IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WA.No. 1649 of 2013 () IN WP(C).20328/2013

AGAINST THE JUDGMENT IN WP(C) 20328/2013 of HIGH COURT OF KERALA DATED 30-09-2013

APPELLANTS/PETITIONERS:
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1. PRASAD V.M., AGED 40 YEARS
   S/O.MADHAVAN PILLAI, PROPRIETOR, M/S ALFA ELECTRONICS
   THITTAMANGALAM, THIRUVANANTHAPURAM-695013
   RESIDING AT V.M.NIVAS, THITTAMANGALAM, KODUNGANOOR.P.O
   THIRUVANANTHAPURAM DISTRICT.

2. BIJU PHILIP, AGED 42 YEARS
   S/O.G.PHILIP, PROPRIETOR, M/S.KOCHUMELETHIL AGENCIES
   KUNDARA.P.O, KOLLAM,
   RESIDING AT KOCHUMELETHIL KENS GARDEN, KUNDARA.P.O
   KOLLAM DISTRICT.

3. MANOJ R.NAIR AGED 38 YEARS
   S/O.C.N.RAVEENDRAN NAIR, PROPRIETOR
   M/S.R G ELECTRONICS, SNEHATHEERAM, PADINJATTINKARA
   KOTTARAKKARA, RESIDING AT "SREERAGAM", PULAMON.P.O
   KOTTARAKKARA.

4. T.T.AHAMMED AGED 47 YEARS
   S/O.K.M.THAMPYKUTTY RAWTHER
   PROPRIETOR M/S.ALMANA TRADING COMPANY
   GOVT.GIRLS HIGH SCHOOL ROAD, NEAR PRIVATE BUS-STAND
   PATHANAMTHITTA, RESIDING AT THAMPURANKALAYIL
   NARANGANAM NORTH.P.O, PATHANAMTHITTA PIN-680642.

   BY ADVS.SRI.K.RAMAKUMAR (SR.)
   SRI.S.M.PRASANTH
   SMT.ASHA BABU
   SMT.G.ASHWINI
   SMT.AMMU CHARLES

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA
   REPRESENTED BY THE CHIEF SECRETARY
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE SECRETARY TO GOVERNMENT
   LOCAL SELF GOVERNMENT DEPARTMENT
   GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
   THIRUVANANTHAPURAM, PIN-695001.

3. THE DIRECTOR OF PANCHAYATS
THIRUVANANTHAPURAM-695 001.

4. THE KERALA RURAL EMPLOYMENT AND WELFARE SOCIETY (KREWS)
CORPORATION JUBILEE BUILDING
NEAR OVER-BRIDGE JUNCTION, THAMPANOOR, M.G.ROAD
THIRUVANANTHAPURAM-695001
REPRESENTED BY ITS MANAGING DIRECTOR
THE DIRECTOR OF PANCHAYATS.

ADDL.RESPONDENT IMPLEADED:
ADDL.R5: PRADEEP V., AGED 39 YEARS,
S/O N.GANGADHARAN NAIR, SOLE PROPRIETOR,
M/S USHA ELECTRONICS SYSTEMS, THRITHALA ROAD,
KOTTANAD PO, PATTAMBI,
PALAKKAD DISTRICT, PIN-679 533.
(ADDL.R5 IMPLEADED AS PER ORDER DATED 1.1.2014 IN I.A.963/13)

R1,R2&3 BY SPL. GOVERNMENT PLEADER C.S.MANILAL
BY SRI.P.MARTIN JOSE
ADDL R5 BY ADV. SRI.P.T.DINESH
ADDL. R5 BY ADV. SRI.K.A.ABDUL NISTAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11.11.2015, ALONG WITH WA. 1675/2013, WA. 1687/2013, THE COURT ON 26.2.2015 DELIVERED THE FOLLOWING:

APPENDIX IN W.A.1649/13

APPELLANTS' ANNEXURES: NIL

RESPONDENTS' ANNEXURES:

ANNEXURE I:	COPY OF ORDER NO.GO(RT)NO.1334/14 DT.20.5.14.
ANNEXURE II:	COPY OF TRANSLATION OF ANNEXURE I.
ANNEXURE III:	COPY OF GOVERNMENT ORDER NO.GO(MS) 173/86 DT.18.9.86.
ANNEXURE IV:	COPY OF GOVERNMENT ORDER NO.GO(MS)180/86 DT.25.9.86.
ANNEXURE V:	COPY OF ARTICLES OF ASSOCIATION OF THE SOCIETY.
ANNEXURE VI:	COPY OF REPORT OF THE DIRECTOR OF PANCHAYATS WITH ENGLISH TRANSLATION.
ANNEXURE VII:	COPY OF LETTER DT.22.11.08 WITH ENGLISH TRANSLATION.
ANNEXURE VIII:	COPY OF LETTER DT.15.2.12 WITH ENGLISH TRANSLATION.

