
(2019) 12 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 50906 Of 2019 (Gm-Ten)

M/S. Atalanta Pumps Pvt. Ltd. And Ors

APPELLANT

Vs

State Of Karnataka And Ors

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Karnataka Transparency In Public Procurements Act, 1999 — Section 13, 14
Karnataka Transparency In Public Procurements Rules, 2000 — Rule 14, 17, 17(2), 25, 25.2
Constitution Of India, 1950 — Article 14, 19(g), 21, 162, 226, 227

Citation : (2019) 12 KAR CK 0020

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Vijaya Shankar, M.Shivaprakash, Vijay Kumar A Patil, Gururaj Joshi

Final Decision : Dismissed

Judgement

The petitioners in the present writ petition sought for writ of certiorari to quash the modified tender notification at Annexure-N bearing No.ADCL/TND/2019-20 dated 05.11.2019, consequently to continue the scheme project notified at Annexure-K and issue appropriate writ direct the respondent/state to continue the scheme providing 15% price preference subsidies extended to MSE Registered Small Scale Industries Units in the State of Karnataka.

I. BRIEF FACTS OF THE CASE:

1. It is the case of the petitioners that all the petitioners are duly registered small scale industries having their establishment since long time presently the Small Scale Enterprise are under the Ministry of Micro Small and Medium Enterprises. The petitioners Small Scale Industries are established and managed by Technically qualified persons providing self employment to 20 to 25 persons/employees in each of the petitioners establishments for their livelihood. The petitioners presently are manufacturers of Submersible Pump-sets with accessories. The petitioners are registered and recognized Small Scale Industrial

Establishments having recognized by the Government Institutions as well as other (NGO) establishments in the State of Karnataka. The petitioners are regular participants in the Government Tenders for supply of Submersible Pump-sets with accessories under various schemes from different corporations viz., under Social Welfare Department as under:

- a) Dr. B.R.Ambedkar Development Corporation Ltd.,
- b) Karnataka Adi Jambava Development Corporation
- c) Karnataka Bhovi Development Corporation
- d) Karnataka Tanda Development Corporation and
- e) Devaraj Urs Backward Class Development Corporation.

2. It is further case of the petitioners that the Government of Karnataka in order to implement various Socio Economic Beneficial Schemes to the Backward Community as well as other down trodden community in rural areas to install and supply of water for irrigation under 'Ganga Kalyana Scheme' proposed to dig a bore-well in a place where the large community persons of one class are residing. The purpose and object is for irrigation to small holders of Agricultural Land. The Department of Social Welfare through the Corporation by Dr. B.R.Ambedkar Development Corporation Ltd., invited tenders for supply, installation and electrification of irrigation submersible pump-sets with accessories suitable for bore-wells in various locations Districts in the State of Karnataka. The Policy of the Government for implementation of the schemes to the needy rural areas for the upliftment of backward class, Socially Economically and simultaneous to support the Small Scale Enterprises/Small Scale Industries. The petitioners industries also recognized by the concerned authorities issued SSI Certificate and also followed by the petitioner registered before the Government of India and obtain GST Certificates and certificates issued by Ministry of Micro, Small and Medium Enterprises and also issued certificate of Udyoga Aadhar Memorandum and they have obtained certain certificates.

3. It is further case of the petitioners that the Government of Karnataka through Dr. B.R.Ambedkar Development Corporation Limited invited tenders for supply, installation and electrification of irrigation submersible pump-sets with accessories under 'Ganga Kalyana Scheme' for the year 2018-19 followed by notification Annexure-K and second notification at Annexure-K1, the total package District-wise is 52, as per Annexure-L. The petitioners made all preparation to participate in the tender invitation, the prevailing rules during that time as per Government Order issued bearing No.219 SDC 2015 dated 20.10.2015. As per the Government Order the scheme has been decentralized, each district comprises of Tender Accepting Committee, which includes the Deputy Commissioner, Chief Executive Officer (CEO), Zilla Panchayath Member (ZP) and Deputy General Managers of Dr. B.R.Ambedkar Development Corporation Limited, to oversee the execution of submersible pumps.

4. It is further case of the petitioners that it is surprise and shock to the petitioners, the respondent Corporation issued another tender notification dated 05.11.2019 as per Annexure-N, contrary to the earlier notification Annexure-K and contrary to the Government Notification dated 20.10.2015. Earlier it was decentralized, to monitor the execution of work headed by the District Authorities. But by the second notification it is centralized the Board - the respondent corporation in whole and sole to take decision in the matter of implementation of schemes. The total package of 52 called in the month of July by Dr. B.R.Ambedkar Development Corporation and Valmiki Development Corporation has been reduced in to 16 packages, it is totally arbitrary with an intention to have pick and choose for allotment of tenders to the few related individuals / participants. It is contrary to the Karnataka Transparency in Public Procurement Act and Rules.

5. It is further case of the petitioners that the respondent Corporation inviting tenders with irrational condition, impracticable condition is with an oblique motive to eliminate the genuine deserved Small Scale Enterprises in order to favour either Mega Companies or persons having good connectivity with power corridors. Therefore, the petitioners are before this Court for the reliefs sought for.

