

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 17TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

W.A.NO.100741 OF 2025

C/W

W.A.NO.100751 OF 2025

IN W.A.NO.100741/2025:

BETWEEN:

1. SMT. SUMA PRADEEP YELI W/O PRADEEP YELI
VEERABHADRESWARA NILAYA, 1ST MAIN, 4TH CROSS,
BASAVESWARA NAGAR, NEAR OXFORD SCHOOL,
SHIVAMOGGA CITY-577204.
SHIVAMOGGA TQ. AND DIST.
2. SRI. PRADEEP YELI S/O VEERAPPA YELI
VEERABHADRESWARA NILAYA, 1ST MAIN, 4TH CROSS,
BASAVESWARA NAGAR, NEAR OXFORD SCHOOL,
SHIVAMOGGA CITY-577204.
SHIVAMOGGA TQ. AND DIST.

...APPELLANTS

(BY SRI. ASHOK HARNAHALLI, SENIOR COUNSEL FOR
SRI. ANIL KALE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
R/BY ITS SECRETARY,
DEPARTMENT OF MINES AND GEOLOGY,
M.S. BUILDING, BENGALURU-560001.
2. THE DIRECTOR,
DEPARTMENT OF MINES AND GEOLOGY 49,
KHANIJA BHAVAN, RACE COURSE ROAD,
BENGALURU-560001.
3. THE DEPUTY COMMISSIONER,
THE PRESIDENT, DISTRICT SAND COMMITTEE,
HAVERI, DIST. HAVERI-581110.

4. SENIOR GEOLOGIST,
MEMBER SECRETARY, DISTRICT SAND COMMITTEE,
HAVERI, DIST. HAVERI-581110.
5. SRI. MOHANUDDIN S/O KHADARSAB RAHIMANSABANAVAR
AGE. 39 YEARS, CLASS I CONTRACTOR,
R/O 897, MARUTHI NAGAR,
NEAR EIDGAH MAIDAN, BESIDE URDU SCHOOL,
RANEBENNUR, DIST. HAVERI-581115.
6. SRI. SAJIDALI S/O RAFIQ AHMED MAHALADARA
AGE. 29 YEARS, CLASS II CONTRACTOR,
R/O MARUTHI NAGAR, NEAR EIDGAH MAIDAN,
BESIDE URDU SCHOOL, RANEBENNUR, DIST. HAVERI-581115.
7. SRI. SURESH R S/O D. RAMAPPA
AGE. 59 YEARS, OCC. BUSINESS,
R/O TARAGANA HALLI ROAD, HONNALLI,
DIST. DAVANAGERE-570001.

...RESPONDENTS

(BY SRI. SHARAD V. MAGADUM, AGA FOR R1 TO R4;
SRI. SUNIL S. DESAI, ADVOCATE FOR R5 & R6;
SRI. S.V. YAJI, ADVOCATE FOR R7)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE IMPUGNED
ORDER DATED 03/11/2025 PASSED BY THE LEARNED SINGLE JUDGE
IN WP NO.105029/2025 & ETC.

IN W.A.NO.100751/2025:
BETWEEN:

SRI. SURESH R S/O D. RAMAPPA
AGE. 59 YEARS, OCC. BUSINESS,
R/O. TARAGANA HALLI ROAD,
HONNALI 577001, DAVANAGERE DISTRICT.

...APPELLANT

(BY SRI. RAVINDRA KOLLE, ADVOCATE FOR
SRI. SOURABH HEGDE, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REP. BY SECRETARY,

DEPARTMENT OF MINES AND GEOLOGY,
M.S. BUILDING, BENGALURU-560001.

2. THE DIRECTOR,
DEPARTMENT OF MINES AND GEOLOGY,
#49, KHANIJA BHAVAN, RACE COURSE ROAD,
BENGALURU-560001.
3. THE DEPUTY COMMISSIONER/THE PRESIDENT,
DISTRICT SAND COMMITTEE,
HAVERI DISTRICT, HAVERI-581110.
4. THE SENIOR GEOLOGIST/MEMBER SECRETARY,
DISTRICT SAND COMMITTEE,
HAVERI DISTRICT, HAVERI-581110.
5. SRI. MOHANUDDIN
S/O KHADARSAB RAHIMANSABANAVAR
AGE. 39 YEARS, CLASS I CONTRACTOR,
R/O. # 897, MARUTHI NAGAR,
NEAR EIDGAH MAIDAN, BESIDE URDU SCHOOL,
RANEBENNUR, HAVERI DISTRICT.
6. SRI. SAJIDALI S/O RAFIQ AHMED MAHALADARA
AGE. 29 YEARS, CLASS II CONTRACTOR,
R/O. MARUTHI NAGAR, NEAR EIDGAH MAIDAH,
BESIDE URDU SCHOOL, RANEBENNUR,
HAVERI DISTRICT.