TRUE COPY

P.S.TO JUDGE

dsn

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

W.A.Nos.1649, 1675 & 1687 of 2013

DATED THIS THE 26th DAY OF FEBRUARY, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellants in W.A.No.1649 of 2013 are the petitioners in W.P.(C)No.20328 of 2013. The appellant in W.ANo.1675 of 2013 is the 1st petitioner in W.P.(C)No.16661 of 2013 and the appellants in W.A.No.1687 of 2013 are petitioners 2 to 4 in that Writ Petition. The appellant in W.A.No.1675 of 2013 is SIDCO suppliers' Association and the appellants in W.A.No.1687 of 2013, who are running Small Scale Industrial Units registered with the Director of Industries and Commerce, Government of Kerala, are the members of that association. Their Small Scale Industrial (SSI) Units are also registered with the Marketing Division of the Kerala Small Industries Development Corporation Ltd. (SIDCO), the 5th respondent herein. The appellants in W.A.No.1649 of 2013 are suppliers of electrical materials to various Grama Panchayats in the State.

2. W.P.(C)No.16661 of 2013 has been filed seeking a writ of certiorari to quash Exhibit P4 Government order dated 5/6/2013 and also Exhibit P5 tender notice dated 13/6/2013 issued by the 6th

respondent. By Exhibit P4, the Government has permitted the Kerala Rural Employment and Welfare Society (KREWS), the 6th respondent herein, to procure and distribute street lights, electrical fittings and other accessories required for the Grama panchayats by open tender, at rates lower than the current market rate. The Government further ordered that, the Grama Panchayats situated in Malappuram, Kozhikode, Kannur and Kasaragod districts shall purchase street lights, electrical fittings and other accessories only from the 6th respondent. Pursuant to the said Government order, the 6th respondent Society issued Exhibit P5 tender notice dated 13/6/2013 inviting sealed competitive tenders from the manufacturers/authorised suppliers for the supply and installation works of bulbs, tubes and electrical fittings for the street lighting programmes of the Grama Panchayats in Malappuram, Kozhikode, Kannur and Kasaragod districts, for the years 2013-14 and 2014-15, on a running contract, for the period up to 31/3/2015. They have also sought a declaration that, the Government have no authority to issue

Exhibit P4 order granting permission to the 6th respondent Society to procure electrical equipments required by the Grama Panchayats by open tendering, in violation of the Stores Purchase Manual and also the Guidelines for Procurement of Goods and Services in Local Self Governments in Kerala, appended to Exhibit P3(a) Government order dated 8/11/2010.

3. W.P.(C)No.20328 of 2013 has been filed seeking a writ of certiorari to quash Exhibit P1 Government order dated 5/6/2013 (same as Exhibit P4 in W.P.(C)No.16661 of 2013) and also a declaration that, Exhibit P1 Government order is violative of the provisions of the Kerala Panchayat Raj Act, 1994, Articles 14, 19 and 21 of the Constitution of India and issued beyond the jurisdiction of the Government.

4. The learned Single Judge by a common judgment dated 13/9/2013 dismissed both the Writ Petitions, holding that the writ petitioners could not make out a case for interference with Exhibit P4 Government order and also the process of tender undertaken by the 6th respondent pursuant to Exhibit P5 tender

notice. It is aggrieved by the said judgment of the learned Single Judge, the appellants are before us in these Writ Appeals.

5. We heard the arguments of the learned Senior Counsel appearing for the appellants in W.A.Nos.1649 of 2013 and 1687 of 2013, the learned counsel for the appellant in W.A.No.1675 2013, the learned Special Government Pleader appearing for the official respondents, the learned Standing Counsel for the 5th respondent Corporation, the learned Senior Counsel appearing for the 6th respondent Society and also the respective counsel appearing for the party respondents.