II.OBJECTIONS FILED BY THE RESPNDENT NOS.4 & 5:

6. The respondent Nos.4 and 5 have filed objections denying the averments made in the writ petition and contended that at the outset, the very writ petition filed by the petitioners is not maintainable and liable to be dismissed. It is further contended that respondent No.5 on behalf of respondent No.4 have called for tenders under E-Tender notification dated 05.11.2019 as per Annexure-N for the benefits of beneficiaries of:

- a) Dr. B.R.Ambedkar Development Corp. Ltd.,
- b) Karnataka Adi Jambava Development Corp. Ltd.,
- c) Karnataka Bhovi Development Corp. Ltd.,
- d) Karnataka Tanda Development Corp. Ltd.,

7. The benefit of the end users of aforesaid corporations i.e., persons belonging to Scheduled Caste in the aforesaid four entities who are agriculturists to supply the bore-well pumps of suitable quality and capacity under 'Ganga Kalyana Scheme'.

8. It is further contended that the petitioners have produced entire tender document which was available to them in the E-Tender Process, along with Annexure-N. The joint writ petition filed by 11 petitioners who are claiming to be prospective bidders for the Tender Notification are in to a fraudulent practice as defined in Clause No.30.1(ii) of the Table of Clauses and Clause No.42.2.1(c) of the General Conditions of Contract.

9. It is further contended that the 5th respondent is tender inviting authority and 4th respondent is tender accepting authority. That the impugned tender notification Annexure-N issued not for the benefit of petitioners, since they cannot vested legal or constitutional rights in this issue. It is further contended that the Government Order dated 20.10.2015 to call for the tenders at District levels to be approved by the respective Deputy Commissioners of the Districts. Subsequently, the said notification came to be modified by a separate Government Order dated 20.07.2018 by the first respondent calling for tenders at state level as per Annexure-R4(b) and respondent No.4 was authorized to call for tenders for the benefit of Dr. B.R.Ambedkar Development Corporation and four other corporations. It is further contended that the said notification also modified by subsequent Government Order dated 18.08.2018 as per Annexure-R4(c) and further it was modified as per the order dated 14.09.2018 as per Annexure-R4(d) and subsequently first respondent issued final notification dated 18.07.2019 as per Annexure-R4(e) has clarified that the Karnataka Maharshi Valmiki ST Development Corp. Ltd., is permitted to float a separate tender for the beneficiaries of their corporation. Admittedly the modification at Annexure-R4(g) in the conditions of tender notification dated 05.11.2019 is under Rule-14 of KTPP Rules, 2000. In view of the earlier tender notification at Annexure-K and K1, cannot be continued as the same was cancelled due to the directions of respondent No.1 and withdrawal of combination of M/s Valmiki Development Corporation Limited for the procurement of pumps jointly with the respondent No.4 as per Annexure-R4(e). It is further contended that the impugned order passed by the respondent No.4 and 5 will in no way prejudice to the petitioners and the petitioners are not entitled for any reliefs in this Court under Article 226 and 227 of the Constitution of India.

10. It is further contended that the tender notification issued as per Annexure-N dated 05.11.2019 is for the benefit of end users of Scheduled Caste persons who are agriculturists to supply the bore-wells pumps of suitable quality and capacity under Ganga Kalyana Scheme, under the directions of Department of Social Welfare, Government of Karnataka, the 15% price preference sought for cannot be considered and granted in view of the Notification dated 03.07.2007 by which a proviso was inserted in Rule-25 of KTPP Rules, 2000, which excludes the price concession of 15% to Small Industrial Units "for the purchase of pump-sets under the Ganga Kalyana Scheme being implemented by the Social Welfare Department."

11. It is further contended that Annexure-N notification came to be issued in pursuance of subsequent Government Order, the same is being public policy with certain financial capacities of the bidders being the criteria for bidding, being the policy decision, based on the smooth and unhindered supply of pumps sought in the tender by the capable bidders only in the form of public interest. Therefore, the petitioners are not entitled for any reliefs before this Court. Therefore sought for dismissal of the writ petition.

III. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES:

12. I have heard the learned counsel for the parties to the lis.

13. Sri Vijaya Shankar, learned Senior Counsel appearing for the petitioners contended with vehemence that the impugned notification issued by the respondent Nos.4 and 5 as per annexure-N inviting tenders, the conditions stipulates which for the implementation of the project is irrational and impracticable in order to eliminate the petitioners entrepreneur, thus calls for interference under Article 226 and 227 of the Constitution of India. He would further contend that as per notification dated 20.10.2015, the policy of the Government exercising the powers under Article 226 of the Constitution of India, the tenders were for executing certain schemes in the District level as per Annexure-K and L dated 21.07.2019 with 52 projects in different district. Very curiously Annexure-K came to be recalled and issued impugned notification, which cannot be sustained. He would further contend that unless and until the policy of the Government order dated 20.10.2015 is set aside or recalled, question of recalling annexure-K dated 21.07.2019 would not arise. The learned Senior Counsel also relied upon comparative table produced by the petitioner as per Annexure-K, 52 projects were allowed to different districts. By Annexure-N dated 05.11.2019 it has been reduced to 16 projects called for by the Corporations and changed the terms and conditions of the tender document which is impermissible. Therefore the petitioners made representation dated 12.11.2019 as per Annexure-Q to re-consider the same. The same has not been considered till today. Therefore, the learned Senior Counsel for the petitioners sought to allow the writ petition.

