State Government, for which, the work order was issued in favour of the petitioner vide Annexure-B dated 28.03.2017 for a Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 3/16 period of one year commencing from 01.04.2017. The petitioner was expected to provide 56 personnel in different categories like District level Data Entry Operator, Drivers, Accounts Assistants, LDC etc., 2. The 2nd Respondent-District Health Officer, Chikkamagalur, on the basis of certain complaints filed against the petitioner, without holding any enquiry in the matter, proceeded to cancel the said work order vide impugned order Annexure-J dated 12.06.2017 and on 16.06.2017, the said Respondent issued a fresh E-Procurement Tender Notification and awarded such fresh work order in favour of another party M/s.Gemini Security and Allied Services, Davangere on 13.07.2017, which is placed on record along with the Statement of Objections filed by the Respondents.

3. The petitioner-company filed the present writ petition in this Court on 27.06.2017 challenging the said cancellation order dated 12.06.2017, but in the Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 4/16 absence of any interim order granted in favour of the petitioner, the 2nd Respondent came to issue fresh Tender Notification and issued the aforesaid work order in favour of the said third party M/s.Gemini Security and Allied Services, Davangere.

4. The learned counsel for the petitioner has urged before the Court that not only false complaints were made against the petitioner but the same were relied upon by the said Respondent to cancel the work order in favour of the petitioner at the threshold of the commencement of the work order on 01.04.2017 itself relying upon the complaint averments for the past period, during which the petitioner held similar work order from the said Department and the Respondent- District Health Officer has cancelled the work order, without holding any enquiry against the petitioner and allowing him any opportunity of cross-examination on such complainants by the petitioner. Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 5/16 5. On the other hand, the learned AGA Ms.Prathima Honnapura has urged before the Court that there were serious complaints against the petitioner of not paying the full wages to the personnel engaged by it in the previous year and the tender condition No.18 specifically stipulated that if there are complaints against the petitioner or service provider like him, the contract in question can be cancelled without assigning any reason. Clause-18 of the Agreement Annexure-C is reproduced below, which was relied upon by the learned AGA. 18. If the service of the Outsourcing Agency is non-satisfactory or when complaint has been received from the Medical Officer, the District Health & Family Welfare Officer, Chikmagalur is vested with power to cancel your service without assigning any reason whatsoever. The learned AGA further drew the attention of the Court towards Section 16 of the Karnataka Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 6/16 Transparency in Public Procurements Act, 1999, and submitted that any Tenderer aggrieved by an order passed by the Tender Accepting Authority other than the Government under Section 13 may appeal to the prescribed authority within thirty days from the date of receipt of the order.

She, therefore, urged that against the work order given in favour of the third party M/s.Gemini Security and Allied Services, Davangere, the petitioner has a remedy by way of an appeal under Section 16 of the said Act. She has also submitted that the said third party has not been impleaded as a party- respondent in the present case and the Court under Article 226 of the Constitution of India would be slow in interfering with the contractual matters, as in hand before this Court.

6. Having heard the learned counsels and upon perusal of the materials placed on record, this Court is satisfied that the Respondent-District Health Officer Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 7/16 was not justified at all in relying upon the complaints filed against the petitioner, more so, because most of them pertained to a period anterior to the commencement of the present work in question from 01.04.2017. The complaints as such could not have been relied upon by the said Respondent, without holding an enquiry in the matter and arriving at the findings of fact about the misdemeanor of the petitioner conduct after allowing him due and reasonable opportunity of cross-examining the complainants, so that veracity of the averments made in the complaint could be tested and verified by the Respondent- Authority himself.

7. The complaints for the past period were of little relevance and consequence. The moment the Respondent issued the work order in favour of the petitioner on 28.03.2017 vide Anenxure-B, if such past conduct was of any relevance, nothing prevented the Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 8/16 said Respondent from not issuing the work order in favour of the petitioner at all. Once the new work order was issued, a valid and new contract between the two parties came into existence and one party thereto, even though it be a Government Department or Public Authority, cannot unilaterally withdraw from that contractual obligation except in accordance with law. On the other hand, the public authority or Government Department, are more so expected to act fairly, transparently and in accordance with law complying with the principles of natural justice in the first instance.

8. The clause like clause-18 quoted above in the Agreement is per se illegal and unsustainable, when it says that the Respondent-Government Department could cancel the contract without assigning any reason. The Public Authorities cannot act arbitrarily and vest themselves with these kind of powers to act so Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 9/16 arbitrarily as has been done in the clause like clause-18 in the present case quoted above. The said clause in the present era of transparency and accountability shocks the conscience of the Court and therefore, deserves to be quashed. The same is accordingly quashed.

9. Coming to the contention of the learned AGA that the petitioner ought to have impleaded the said third party M/s.Gemini Security and Allied Services, Davangere, as a party-respondent in the present case or should avail the remedy by way of an appeal under Section 16 of the Karnataka Transparency in Public Procurements Act, 1999, both these contentions raised by the Govt. Advocate are also misconceived in the present case.