...RESPONDENTS

(BY SRI. SHARAD V. MAGADUM, AGA FOR R1 TO R4;
SRI. SUNIL S. DESAI, ADVOCATE FOR R5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED
03.11.2025 PASSED BY THE LEARNED SINGLE JUDGE IN
W.P.NO.105029/2025 (GM-TEN) & ETC.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED ON
08.12.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT
THIS DAY, **S G PANDIT J.**, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE S G PANDIT)

In W.A.No.100741/2025, the appellants – non-parties to the writ petition are before this Court under Section 4 of the Karnataka High Court Act, 1961 (for short, '1961 Act') questioning the order dated 03.11.2025 in W.P.No.105029/2025, whereunder, Annexure-A dated 25.02.2025 inviting e-tenders for disposal of River Thungabhadra Sand Blocks in IV, V and Higher Order Streams/Rivers is quashed.

2. In W.A.No.100751/2025, respondent No.5 before the learned single judge in W.P.No.105029/2025 is before this Court under Section 4 of the 1961 Act, questioning the same order which is under challenge in the above-stated Writ Appeal.

3. In W.A.No.100741/2025, along with the Writ Appeal, I.A.No.1/2025 is filed under Section 151 of the Code of Civil Procedure, 1908 seeking leave to prosecute the appeal. I.A.No.4/2025 is filed under Order XLI Rule 27

of CPC seeking leave to produce documents in support of their appeal. Both the I.As would be considered during the course of this order.

4. The parties would be referred to as per their ranking in the writ petition before the learned Single Judge and the appellants in W.A.No.100741/2025 would be referred to as non-parties.

5. Brief facts of the case are that, a tender notice dated 25.02.2025 (Annexure-A) was issued by the respondent No.4, Senior Geologist and Member Secretary, District Sand Committee, Havari, inviting e-tenders from the Person/Company/Firm registered under the e-procurement for disposal of River Thungabhadra Sand Blocks in IV, V and Higher Order Streams/Rivers. The non-parties submitted their tender for Block Nos.V and II respectively; whereas, the petitioners in both the writ appeals applied for Block Nos.IV and V. 01.04.2025 was the date fixed for opening of technical bids on the e-

procurement portal and 09.04.2025 was the date fixed for opening of financial bids of technically qualified bidders.

6. It is stated that since all the tenderers/participants had quoted identical or same price, the tender inviting authority decided to allot or dispose of the Sand Blocks by drawl of lottery. Accordingly, notice dated 05.06.2025 was issued to all the participants fixing the date of drawal of lottery on 13.06.2025, which was postponed to 16.07.2025. It is stated that in the lottery, all the tenderers who had technically qualified were put into lots and lottery was drawn. In the lottery, the non-parties were successful and accordingly provisional acceptance letter dated 23.07.2025, Document No.5 and 6 were issued to the non-parties. Respondent No.5 who was successful bidder in respect of Block No.VI, who was also not made party in the writ petition, got himself impleaded by Order dated 18.09.2025 of the learned Single Judge.

7. On 23.07.2025, the petitioner filed writ petition before this Court with the following prayers:

- "1. *Issue a writ of mandamus declaring all the process of tender in pursuance of the tender notification dated 25.02.2025 vide Annexure-A after expiry of validity period as illegal and arbitrary, in the interest of justice and equity.*
2. *Issue a direction to the 3rd and 4th respondent to call for the fresh tender for Sandy Quarry Lease in terms of Karnataka Transparency in Public Procurement (KTTP) Act, 1999 and allied rules, in the interest of justice and equity."*

8. The learned Single Judge, on hearing the parties to the writ petition, accepting the contention of the petitioner, held that the validity period of 90 days of the tender has expired and as the draw of lottery to award contract has been drawn subsequent to expiry of 90 days, quashed the tender notification dated 25.02.2025 (Annexure-A) with a direction to the respondents to re-notify the tender, if they so desire, in accordance with law.