6. For the sake of convenience the documents on record are described as in W.P.(C)No.16661 of 2013.

7. The appellant in W.A.No.1675 of 2013 is an association of SSI Units registered with the Marketing Division of SIDCO. The appellants in W.A.No.1687 of 2013 are members of the said association and the electrical items manufactured by them are being marketed through SIDCO to various Grama Panchayats and Municipalities in the State, based on the orders

received by SIDCO. According to the appellants, Para 38(A) and Appendix XXVIII of the Stores Purchase Manual issued by the Stores Purchase Department, Government of Kerala, provide for purchase of items including electrical items required by Government Departments, Public Sector Undertakings, etc., from SSI Units in Kerala. In order to ensure the same, the 3rd respondent has issued Exhibit P3 circular dated 30/1/2009. Accordingly, Local Self Government Institutions in the State have been procuring electrical items required for street lighting programmes from SSI Units in the State, through SIDCO.

8. While matters stood thus, the 2nd respondent issued Exhibit P3(a) Government order dated 8/11/2010, prescribing the guidelines for procurement of goods and services in Local Self Governments in the State. The main grievance of the appellants in these Writ Appeals is that, by Exhibit P4 Government order dated 5/6/2013, the Government of Kerala has permitted the 6th respondent Society to procure and distribute street lights, electrical fittings and other accessories required for Grama

panchayats by open tender, at rates lower than the current market rate. Further, the Government ordered that, Grama Panchayats in Malappuram, Kozhikode, Kannur and Kasaragod districts shall purchase street lights, electrical fittings and other accessories only from the 6th respondent Society.

9. Based on Exhibit P4 Government order, the 6th respondent Society issued Exhibit P5 tender notice, inviting sealed competitive tenders from the manufacturers/authorised suppliers, for the supply and installation of bulbs, tubes, electrical fittings and other accessories required for the street lighting programmes of Grama Panchayats in Malappuram, Kozhikode, Kannur and Kasaragod districts, for the year 2013-14 and 2014-15, on a running contract, for the period up to 2015. According to the appellants, the approximate cost of the items to be supplied as per Exhibit P5 tender notice comes to more than ₹12 crores.

10. A reading of Exhibit P3(a) Government order prescribing the guidelines for procurement of goods and services in Local Self Governments in the State would show that, the

Government felt the need for a separate guidelines for procurement of goods and services in Local Self Governments, since the provisions under the Stores Purchase Manual may not always fully suit the needs of Local Self Government, while implementing various schemes and projects as envisaged by them. It was accordingly, the Government issued the guidelines appended to Exhibit P3(a) Government order, in which the Government has made it clear that, all Local Self Government Institutions in the State will follow these guidelines in letter and spirit for procurement of goods and services by them in respect of the items covered by these guidelines. Exhibit P3(a) Government order further shows that, copy of the said guidelines was forwarded to the Accountant General (Audit), Kerala, with an endorsement that it is issued with the concurrence of Stores Purchase Department. Similarly, copy of the same was also forwarded to the Stores Purchase Department, referring to U.O. Note No.3045/A2/10/SPD dated 2/11/2010. Moreover, the specific stand taken by respondents 1 and 2 in the counter affidavit filed in W.P.(C)No.16661/2013 was that, there was in fact deliberations and discussions between Local Self Government Department and Stores Purchase Department, as contemplated under the Rules of Business of Government of Kerala issued by the Governor of Kerala under Clauses (2) and (3) of Article 166 of the Constitution of India before formulating the said guidelines. In such circumstances, contention to the contra raised by the appellants is absolutely untenable.

11. Going by the methods for procurement of goods envisaged under the guidelines appended to Exhibit P3(a), 'petty purchase' is permitted for contracts estimated to cost less than ₹5,000/-; 'local shopping' for contracts estimated to cost more than ₹5,000/- and less than ₹50,000/-; 'limited tendering' for contracts estimated to cost more than ₹50,000/- and less than ₹1,00,000/-; and 'open tendering' for contracts estimated to cost more than ₹1,00,000/-. In cases where purchases are through open tendering, a notification/advertisement should be published in widely circulated newspapers, one national English and one

Malayalam, and the cost of bid document will be ₹200/- for contracts estimated to cost up to ₹10,00,000/-; ₹500/- for contracts estimated to cost up to ₹20,00,000/-; and ₹1000/- for contracts valued above ₹20,00,000/-. As per the guidelines, the public opening of tenders and verification of tender security should be done in the presence of the representatives of the bidders and a member of the Local Self Government Social Audit Committee.