14. In support of his contentions, learned senior counsel for the petitioners relied upon the dictum of this Court and Hon'ble Apex Court as under:

i) M/S. DESHMUKJ BOREWELLS AND OTHERS VS. STATE OF KARNATAKA AND OTHERS IN W.P.NOS.201482-484/2019 DATED 15.10.2019 by learned Single Judge to the effect that in the similar circumstances, in the case of Deshmukh Borewells and others supra, the second respondent / D.Devaraju Urs Backward Classes Development Corporation Limited files a memo before this Court with liberty to the Corporation to issue fresh tender in terms of the tender notification filed along with the memo and based on the said memo, this Court quashed the notification.

ii) He also relied upon the dictum of Hon'ble Supreme Court in the case of TATA CELLULAR VS. UNION OF INDIA reported in (1994)6 SCC 651 with regard to Article 14 (para 70 and 94.5)

iii) MUNICIPAL CORPORATION, UJJAIN AND ANOTHER VS. BVG INDIA LIMITED AND OTHERS reported in (2018)5 SCC 462 (para 22.3, 22.5 and para 63)

15. Per contra Sri Gururaj Joshi, learned counsel appearing for respondent Nos.4 and 5 while justifying the objections, contended that the impugned notification

Annexure-N issued by the respondent Nos.4 and 5 on 05.11.2019 on the basis of the directions issued by the respondent Nos.1 and 2. He would further contend that the State Government issued Government order dated 20.07.2018 considering the earlier notification dated 20.10.2015 relied upon by the petitioners and in the said notification it is specifically stated that the earlier policy of District level was not fulfilled the scheme which was introduced. Therefore the Government thought fit and issued notification dated 20.07.2018 and permitted to invite tender notification at state level. The state level tender inviting authority allotted packages to the respective Districts. It is also argued that the respondent Nos.4 and 5 have issued notification dated 18.08.2018 modifying the notification dated 20.07.2018 and final notification/addendum came to be issued on 05.11.2019 and contended that admittedly the petitioners have not challenged the subsequent government notification modifying the earlier notification dated 20.10.2015 and in the entire writ petition, the petitioners have not alleged any arbitrariness or mala-fides on the part of the respondent/Corporation. It is further contended that if the petitioners are eligible, they can apply and by way of new notification issued in the interest of the public and particular community at the district and state level.

16. He would further contend that the prayer (3) sought for by the petitioners cannot be granted in view of the provisions of Rule 25.2 of KTPP Rules, 2000, last proviso which reads as "provided further that nothing contained in the first proviso shall apply for the purchase of pump-sets under Ganga Kalyan Scheme being implemented by the Social Welfare Department". Admittedly, in the present case the scheme is called under Ganga Kalyana Scheme and therefore, the petitioners are not entitled for the prayer sought for in the present writ petition.

17. In support of his contentions, Sri Gururaj Joshi, learned counsel for respondent Nos.4 and 5 relied upon the dictum of the Hon'ble Supreme Court and this Court as under:

i) MUNICIPAL CORPORATION, UJJAIN AND ANOTHER VS. BVG INDIA LIMITED AND OTHERS reported in (2018)5 SCC 462 (para 50).

ii) BRUHAT BENGALURU MAHANAGARA PALIKE POWER CONTRACTORS ASSOCIATION BENGALURU VS. THE EXECUTIVE ENGINEER (ELEC), OFFICE OF THE EXECUTIVE ENGINEER (ELEC), EAST ZONE, BENGALURU AND OTHERS reported in 2018(4) KAR.L.J. 178 (paragraphs 3, 7 and 8)

Therefore he sought to dismiss the writ petition.

18. Sri Vijay Kumar A Patil, learned Additional Government Advocate, while justifying the notification issued by respondent Nos.4 and 5 contended that the scope of the tender notification at 1.1 on behalf of Dr. B.R.Ambedkar Development Corporation Limited, Karnataka Adi Jambava Development Corporation Limited, Karnataka Bhovi Development Corporation Limited and Karnataka Tanda Development Corporation Limited was empowered to invite

tenders through E-Tender procedure and Annexure-K and L.

The earlier two corporations were changed the procurements in one corporation by Annexure-N on the basis of the orders passed by the State Government. Learned AGA would invite the attention of this Court to the provisions of Section 14 of the KTPP Act, 1999, which reads thus:

14. GENERAL REJECTION OF TENDERS.-

(1) The Tender Accepting Authority may at any time before passing an order of acceptance under section 13 reject all the tenders on the ground of changes in the scope of procurement, failure of anticipated financial resource, accidents, calamities or any other ground as may be prescribed.