9. Questioning the said order of the learned Single Judge, the non-parties as well as respondent No.5 before the learned Single Judge are before this Court, urging

several grounds including mainly that non-parties who were successful tenderers for Block Nos.V and II respectively were not made parties and that they were necessary parties to the writ petition, since, by communication dated 23.07.2025, provisional acceptance of Block Nos.V and II respectively, were communicated.

10. Heard learned Senior Counsel Sri.Ashok Harnahalli for learned Counsel Sri.Anil Kale for non-parties in W.A.No.100741/2025, learned Senior Counsel Sri.Ravindra Kolle for learned counsel Sri.Sourab Hegde for respondent No.5 in W.P.No.100751/2025. Learned counsel Sri.Sunil Desai for petitioner and learned Additional Government Advocate Sri.Sharad V. Magadum for official respondents. Perused both the writ appeal papers.

11. Learned Senior Counsel Sri.Ashok Harnahalli appearing on behalf of learned Counsel Sri.Anil Kale for non-parties/appellants would submit that the non-parties were successful bidders for Block Nos.V and II respectively. The provisional acceptance was communicated under letter dated

23.07.2025 (Document Nos.5 and 6 to I.A for production of documents). It is submitted that, since the bid of the non-parties was provisionally accepted, they were necessary and proper parties to the writ petition. Since the provisional acceptance in pursuance to the tender process under the notification dated 25.02.2025 is quashed, without hearing the non-parties, the same would be in violation of principles of natural justice. It is submitted that no order adverse to a person could be passed without hearing such a person. As the allotment of Block Nos.V and II in favour of the non-parties was taken away by the learned Single Judges' order, it is submitted that learned Single Judge's order requires interference. Learned Senior Counsel would submit that, the petitioner was aware of the allotment of Block Nos.V and II in favour of the non-parties. Though he was aware of the allotment of Block Nos.V and II to the non-parties, deliberately he did not make them as parties to the writ petition. Attention of this Court is invited to the averments made in paragraph (6) of the writ petition, wherein the petitioner has stated that, as per the process held on

16.07.2025, Smt.Suma Pradeep Yeli (appellant No.1) and Sri.JafarBogalay were selected in lottery and LOA/LOI were issued to them on 22.07.2025. If that is the averments of the petitioner in the writ petition, learned Single Judge could not have entertained the writ petition without those persons being made the parties and without hearing them.

12. Learned Senior Counsel Sri.Ashok Harnahalli in W.A.No.100741/2025 and learned Senior Counsel Sri.Ravindra Kolle have contended that learned Single Judge is not right in coming to the conclusion that as per Rule 22 of the Karnataka Transparency in Public Procurement Rules 2000, (for short, '2000 Rules') the tender deemed to have become invalid. It is submitted that Rule 22 is not mandatory and they submit that Sub-Rule (1) of Rule 22 of 2000 Rules would state that evaluation of tender and award of contract shall be completed, as far as possible within the period for which tenders are held valid. They emphasize the words "as far as possible".

13. Learned Senior counsels would also contend that since the tenders are invited, as could be seen from the tender documents, in terms of Rule 31U of the Karnataka Minor Mineral Concession Rules, 1994 (for short, '1994 Rules'), the 2000 Rules would have no application. Learned Senior Counsels would also contend that the bid of the petitioner was rejected and the same was communicated on 22.07.2025, which the petitioner could not challenge. Moreover, they submit that the petitioner after participating in the lottery, could not turn around and challenge the same. Thus, both the learned Senior Counsels would pray for allowing the writ appeals by setting aside the impugned order passed by the learned Single Judge under challenge.

14. Per contra, learned counsel Sri.Sunil Desai for petitioner would submit that except the Tender Inviting Authority and Tender Accepting Authority, none others are necessary parties to the proceedings. Learned counsel would invite attention of this Court to Sub-Rule (3) of Rule 22 of 2000 Rules to submit that it is a deeming provision

and on expiry of a tender period i.e., 90 days, in the instant case it becomes invalid and the fresh tender shall have to be called for. It is submitted that, in terms of Sub-Rule (3) of Rule 22 of 2000 Rules, learned Single Judge has declared the tender as invalid in view of expiry of 90 days as on the date of drawing of lottery and consequently has directed calling for fresh tenders. Thus, he submits that there is no error or illegality in the order passed by the learned Single Judge. Learned counsel Sri.Sunil Desai would submit that the Karnataka Transparency in E-Procurement Act, 1999 (for short, '1999 Act'), as well as 2000 Rules would be applicable to the award of Sand Blocks brought under Rule 31U of 1994 Rules. Since Rule 22 of 2000 Rules is applicable, learned Single Judge rightly placed reliance on the circular issued and allowed the writ petition. Thus, it is prayed to dismiss the writ appeals.