12. The objectives of the guidelines appended to Exhibit P3(a) is to enable Local Self Government Institutions to procure goods and services for its use, in the context of transfer of functions and functionaries. It is pertinent to note that, there is people's participation in various developmental activities undertaken by Local Self Government Institutions, as the Government have permitted the beneficiary groups to undertake various works at Local Self Government level. It was in such circumstances, the Government thought it fit to have a consolidated procurement manual for Local Self Government

Institutions in Kerala.

13. The appellants would contend that, the guidelines appended to Exhibit P3(a) is only in addition to the Stores Purchase Manual appended to Exhibit P7 Government order and it has not been issued in supersession of the said manual. The said guidelines is mainly concerned with the procurement process, methods for procurement, etc. Further, going by Annexure 19 to the Stores Purchase Manual, which contains the list of items reserved for exclusive purchase from the Micro, Small & Medium Enterprises, street light fittings is an item reserved for procurement from the Micro, Small and Medium Enterprises within the State and if not available within the State, from the Micro, Small and Medium Enterprises outside the State. We notice that, Para 1.6 of the revised Stores Purchase Manual appended to Exhibit P7 Government order makes it abundantly clear that, the manual contains the general rules applicable to all departments regarding purchase of stores required for use in the public service and in the case of Public Works, Irrigation, Forest,

Stationary, Police, Local Self Government Institutions and other special departments, the rules contained in the Stores Purchase Manual should be supplemented by the special rules contained in the codes and manuals of the departments concerned, like PWD Code, Forest Code, Stationary Manual, Police Manual, etc. Therefore, when the Government have formulated special guidelines exclusively for the Local Self Government Institutions, the general rules contained in the Stores Purchase Manual appended to Exhibit P7 have given way to the special rules contained in the guidelines appended to Exhibit P3(a).

14. It is not in dispute that, the 6th respondent Society was established in the year 1986, with Grama Panchayats in the State as its members, under the auspices of Panchayat Department, in order to undertake activities and implement schemes designed to promote the progress and welfare of rural people and to improve the employment potential for young men and women of rural areas. It is a Society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955,

with its activities extended to whole of Kerala. The President and Vice President of the Society are being appointed by the Government and the Director of Panchayats, Kerala, is the Ex-officio Managing Director of the Society. As evident from Exhibit P5(a) document relied on by the appellants, the 6th respondent Society is running printing press at Kanjikode in Palakkad district, from the year 1988 onwards, to print and supply the forms and registers required to the Panchayats, Municipalities and Municipal Corporations in the State and also to impart training in offset printing, binding, etc., to rural youths. Exhibit P5(a) would further show that, setting up of another printing unit by the 6th respondent Society at Kalliyoor in Thiruvnanthapuram district is under way and that, the society has proposed to set up a CFL fitting manufacturing unit at KINFRA Park, Kasaragode, to supply CFL and other electrical accessories to Grama Panchayats, Municipalities and Municipal Corporations in the State. In the counter affidavit filed on behalf of respondents 1 and 2, in W.P.(C)No.16661 of 2013, it has also been stated that, the two printing presses established by the Society during 1986 and 2010, one at Palakkad district and another at Thiruvnanthapuram district cater to the entire printing needs of all Local Self Government Institutions in the State.

15. Along with an interlocutory application filed on 11/9/2013 in W.P.(C)No.16661 of 2013, the Memorandum and Articles of Association of the 6th respondent Society has been produced as Exhibit R6(c). Going by para 2 of the Memorandum of Association, the main object of the Society is the welfare of the rural population of Kerala especially those who are financially poor, by providing educational facilities, vocational training and creating employment opportunities. As per clause (c) of para 2, one among the aims and objects of the Society is to assist, subsidise, co-ordinate and encourage the welfare activities undertaken by the Panchayats of Kerala for the benefit of rural population; and to create, or cause to be created, suitable infrastructural arrangements for such activities. The affidavit accompanying the said interlocutory application further states

that, at the time of formation of the Society all the 1000 Panchayats in the State where institutional members and were remitting yearly subscription. Some of the Panchayats became Municipality and some were included in the existing Municipalities. Now there are 978 Panchayats in the State and all the Panchayats are members of the Society and they are remitting subscription regularly. The affidavit further states that there is only few individual members in the society and no further individual membership is being issued.