The State Government by modifying the notification dated 20.10.2015, issued fresh notification on 20.07.2018 and subsequently amended and though fit the earlier notification issued would not render the anticipated financial resources and it will not benefit the persons. Therefore, the scope of procurement was changed.

19. He would further contended that the petitioners have no right to challenge the conditions, it is the exclusive domain of the Corporation to impose conditions unless the petitioners show mala-fide intention, arbitrariness or unfairness in the impugned notification. Admittedly the same has not be pleaded or urged in the present writ petition. Therefore, he sought to dismiss the writ petition.

20. In support of his contentions, learned Additional Government Advocate relied upon the following judgments.

i) MUNICIPAL COUNCIL NEEMUCH VS. MAHADEO REAL ESTATE AND OTHERS reported in 2019 SCC ONLINE SC 1215 (Para 14, 15, 16 & 17)

ii) UGAR SUGAR WORKS LTD., VS. DELHI ADMINISTRATION AND OTHERS reported in (2001)3 SUPREME COURT CASES 635 (with regard to policy decision Para 18)

iii) JAGDISH MANDAL VS. STATE OF ORISSA AND OTHERS reported in (2007)14 SUPREME COURT CASES 517 (with regard to judicial review Para 21.2, 21.3, 21.4(7))

Therefore he sought to dismiss the writ petition.

IV. POINT FOR CONSIDERATION:

In view of the rival contentions urged by the parties, the only point that arises for consideration in this writ petition, is;

"Whether the petitioners have made out any case to interfere in the impugned notification issued by the State Government at Annexure-N and whether it violates Articles 14, 19(g) and 21 of the Constitution of India?

V. CONSIDERATION:

21. I have given my anxious consideration to the arguments advanced by the learned Senior Counsel for the petitioners, learned Additional Government Advocate for respondent Nos.1 and 2 and learned counsel for the respondent No.3 to 5 and perused the entire material on record carefully.

22. Having heard the learned counsel for the parties, the main contention of the petitioners is that in the Government Order dated 20.10.2015 issued by the State Government, exercising powers under Article 162 of the Constitution of India and tender was called for as per Annexure-K under Ganga Kalyana Scheme in the district level for the benefit of the persons belongs to SC/ST under four different Corporations. By Annexure-N, the same is recalled by the fourth respondent/Corporation which is impermissible.

23. It is the specific case of the respondents that the earlier policy decision of the State Government dated 20.10.2015 is modified by a subsequent Government Order dated 20.07.2018 and instead of two different Corporations, one Corporation was entrusted for change of the procurement and the change of the terms and conditions of the tender.

24. Though learned Senior Counsel for the petitioners contended that unless until the Policy of the Government dated 20.10.2015 is set aside or recalled, the question of recalling Annexure-K notification dated 20.07.2019 would not arise. Admittedly the said Government Order dated 20.10.2015 is modified by the state Government by issuing separate order dated 20.07.2018 and there is a reference to the earlier order dated 20.10.2015. In the subsequent Government Policy it is clearly stated as under:

ಡಾ. ಬಿ.ಆರ್.ಅಂಬೇಡ್ಕರ್ ಅಭಿವೃದ್ಧಿ ನಿಗಮ, ಕರ್ನಾಟಕ ಮಹರ್ಷಿ ವಾಲ್ಮೀಕಿ ಪರಿಶಿಷ್ಟ ಪಂಗಡಗಳ ಅಭಿವೃದ್ಧಿ ನಿಗಮ. ಡಿ.ದೇವರಾಜ ಅರಸು ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಅಭಿವೃದ್ಧಿ ನಿಗಮ ಮತ್ತು ಕರ್ನಾಟಕ ಅಲ್ಪಸಂಖ್ಯಾತರ ಅಭಿವೃದ್ಧಿ ನಿಗಮಗಳಿಂದ ಅನುಷ್ಠಾನಗೊಳಿಸುತ್ತಿರುವ ಗಂಗಾ ಕಲ್ಯಾಣ ಯೋಜನೆಯಡಿ ಪ್ರತಿ ವರ್ಷ ನಿಗದಿಪಡಿಸಿದ ಗುರಿಯಲ್ಲಿನ ಕೊಳವೆಬಾವಿಗಳನ್ನು ಕೊರೆದು. ಪಂಪ್ ಸೆಟ್ ಅಳವಡಿಕೆ. ಪೂರಕ ಸಾಮಗ್ರಿಗಳ ಸರಬರಾಜು ಮತ್ತು 3ನೇ ತಪಾಸಣಾ ಸಂಸ್ಥೆಯಿಂದ ತಪಾಸಣೆ ಮಾಡಿಸುವ ಸಂಬಂಧ ಟೆಂಡರ್‌ಗಳನ್ನು ಕರ್ನಾಟಕ ಸಾರ್ವಜನಿಕ ಸಂಗ್ರಹಣೆಗಳಲ್ಲಿ ಪಾರದರ್ಶಕ ಅಧಿನಿಯಮ 1999 ಮತ್ತು ನಿಯಮಗಳು 2000 ಅನ್ವಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಉಸ್ತುವಾರಿಯಲ್ಲಿ ಟೆಂಡರ್‌ಗಳನ್ನು ಕರೆಯಲು ಹಾಗೂ ವಿವಿಧ ಟೆಂಡರ್ ಸಮಿತಿಗಳನ್ನು ರಚಿಸಿ ಮೇಲೆ ಕ್ರಮ ಸಂಖ್ಯೆ (1)ರಲ್ಲಿ ಓದಲಾದ ದಿನಾಂಕ: 20.10.2015 ರಲ್ಲಿ ಆದೇಶಿಸಲಾಗಿದೆ.