10. Section 16 firstly does not apply to the facts of the present case, as the said appeal remedy is at the time of decision taken, awarding the work order in the Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 10/16 tender process undertaken by the Government Agency. The present petitioner was not a party to the said tender process which was undertaken by the Respondents- Authorities in the present case in later phase, despite filing of the present writ petition, but, since no interim order was passed in favour of the petitioner.

11. As a matter of fact, the Respondent-Authority should have shown deference of the pendency of the present writ petition itself and should have been obtained specific leave of this Court to undertake such fresh tender process during the pendency of the present writ petition. Instead of doing that, despite the fresh tender process being under challenge, the Respondent- Authority chose not only to undertake such fresh E- Tender process but finalized in favour of a third party M/s.Gemini Security and Allied Services, Davangere, without obtaining specific leave of this Court, is a conduct which deserves to be strongly deprecated by Date

of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 11/16 this Court. The pendency of Court process itself was sufficient to put the Respondents on guard and not to change the status-quo of the matter without filing specific application seeking directions of this Court. Having not done that, the Respondents cannot complain about the absence of the third party who is a beneficiary of their illegal acts and the plea of the alternative remedy which is not really available to the present petitioner.

12. The compliance with the principles of natural justice have been observed by the Respondents more in breach thereof, rather than compliance. Merely because a notice is served upon the petitioner and an explanation is obtained, the said compliance cannot be said to be complete, unless the enquiry against the petitioner was taken to its logical end and concluded with the proper findings of facts arrived at against the Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 12/16 petitioner, which could perhaps entitle the Respondents to cancel the said contract in favour of the petitioner.

13. The learned AGA was fair to admit that no such enquiry was held in the matter and no enquiry report was given by any competent authority in this regard.

14. It is true that in contractual matters, this Court would loath to interfere because certain questions of facts are always involved in such matters, but the legal jurisprudence is not lacking in the cases, where the Courts have not only interfered but granted relief to the petitioners in such cases, even in exercise of writ jurisdiction by the Courts, when the Court finds a gross breach of natural justice or gross illegalities committed by the Government Departments or Authorities and it is not a bar of jurisdiction of this Court under Article 226 of the Constitution of India but only a self imposed restriction on the use of discretion under Article 226 of Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 13/16 the Constitution of India in such cases that the Courts have declined to interfere in such matters.

15. The present is the case where the material placed on record is sufficient to persuade this Court to take a view in favour of the petitioner and invoke its extraordinary jurisdiction under Article 226 of the Constitution of India and grant

suitable relief to the petitioner overruling the objections raised by the learned AGA on behalf of the Respondents.

16. This Court finds that the cancellation of the contract in favour of the petitioner by the impugned order Annexure-J dated 12.06.2017 and the fresh E- Tender process and awarding a contract in favour of the third party is unsustainable in law and deserves to be quashed and set aside by this Court.

17. The interference by the third parties or even public elected representatives in such cases, cannot be Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 14/16 ruled out. It would appear from the impugned order itself, in as much as it refers to a meeting of the concerned Committee of the Outsourcing Agency held on 24.05.2017, presided over by a President of Zilla Panchayath and the Reference No.2 also refers to a letter No.MLA/Koppa/C/13/17 dated 15.04.2017 addressed by the local elected representative namely, the Member of Legislative Assembly, Sringeri. Such interference even though by an elected representative of the local constituency is neither provided for in the provisions of the Transparency Act, 1999 nor is otherwise envisaged. The transparency, independence and fair decision making on the part of the Government Departments who are Awarders of such contracts has to have its own sanctity in law and no interference should be there by any outsider. However, the details of the same need not be gone into in the present case, as this Court finds that enquiry against the present petitioner itself was never held and there is no finding of fact on Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 15/16 record against the present petitioner for verifying the averments made in such complaints against the present petitioner. Clause-18 of the Agreement has been found to be unsustainable and illegal in the present case and therefore, requirement of giving the notice/opportunity of hearing to the petitioner and holding an enquiry in the matter cannot be excluded even in contractual matters specially in the cases of unilateral cancellation of the contract.

18. Accordingly, this petition deserves to be allowed. The same is accordingly allowed with costs of Rs.20,000/- to be paid by the 2nd Respondent to the

petitioner and the impugned order Annexure-J dated 12.06.2017 and the fresh E-Procurement Notification Annexure-K dated 16.06.2017 and work order in favour of the third party vide Annexure-R10 dated 13.07.2017 are liable to be quashed and accordingly quashed. The petitioner shall be allowed to supply the Date of Order 09-08-2017 W.P.No.28195/2017 Object Technologies Vs. State of Karnataka & Ors. 16/16 personnel in terms of the work order Annexure-B dated 28.03.2017 and for the implementation of this work order, the Respondents will take steps forthwith and discharge their contractual obligations in the contract period of one year from 01.04.2017. Srl. Sd/- JUDGE

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