16. Pursuant to an order passed by this Court dated 29/5/2014, the 2nd respondent has filed an affidavit dated 4/6/2014 in W.A.No.1649/2013, stating that the Government took a policy decision whereby it was decided that procurement of materials for street lighting programmes of Grama Panchayats should be made exclusively through the 6th respondent Society and as a first phase it was decided to implement the policy in the Grama Panchayats in Malappuram, Kozhikode, Kannur and Kasaragod districts. In Exhibit P4 Government order, the

application of the said policy was confined to four districts only, since the policy decision and the project are to be implemented in a phased manner and in due course it will be extended to areas in the other districts. In the first phase it was found that the procurement and distribution were beneficial and economical to Grama Panchayats in those districts and therefore, it was extended to Grama Panchayats in Palakkad, Wayanad and Thrissur districts, by Annexure I Government order dated 29/5/2014. It was also made clear in the said affidavit that, in areas where procurement is not through the 6th respondent Society, the same is being undertaken as before through SIDCO, which is another State owned agency, and as such no difficulty is being experienced by Grama Panchayats in other districts. For procurement and distribution of electrical goods, the 6th respondent Society has set up a massive godown facility on two acres of land taken on lease for 99 years, at KINFRA Industrial Estate, Kasaragode, and that is the reason why the first phase of implementation of the policy was confined to four northern districts in the State. The 6th respondent Society is taking earnest efforts to establish a central godown at Kochi. The 2nd respondent has reiterated in his affidavit dated 4/6/2014 that, the Government have decided as a matter of policy to extend the activities of the 6th respondent Society to the entire State and not to a portion of it.

17. Annexure III Government order dated 18/9/1986, produced along with the affidavit dated 4/6/2014 filed by the 2nd respondent in W.A.No.1649/2013 would show that, by the said order the Government approved the Memorandum and Articles of Association of the 6th respondent Society and the Director of Panchayats was directed to take further action to get the Society registered. Later by Annexure IV Government order dated 25/9/1986, sanction was accorded to the Grama Panchayats in the State to become members of the 6th respondent Society, by remitting an entrance fee of ₹5,000/- and an annual membership subscription of ₹500/-. Therefore, the documents on record clearly indicate that, the policies and decisions of the 6th

respondent Society are controlled and managed by the State Government and that the Government exercise deep and pervasive control over the affairs of the Society.

18. The documents on record would show that, before the issuance of Exhibit P4 order, the Government have directed the Director of Panchayats to submit a report on purchase of electric bulbs and electrical goods required for the street lights in Grama Panchayats and its distribution through the 6th respondent Society. Pursuant to the said direction, the Director of Panchayats has submitted a project report along with Annexure VI covering letter dated 27/4/2012. Going by the said project report, each Grama Panchayat is spending around 4 to 5 lakhs rupees per annum for street lights and electrical fittings. Once the Society enters the field, quality products at reasonable price can be supplied to Grama Panchayats. Moreover, Grama Panchayats can at any time place orders for electrical items, without any tender formalities, by which huge expenditure incurred by the respective Panchayats for publication of tender notifications can also be

avoided. Therefore, it was suggested in the said project report that, on a trial basis, the distribution in five districts, i.e., Kasargode, Kannur, Wayanad, Kozhikode and Palakkad can be started initially.

19. As we have already noticed, all the 978 Panchayats in the State are members of the 6th respondent Society. Annexure VII letter dated 22/11/2008 of the 6th respondent Society, addressed to the 2nd respondent, produced along with the affidavit filed by the 2nd respondent dated 4/6/2014 in W.A.No.1649/2013 would show that, in the meeting of the Board of Directors of the Society held on 8/11/2008 it was decided to submit the project report to the Government and to request the Government to issue appropriate orders to the effect that, electrical fittings required for Grama Panchayats in the State should be procured only through the Society. Annexure VIII letter dated 15/2/2012 of the 6th respondent Society addressed to the Minister for Panchayats and Social Welfare would further show that, the General Body and also the General Council of the

Society which met at Thiruvnanthapuram on 7/2/2012 resolved to procure bulbs and electrical fittings required for Grama Panchayats in the State and distribute it through the Society. Pursuant to the said decision, the Society submitted Annexure VIII letter requesting the Government to issue necessary orders to the effect that bulbs, electrical fitting and other accessories required for the street lights in all Grama Panchayats in the State should be purchased only through the 6th respondent Society. The decision taken by the General Body and the General Council of the 6th respondent Society, is nothing but the collective will of the member Panchayats and that being so, there is no question of the Government compelling the individual Grama Panchayats to procure materials from the 6th respondent Society. Therefore, the contention raised by the appellants is absolutely unsustainable.