ಪ್ರಸ್ತುತ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಉಸ್ತುವಾರಿಯಲ್ಲಿ ಪ್ರಾಕೇಜ್‌ವಾರು ಟೆಂಡರ್

ಆಹ್ವಾನಿಸಲಾಗುತ್ತಿದೆ. ಜಿಲ್ಲಾ ಮಟ್ಟದಲ್ಲಿ ಟೆಂಡರ್ ಆಹ್ವಾನಿಸಿ ಪ್ರಕ್ರಿಯೆ ಪೂರ್ಣಗೊಳಿಸಲು ಕನಿಷ್ಠ 4 ರಿಂದ 7 ತಿಂಗಳ ಕಾಲಾವಧಿ ತೆಗೆದುಕೊಳ್ಳುತ್ತಿದೆ. ಟೆಂಡರ್ ಕರೆಯಲು ಆದೇಶಿಸಿದ ನಂತರ ಟೆಂಡರ್ ಪ್ರಕ್ರಿಯೆಗೆ ಚಾಲನೆ ನೀಡಿದ್ದು ಅವುಗಳನ್ನು ಪೂರ್ಣಗೊಳಿಸಿ ದರ ಹಾಗೂ ಏಜೆನ್ಸಿಗಳ ನೇಮಕಾತಿ ಅಂತಿಮಗೊಳಿಸಲು ಹೆಚ್ಚಿನ ಕಾಲಾವಧಿ ತೆಗೆದುಕೊಳ್ಳಲಾಗುತ್ತಿದೆ. ಇದರಿಂದಾಗಿ 2016-17 ಮತ್ತು 2017-18 ನೇ ಸಾಲಿನ ಕೊಳವೆ ಬಾವಿಗಳನ್ನು ಕೊರೆಯಿಸಿ ಯೋಜನೆ ಸೌಲಭ್ಯವನ್ನು ಫಲಾನುಭವಿಗಳಿಗೆ ಒದಗಿಸುವಲ್ಲಿ ವಿಳಂಬವಾಗಿದ್ದು, ನಿಗದಿಯಂತೆ ಪ್ರಗತಿ ಸಾಧಿಸಲು ಸಾಧ್ಯವಾಗಿರುವುದಿಲ್ಲ. ಜಿಲ್ಲಾ ಮಟ್ಟದಲ್ಲಿ ಟೆಂಡರ್ ಪ್ರಕ್ರಿಯೆ ಪ್ರಗತಿ ಹಂತಗಳ ಬಗ್ಗೆ ಕೇಂದ್ರ ಕಛೇರಿಗೆ

ಮಾಹಿತಿ ಲಭ್ಯವಾಗುತ್ತಿಲ್ಲ. ಆದುದರಿಂದ, ಈ ಸಮಸ್ಯೆಗಳನ್ನು ನಿವಾರಿಸುವ ಸಲುವಾಗಿ ಕೇಂದ್ರ ಕಛೇರಿಯಿಂದ ಪ್ರಾಕೇಜ್‌ವಾರು ರಾಜ್ಯ ಮಟ್ಟದಲ್ಲಿ ಆಹ್ವಾನಿಸಲು ಸರ್ಕಾರದ ಅನುಮೋದನೆ ನೀಡುವಂತೆ ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು. ಡಾ.ಬಿ.ಆರ್.ಅಂಬೇಡ್ಕರ್ ಅಭಿವೃದ್ಧಿ ನಿಗಮದವರು ಮೇ7ರ ಕ್ರಮ ಸಂಖ್ಯೆ (2)ರಲ್ಲಿ ಓದ7ರ ದಿನಾಂಕ:30.05.2018ರ ಏಕ ಕಡತದಲ್ಲಿ ಕೋರಿರುತ್ತಾರೆ.

ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು ಡಾ.ಬಿ.ಆರ್.ಅಂಬೇಡ್ಕರ್ ಅಭಿವೃದ್ಧಿ ನಿಗಮ ಇವರ

ಪ್ರಸ್ತಾವನೆಯನ್ನು ಕೂಲಂಕಷವಾಗಿ ಪರಿಶೀಲಿಸಿ. ರಾಜ್ಯ ಮಟ್ಟದಲ್ಲಿ

ಜಿ7ರವಾರು/ಪ್ರಾಕೇಜ್‌ವಾರು ಟೆಂಡರ್‌ಗಳನ್ನು ಕರೆಯಲು ಟೆಂಡರ್ ಆಹ್ವಾನಿಸುವ/ಪರಿಶೀಲಿಸುವ ಮತ್ತು ಅಂಗೀಕರಿಸುವ ಪ್ರಾಧಿಕಾರಗಳನ್ನು ಈ ಕೆಳಕಂಡಂತೆ ಪುನರ್ ರಚಿಸಲು ನಿರ್ಧರಿಸಿ. ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ:-

ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಕಇ 281 ಎಸ್‌ಡಿಸಿ 2018,

ಬೆಂಗಳೂರು, ದಿನಾಂಕ:20.07.2018

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಕಾರಣಗಳಿಂದ ಡಾ.ಬಿ.ಆರ್.ಅಂಬೇಡ್ಕರ್ ಅಭಿವೃದ್ಧಿ ನಿಗಮ ಕರ್ನಾಟಕ ಮಹರ್ಷಿ ವಾಲ್ಮೀಕಿ ಪರಿಶಿಷ್ಟ ಪಂಗಡಗಳ ಅಭಿವೃದ್ಧಿ ನಿಗಮ. ಡಿ.ದೇವರಾಜ ಅರಸು ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಅಭಿವೃದ್ಧಿ ನಿಗಮ. ಕರ್ನಾಟಕ ಅಲ್ಪಸಂಖ್ಯಾತರ ಅಭಿವೃದ್ಧಿ ನಿಗಮ ಹಾಗೂ ಕರ್ನಾಟಕ ವಿಶ್ವಕರ್ಮ ಸಮುದಾಯಗಳ ಅಭಿವೃದ್ಧಿ ನಿಗಮ ಇವುಗಳಿಂದ ಅನುಷ್ಠಾನಗೊಳಿಸುತ್ತಿರುವ ಗಂಗಾ ಕ7ರ ಯೋಜನೆಯಡಿ ಪ್ರತಿ ವರ್ಷ ನಿಗದಿಪಡಿಸಿದ ಗುರಿಯಂತೆ ಕೊಳವೆಬಾವಿಗಳನ್ನು ಕೊರೆದು. ಪಂಪ್‌ಸೆಟ್ ಅಳವಡಿಕೆ. ಪೂರಕ ಸಾಮಗ್ರಿಗಳ ಸರಬರಾಜು ಮತ್ತು 3ನೇ ತಪಾಸಣಾ ಸಂಸ್ಥೆಯಿಂದ ತಪಾಸಣೆ ಮಾಡಿಸುವ ಸಂಬಂಧ ಟೆಂಡರ್‌ಗಳನ್ನು ಕರ್ನಾಟಕ ಸಾರ್ವಜನಿಕ ಸಂಗ್ರಹಣೆಗಳಲ್ಲಿ ಪಾರದರ್ಶಕ ಅಧಿನಿಯಮ 1999 ಮತ್ತು ನಿಯಮಗಳು 2000 ಅನ್ವಯ ಟೆಂಡರ್ ಅಂಗೀಕಾರ ಪ್ರಾಧಿಕಾರವನ್ನು ಕೆಳಕಂಡಂತೆ ಪುನರ್ ರಚಿಸಿ ಆದೇಶಿಸಿದೆ.

25. Subsequently, said Government Order came to be amended providing the power of the appellate Authority and also tender inviting authority by subsequent Government Order dated 14.09.2018 and ultimately the State Government issued final Government Order dated 18.07.2019, considering the earlier Government Order and permitted the fourth respondent/Corporation to call for tenders under state level/district level package tender. The said Government Order issued by the State Government has reached finality. Admittedly the petitioners have not challenged the said Government Order modifying the earlier Government Order dated 20.10.2015.

26. The contention of the learned Senior Counsel for the petitioners that the Scheme to implement supply of submersible pump-sets, accessories etc., in earlier notification was managed suitable district level head. The same has been withdrawn and entrusted to the State level tender inviting authority is arbitrary and mala fide warrants interference. The Annexure-N notification issued by the 5th respondent on the basis of the policy introduced by the State Government on 05.11.2019. As stated supra the petitioners have not questioned the final Government Order permitting the 5th respondent to invite state level bids under District level packages is not challenged. In the grounds of writ petition or the arguments of the learned Senior Counsel except arbitrariness, they have not made out in the case of mala-fide intention to deprive the particular parties.

Though, by way of amendment the petitioners have taken contention of mala-fide intention based on the records, they are not in a position to assist the Court what is mala-fide on the State Government. Admittedly the policy of the state Government dated 05.11.2019 not at all questioned by the petitioners. Therefore, the contention of the learned Senior Counsel with regard to malafide cannot be accepted.

27. Admittedly the petitioners were 11 petitioners before this Court, the State Government has issued policy decision dated 05.11.2019 to call for tenders in the interest of larger public. Such a policy decision cannot be interfered with by this Court.

28. So far as the contention of the learned Senior Counsel for the petitioners with regard to prayer No.3 directing the respondent/State Government to continue scheme of 15% price preference subsidies extended to MSE registered Small Scale Industrial Units in the State of Karnataka cannot be granted in view of the provisions of Rule

25.2 last proviso, which reads as under:

"provided further that nothing contained in the first proviso shall apply for the purchase of pump-sets under Ganga Kalyan Scheme being implemented by the Social Welfare Department".