15. Having heard the learned counsel appearing for the parties and on perusal of the entire writ appeal papers, the following points would arise for our consideration:

- a) Whether the non-parties were necessary and proper parties to the writ petition before the learned single judge?
- b) If non-parties were necessary and proper parties, what order would follow?

16. In view of the finding that non-parties are necessary and proper parties to the writ proceedings, I.A.No.1/2025 filed seeking permission to prosecute the appeal needs to be allowed and accordingly, I.A.No.1/2025 is allowed and non-parties are permitted to prosecute the appeal.

17. I.A.No.4/2025 is filed seeking permission to produce documents by the appellants. Since the appellants were non-parties to the writ proceedings, they had no opportunity to produce the documents. Moreover, the documents produced along with I.A.No.4/2025 would be absolutely necessary to decide the *lis* between the parties. The documents produced are notices and provisional acceptance communications which would indicate that the

non-parties were successful bidders in respect of Block Nos.V and II respectively. Hence, I.A.No.4/2025 is allowed and the non-parties are permitted to produce the documents produced along with application.

18. It is settled position of law and the Hon'ble Apex Court has made it amply clear that, a necessary party is one without whom, no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. A party who has interest in the subject matter of the *lis* would become necessary and proper party to the proceedings (**RAMESH HIRACHAND KUNDANMAL VS. MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS¹** and **SARVINDER SINGH VS. DALIP SINGH AND OTHERS²**).

¹ (1992) 2 SCC 524

² (1996) 5 SCC 539

19. In the case on hand, under Notification dated 25.02.2025 (Annexure-A), tenders were invited for disposal of River Thungabhadra Sand Blocks in IV, V and Higher Order Streams/Rivers by the fourth respondent – Senior Geologist. In pursuance to the said notification, petitioner/respondent No.5 as well as non-parties have participated in the tender process. All the tenderers who participated in the tender process are stated to have quoted identical or same price. In the said situation, Clause 14.5 of the Sand Tender Document, 2025 provides for choosing successful bidder by lottery to be conducted by District Sand Committee. As all the tenderers had quoted identical or same price, the Tender Inviting Authority decided to choose the successful bidder by lottery and accordingly, intimation was sent to the bidders intimating that lottery would be conducted on 16.07.2025. In the lottery, respondent No.5 as well as the non-parties have succeeded and accordingly by letter dated 23.07.2025 provisional acceptance was communicated to the non-parties. The non-parties/appellants were awarded Block Nos.V and II respectively.

20. On the same day i.e., on 23.07.2025, the petitioner filed writ petition before this Court seeking for a writ of mandamus to declare the process of tender in pursuance to the tender notification dated 25.02.2025 (Annexure-A), after expiry of validity period as illegal and arbitrary and for a direction to call for fresh tender. At paragraph No.(6) of the writ petition, the petitioner made a specific averment that, as per the process held on 16.07.2025, Smt.Suma Pradeep Yeli (one of the non-party) and Sri.JafarBogalay were selected in lottery and LOA/LOI were issued to them on 22.07.2025. However, the petitioner failed to make them party to the writ petition.

21. The Hon'ble Apex Court in **ABHISHEK GUPTA VS. DINESH KUMAR AND OTHERS**³ has reiterated the principle that non joinder of proper or necessary parties is fatal to the cause of justice and against principles of natural justice. The Hon'ble Apex Court made it clear that, in an intra-Court appeal, where the Court is of the opinion that

³ 2025 SCC OnLine SC 2739

necessary party has not been made a party before the learned Single Judge, the appropriate course would be to either remand the matter or decide the matter on merits. Paragraphs 16 to 19 of the **ABHISHEK GUPTA** (supra) is reproduced hereunder:

"16. In the circumstances before us, the bar created by Rule 5 must yield to the foundational principles of natural justice, namely, the right to be heard and the right to a fair hearing. It is trite law that the principle of non-joinder, though originating from the Civil Procedure Code, 1908, applies with equal force to writ proceedings. An order passed in writ jurisdiction without impleading an affected or necessary party is liable to be invalidated on that ground alone. Since the courts exist to administer justice, the rigours of Rule 5 would not apply and stand relaxed in a case of the present nature where the order under challenge is one, passed by a Single Judge on a petition under Article 226 of the Constitution, adversely affecting the rights of a party who was not a party-respondent before the Single Judge.