20. Section 166 of the Kerala Panchayat Raj Act, 1994, deals with the powers, duties and functions of Village Panchayat. Going by Sub-section (1) of Section 166, it shall be the duty of the Village Panchayat to meet the requirements of the Village

Panchayath area in respect of the matters enumerated in the 3rd schedule to the Act. Going by the 3rd Schedule, street lighting and its maintenance is one among the mandatory functions of Village Panchayats. Section 176B of the Act deals with provision for lighting public streets. Going by Sub-section (1) of Section 176B, a Village Panchayat shall cause all public streets in its area to be lighted and for that purpose shall provide such lamps and works as may be necessary. As per Sub-section (2) of the said Section, for the purpose of Sub-section (1) the Kerala State Electricity Board shall provide necessary electrical energy and other technical assistance to the Village Panchayat at the rates fixed by the Government and on such other terms as prescribed. Sub-section (3) of the said Section provides that, notwithstanding anything contained in Sub-section (1) the Government may in consultation with the Village Panchayath arrange a lighting system on any public streets through an agency approved by the Government. Sub-section (4) provides further that, notwithstanding anything contained in Section 176B, a Village

Panchayat or any other Local Self Government Institutions may jointly arrange and maintain a street lighting system. Section 189 of the Act deals with general power of Government to issue guidelines and to conduct enquiry. Going by Sub-section (1) of Section 189, notwithstanding anything contained in the Act, the Government shall have the power to issue general guidelines to the Panchayats in accordance with the National and State policies in the matters such as finance, maintenance of accounts, office management, formulation of schemes, selection of sites and beneficiaries, proper functioning of Grama Sabha, welfare programmes and environmental regulations and the Panchayats shall comply with such directions. Therefore, the Government was well within its powers in issuing Exhibit P4 order approving the 6th respondent Society as an agency in terms of Sub-section (3) of Section 176B of the said Act. As we have already noticed, the decision taken by the General Body and the General Council of the 6th respondent Society, to procure bulbs and electrical fittings required for Grama Panchayats in the State and distribute it through the Society and to request the Government to issue necessary orders in this regard, is nothing but the collective will of the member Panchayats. If that be so, by Exhibit P4, Government was only endorsing the collective decision taken by the Grama Panchayats. Therefore, the contentions to the contra raised by the appellants cannot be accepted. We also notice that, if at all anyone is affected by Exhibit P4, it is only the Grama Panchayats and none of the Grama Panchayats in the State have chosen to challenge Exhibit P4 Government order or Exhibit P5 tender notice issued by the 6th respondent Society.

21. The Kerala Panchayat Raj (Contract) Rules, 1996, was issued by the Government of Kerala in exercise of the powers conferred by Clause (ix) of Sub-section (2) of Section 254 of the Act, which deals with the power of Government to make rules as to the conditions on which and the method by which contracts may be made by or on behalf of the Panchayath. Rule 3 deals with general conditions in respect of contracts and going by Sub-rule (1) a Panchayat may enter into and perform all contracts

that it deems necessary or proper for implementing the provisions of the Act. The Kerala Panchayath Raj (Execution of Public Works) Rules, 1997, were issued by the Government of Kerala in exercise of the powers conferred by Clause (xi) of Sub-section (2) of Section 254 of the Act, which deals with the power of the Government to make rules as to the preparation of plans and estimates for works and the power of Panchayats and of officers of the Central or State Government to accord technical or administrative sanction to estimates. Rule 16 of the said Rules deals with the procedure for securing supplies of materials and goods for the work. Going by Sub-rule (1) of Rule 16, no purchase of materials and goods to a Panchayat shall be made unless allotment of funds therefor has been made and administrative sanction is accorded by the authority competent to accord sanction under Rule 4. Rules 8, 9 and 10 of the Rules deal with invitation of tenders, publication of tender notice and acceptance of tenders. As per Sub-rule (2) of Rule 16, the provisions in Rules 8, 9 and 10 shall be as such followed in the purchase of any materials and goods by a Panchayat. But, going by Clause (a) to the proviso to Sub-rule (2) of Rule 16, the procedures laid down in Rules 8, 9 and 10 may be dispensed with in cases of purchase of materials and goods from the institutions, owned or controlled by the Central or State Government. As we have already noticed, the policies and decisions of the 6th respondent Society are controlled and managed by the State Government and that the Government exercise deep and pervasive control over the affairs of the Society. If that be so, the purchase of materials by the Grama Panchayats from the 6th respondent Society squarely falls within the sweep of Clause (a) to the proviso to Sub-rule (2) of Rule 16.