29. Admittedly under the old tender notification Annexure-K and new notification, the tenders called for purchase of submersible pump-sets under Ganga Kalyana Scheme being implemented by Department of Social Welfare. Therefore the petitioners are not entitled to seek to continue the scheme providing 15% price preference subsidies to the petitioners as sought for.

30. The Hon'ble Supreme Court while considering the conduct of action and evaluation of accept and rejection of Bid, tender and scope of judicial review, in the case of MUNICIPAL CORPORATION, UJJAIN AND ANOTHER VS. BVG INDIA LIMITED AND OTHERS reported in (2018)5 SCC 462 in para 50 held as under:

50. Since Global Waste Management Cell Private Limited, i.e., Appellant in Civil Appeal arising from SLP (C) No. 11967 of 2016 secured the highest score, i.e., 84.36, it emerged as the overall eligible bidder for awarding the project as per the terms of NIT. Global Waste Management Cell Private Limited has experience of 10 years and has demonstrated an ability for good responsiveness to tender. Consequently, it was declared L 1 as per the terms of the NIT. As a decision was qualitatively arrived at by the technical expert respondent no. 2, the High Court need not have gone into the merits of such decision as an appellate authority, especially when there was no bias or mala fide.

31. In BRUHAT BENGALURU MAHANAGARA PALIKE POWER CONTRACTORS ASSOCIATION BENGALURU VS. THE EXECUTIVE ENGINEER (ELEC), OFFICE OF THE EXECUTIVE ENGINEER (ELEC), EAST ZONE, BENGALURU AND OTHERS reported in 2018(4) KAR.L.J. 178, while considering the provisions of Rule 17

and 17(2) of KTPP Rules, 2000 learned Single Judge of this Court held as under:

3. The learned counsel for the petitioner Mr.Ganapathy Bhat has urged before the Court that the eligibility criteria stated in the Tender Notification is too high to be complied with by any of the existing Contractors doing such electrification work for BBMP hitherto and the net worth of Rs.100 Crores required in the said Tender document, as also the 5 years experience are the twin conditions, which the Members of the Petitioner-Association cannot just satisfy and therefore, it is a deliberate exclusion of the Members of the Petitioner-Association and therefore, the said Tender Notification is challenged before this Court.

He has further submitted that Rule-17 of the Karnataka Transparency in Public Procurement Rules, 2000, have not been complied with by the Respondents-BBMP, which interalia requires 60 days time for Tenders to give bids for the contracts in excess of Rs.2 crores in value. He also submitted that even this time limit has not been observed by the Respondents-BBMP.

He however, submitted that Rule 17(2) of the Karnataka Transparency in Public Procurement Rules, 2000, allows the reduction of the said timeframe by the order in writing recording reasons by a specifically authorized by an authority superior to the Tender Inviting Authority, but no such special reasons were recorded under Rule 17(2) of the Rules.

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7. Prima-facie, the project in question appears to be a bonafide project and should save the costs for providing efficient street lights to the city of Bengaluru for the Respondents-BBMP. Apparently, as contended by the learned counsel for the Respondents-BBMP, not only the entire replacement of LED bulbs is to be undertaken by the Contractor, who is finally awarded the contract, free of costs but they have to maintain the same also for a period of ten years without any charges from the BBMP.

8. The operating and maintenance costs to be deposited in a ESCROW account, which are based on the present energy costs borne by the BBMP for maintaining these street lights, will continue to be paid and out of the savings on account of the change of technology, the BBMP is assured of being paid back 20% of the saved amount, after the reduced bills of power supply paid to BESCO by the Contractor. For such a big project, if the Respondent-BBMP has set the minimum eligibility criteria of a bidder to have a minimum Net worth of Rs.100 crores or the experience of 5 years in undertaking Projects of these kinds, no illegality or arbitrariness can be found in such a policy decision. There is no violation of Article 14 of the Constitution of India. On the contrary, the effort of petitioner-Association to stick on to old pattern of contracts for this purpose, resulting in more cost to BBMP at the cost of public, cannot be appreciated and countenanced.

And ultimately writ petition came to be dismissed.

32. The Hon'ble Supreme Court while considering TATA CELLULAR case relied upon by the learned Senior Counsel for the petitioners in the latest judgment in the case of MUNICIPAL COUNCIL NEEMUCH VS. MAHADEO REAL ESTATE AND OTHERS reported in 2019 SCC ONLINE SC 1215 at Para 14, 15 and 16 held as under:

14. In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage. However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 lays down the basic principles which still hold the field. Paragraph 77 of the said judgment reads thus:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'".

15. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion, that the decision maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision maker is vitiated by irrationality and that too on the principle of "Wednesbury Unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision making process. It is also equally well settled, that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

16. This Court recently in the case of West Bengal Central School Service Commission vs. Abdul Halim reported in 2019 SCC Online SC 902 had again an occasion to consider the scope of interference under Article 226 in an administrative action.