17. In our further considered opinion, the law laid down by this Court in Smt. Jatan Kanwar Golcha v. Golcha Properties (P) Ltd.⁶ and State of Punjab v. Amar Singh⁷ that an appeal could be

preferred with an application for leave to appeal, provided the non-party appellant demonstrates that either the order under challenge is prejudicial to his interest or adversely affects him or is binding on him, would be applicable.

18. Also, the maxim *ubi jus, ibi remedium* cannot be ignored. A party suffering an adverse order in judicial proceedings where he is not noticed, because he was not a party, cannot be left without a remedy. Although he can apply for a review, the scope of a review is much narrower than an appeal and would not provide a remedy as effective as an appeal.

19. For the foregoing reasons, we hold that where an allegation of non-joinder of a necessary party is raised in an intra-court appeal, the High Court, if satisfied that such allegation has merit, should either remand the matter to the Single Judge or decide it on the merits. Such an approach while not militating against the object and purpose of Rule 5 would, at the same time, accord with the maxim *ubi jus, ibi remedium*.”

22. Admittedly, the non-parties were beneficiaries being awarded Block Nos.V and II in the process of lottery. When the petitioner sought prayer to declare all the process

of tender in pursuance to tender notification dated 25.02.2025 and subsequent issuance of provisional acceptance by communication dated 23.07.2025 to be arbitrary and illegal, the petitioner ought to have made the non-parties as parties in whose favour the Sand Blocks have been awarded. The persons in whose favour the Sand Blocks were awarded and communications were issued were necessary and proper parties to the writ proceedings. By virtue of the order passed by the learned Single Judge, the benefit accrued i.e., the award of Sand Blocks in favour of non-parties is taken away without hearing or providing opportunity to them to present their case before the learned Single Judge. The entire exercise by the learned Single Judge is in violation of principles of natural justice. The principles of natural justice demands hearing a party before any adverse order is passed against such person. Only on the ground that the non-parties were necessary parties and as they had no opportunity of hearing before the learned Single Judge, the order impugned herein passed by the learned Single Judge requires to be set aside.

23. Learned senior counsels urged several grounds on merits of the subject matter of the writ petition i.e., with regard to applicability of 2000 Rules to the tender notification issued under Rule 31U of 1994 Rules. Further, it is also contended that Rule 22 of 2000 Rules is not mandatory since it uses the word "as far as possible" and also the contention that the petitioner having participated in the tender process could not have turned around and challenged the tender process when he was unsuccessful. Those contentions are to be considered by the learned Single Judge on giving an opportunity to both the parties. If those contentions are considered for the first time at the appellate stage, the parties would be deprived of opportunity to appeal and as such we do not wish to go into all those contentions while remitting the matter to the learned Single Judge.

24. I.A.No.6/2025 is filed on 02.12.2025 seeking stay of the re-notified tender notification. It is stated that in pursuance to the direction of the learned Single Judge, tender has been re-notified in the local newspaper dated

29.11.2025 and to stay the said re-notified tender as prayed for.

25. For the reasons recorded above, the following:

ORDER

- a) W.A.No.100741/2025 is allowed.
- b) Impugned order dated 03.11.2025 in W.P.No.105029/2025 on the file of the learned Single Judge is set aside and the matter is remitted back to the learned Single Judge for fresh disposal in accordance with law, by impleading the non-parties as party-respondents to the writ petition.
- c) The petitioners in W.P.No.105029/2025 are directed to implead the non-parties as party-respondents to the writ proceedings.
- d) Consequent to setting aside of the order dated 03.11.2025 in W.P.No.105029/2025, W.A.No.100751/2025 would not survive for consideration on the grounds urged by the appellant/respondent No.5 therein. However, it is for the appellant/respondent

No.5 to participate in the remitted writ proceedings.

- e) The respondents are directed not to proceed with fresh tender notification published in newspaper dated 29.11.2025 in view of setting aside the order of the learned Single Judge.
- f) All the contentions on merits urged before this Court are kept open and nothing is expressed on the merits of the *lis*.
- g) Whatever interim order is operating in WP No.105029/2025 shall continue. However, it is open for the respondents to file an application for vacating interim order.

Sd/-
(S G PANDIT)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

NC.
CT-VP