

(2012) 02 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No"s. 4377-4379 of 2012 (GM-TEN)

Johnson and Smith Co

APPELLANT

Vs

Karnataka State Drugs Logistics And Warehousing Society

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Transparency in Public Procurements Act, 1999 — Section 16

Citation : (2012) 02 KAR CK 0047

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Madhusudhan R. Naik, for Sri. K. Sachindra Karanth, for the Appellant; Udaya Holla, for M/s. Holla and Holla for R- 1, Smt. M.C. Nagashree, HCGP for R-2 and Sri. D.N. Nanjunda Reddy, for Sri. Reuben Jacob, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer

1. I have heard Sri. Madhusudhan R. Naik, learned Senior Counsel appearing for the petitioner, Sri. Udaya Holla, learned Senior Counsel appearing for respondent No. 1, learned HCGP appearing for respondent No.2 and Sri. D.N. Nanjunda Reddy, learned Senior Counsel appearing for respondent No.3.

2. In these cases, the petitioner has assailed the order at Annexure-R dated 22.11.2011, whereby the 1st respondent has awarded the contract in favour of the 3rd respondent.

3. Learned Senior Counsel appearing for the petitioner submits that the tender accepting authority has awarded the contract in favour of the 3rd respondent by playing fraud though the 3rd respondent was not eligible to apply for the tender.

4. On the other hand, learned Counsel appearing for the respondents submit that the petitioner has to avail the alternative remedy available to it in law for

challenging the impugned order. It is argued that the matter requires factual adjudication and that the alternative remedy available to the petitioner is not only adequate but efficacious in nature.

5. It is well settled that when an alternative and efficacious remedy is available to a litigant, he should be required to pursue that: remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The extraordinary jurisdiction of the Court is not a panacea for all the maladies, which a litigant may suffer from. It is true that an existence of an alternative remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writ. Article 226 of the constitution of India is not meant to supplant the existing remedies at law but only to supplement them in certain well recognised situations.

6. It is not in dispute that the petitioner had filed a writ petition in W.P. No.44501/2011 seeking a direction to respondent Nos. 1 and 2 not to award or grant the contract in question in favour of the 3rd respondent. During the pendency of the matter, respondent No. 1 has passed the impugned order at Annexure-R awarding the contract in favour of the 3rd respondent. When this aspect was brought to the notice of this Court, the aforesaid writ petition was dismissed on 15.12.2011 with liberty to the petitioner to avail an alternative remedy available to it in law. Learned Senior Counsel appearing for the petitioner submits that an appeal has been filed against the said order which is pending before a Division Bench of this Court. Be that as it may.

7. The contention of the learned senior counsel appearing for the petitioner is that the contract has been awarded in favour of the 3rd respondent by playing fraud, which essentially requires factual adjudication. Therefore, the petitioner has to file an appeal challenging the award of contract u/s 16 of the Karnataka Transparency in Public Procurements Act, 1999. The alternative remedy available to the petitioner is not only adequate but also efficacious in nature. Therefore, I decline to entertain these writ petitions. They are accordingly dismissed reserving liberty to the petitioner to file an appeal challenging the order impugned herein. All the contentions on merit are kept open.

8. Learned counsel appearing on behalf of respondent Nos.1 and 2 are granted four weeks time to file their vakalath/memo of appearance, as the case may be. No costs.