"31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan v. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.

33. The Hon'ble Supreme Court while considering the policy decisions in the case of *UGAR SUGAR WORKS LTD., VS. DELHI ADMINISTRATION AND OTHERS*

reported in (2001)³ SUPREME COURT CASES 635 in Para 18 held as under:

18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

34. The Hon'ble Supreme Court again relying upon the TATA CELLULAR case in the case of JAGDISH MANDAL VS. STATE OF ORISSA AND OTHERS reported in (2007)¹⁴ SUPREME COURT CASES 517 in Para 21.2.3, 21.2.4 and 21.4.7 held as under:

21.2) In Tata Cellular v. Union of India [AIR 1996 SC 11], this Court referred to the limitations relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts, thus :

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(3) The Court does not have the expertise to correct the administrative action. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract..... More often than not, such decisions are made qualitatively by experts.

21.4) In Air India Ltd. vs. Cochin International Airport Ltd [2000 (2) SCC 617], this Court summarized the scope of interference as enunciated in several earlier decisions thus :

"7....The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest

or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

VI. CONCLUSION:

35. In view of the peculiar facts and circumstances of the case and the dictum of the Hon'ble Supreme Court and this Court, it is clear that this Court while exercising the powers under Article 226 and 227 of the Constitution of India, examine the reasonableness of an order of the authorities cannot act as an appellate authority over a decision taken by the state Government in respect of tender matters and policy decision taken. The notification issued in the year 2019 is based on the Government Order inviting tenders is not unreasonable and will not manifest injustice to the petitioners. Therefore, this Court cannot interfere with the tender invited by the 5th respondent on the basis of the policy decision of the State Government stated supra. As stated already, the policy decision by the State Government modifying the earlier decision dated 20.07.2018 modifying the earlier Government Order dated 20.10.2015, relied upon by the petitioners and subsequently final Government Order dated 05.11.2019 is a policy decision, this Court cannot exercise the judicial power unless the policy decision is made on fraud, mala-fide, unreasonableness, arbitrariness or unfairness, mere the grounds taken on arbitrariness or mala-fide by the petitioners is not a ground to interfere with the exclusive domain and the discretion of the State Government.

36. The judgment relied upon by the learned Senior Counsel for the petitioners in the case of M/S DESHMUKH BOREWELLS and others made in WP No.201482-484/2019 dated 15.10.2019, in the case of D.Devaraju Urs Backward Classes Development Corporation Limited, it was a case where this Court quashed the tender notification issued reserving liberty to the D.Devaraju Urs Corporation to issue fresh notification based on the memo filed by the counsel for D.Devaraju Urs Backward Classes Development Corporation Limited considering the prayer, it was a virtual consent decision by this Court based on the parties. The said case has no application to the facts of the present case.

37. Insofar as the decision relied upon by the learned Senior Counsel for the petitioners in the case of TATA CELLULAR, as already stated supra, the subsequent judgments considering the very judgment has held that the Court

does not have expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will substituting its own decision without necessary of expertise which itself may fallible. The Government must have a freedom of entity to direct, in other words, a fair play in the joint is necessary experts in concommitment for administrative body in administrative spur or plausible spur. However, the decision must not be apply or to be tested by the principles of reasonableness, it must free from arbitrariness and not affected by bias as stated by mala-fide. Admittedly in the present case, based on the material documents the petitioners have not shown any arbitrariness or mala-fides as alleged. Therefore, said judgment is virtually against the petitioners as the subsequent judgment relied upon by the learned counsel for the respondents has reiterated the same principle. The said judgment will not assist the case of the petitioners.

38. Insofar as the judgment in the case of MUNICIPAL CORPORATION, UJJAIN AND ANOTHER VS. BVG INDIA LIMITED AND OTHERS reported in (2018)5 SCC 462 relied upon by the learned Senior Counsel for the petitioners that reasonableness relying upon the earlier case in the case of TATA CELLULAR, this Court has no quarrel with the principles laid down by the Hon'ble Supreme Court in that case. The said principles have no application to the facts and circumstances of the present case.

39. For the reasons stated above the issue raised in the present writ petition has to be held in the affirmative holding that the respondent No.4 is justified in call for the tender notification based on the policy decision of the State Government as per Annexure R4(f) dated 05.11.2019, same is in accordance with law and this Court cannot act as appellate Authority to interfere with the Tender conditions imposed by the Tenders inviting authorities based on the Government Policy decision. It is exclusive domain of the tender inviting authority, this Court cannot substitute the conditions in exercise of extraordinary writ jurisdiction under Article 226 and 227 of the Constitution of India.

40. In view of the above, petitioners have not made out any ground to interfere with impugned order under extraordinary jurisdiction of this Court to grant reliefs as sought for. Accordingly, writ petition is dismissed.

However, the dismissal of the writ petition shall not come in the way of petitioners to apply in pursuance of the impugned tender notification invited by the respondent Nos.4 and 5, if they fulfill all the tender conditions in accordance with law.

Ordered accordingly.