22. The appellants would contend that, power and authority have been conferred on the Local Self Government Institutions under the Kerala Panchayat Raj Act, 1994, for its self governance and if Exhibit P4 Government order is permitted to stand it would defeat the very object of decentralisation of power. The appellants would also contend that, Exhibit P4 Government

order is contrary to the provisions contained in the aforesaid Act and the Rules made thereunder. In **Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Co-operative Housing Society, Jaipur and others (2013 (5) SCC 427)** the Apex Court held that, Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced. [Vide: B. N. Nagarajan and others, etc. v. State of Mysore and others etc. (AIR 1966 SC 1942); Sant Ram Sharma v. State of Rajasthan and others (AIR 1967 SC 1910); Secretary, State of Karnataka and others v. Umadevi and others (AIR 2006 SC 1809); and Mahadeo Bhau Khilare (Mane) and others v. State of Maharashtra and others (2007 (5) SCC 524)]. In **State of Jharkhand and others v. Jitendra Kumar Srivastava and another (2013 (12) SCC 210)** the Apex Court held that, though the administration can issue administrative instructions for the smooth administrative function, such administrative instructions cannot supplant the rules. However, these administrative instructions can supplement the statutory rules by taking care of those situations where the statutory rules are silent.

23. In **Joint Action Committee of Airlines Pilots Associations of India and others v. Director General of Civil Aviation and others** (**2011 (5) SCC 435)** the Apex Court held that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner. But, in para 29 of the judgment, the Apex Court further held that, the exercise of power is always referable to the source of power and must be considered in conjunction with it. Paragraphs 28 and 29 of the judgment read thus;

> "**28.** In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.
>
> **29.** It cannot be said that the Circular dated 29.5.2008

was either issued illegally or without any authority. Admittedly, the DGCA is competent to issue special directions and the same had been issued by him, though may be with the consultation of some other authorities. However, it cannot be denied that the DGCA was involved in the process. The authority which had been in consultation with the DGCA had been provided for under the business rules and it cannot be held by any stretch of imagination that the Ministry of Civil Aviation is not an authority concerned with the safety measures involved herein. The authorities are competent to issue the said regulations. Exercise of the power is always referable to the source of power and must be considered in conjunction with it. In view of the fact that the source of power exists, there is no occasion for the Court to link the exercise of power to another source which may invalidate the exercise of power."

24. In **Dipak Babaria v. State of Gujarat (2014 (3) SCC 502)** the Apex Court held that, if the law requires a particular thing should be done in a particular manner it must be done in that way and none other. Further, the State cannot ignore the policy intent and the procedure contemplated by the statute. Paragraph 72 of the judgment reads thus;

"**72.** In our view, considering the scheme of the act, the process of industrialization must take place in accordance therewith. As stated earlier if the law requires a particular thing should be done in a particular manner it must be done in that way and none other. The State cannot ignore the policy intent and the procedure contemplated by the statute. In the instant case, the State could have acquired the land, and then either by auction or by considering the merit of the proposal of respondent No.5 allotted it to respondent No.5. Assuming that the application of the Respondent No 5 was for a bona - fide purpose, the same had to be examined by the industrial commissioner, to begin with, and thereafter it should have gone to the collector. After the property vests in the Government, even if there were other bidders to the property, the collector could have considered the merits and the bona - fides of the application of Respondent No. 5, and nothing would have prevented him from following the course which is permissible under the law. It is not merely the end but the means which are of equal importance, particularly if they are enshrined in the legislative scheme. The minimum that was required was an enquiry at the level of the Collector who is the statutory authority. Dictating him to act in a particular manner on the assumption by the Minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The Ministers are not expected to act in this manner and therefore, this particular route through the corridors of the Ministry, contrary to the statute, cannot be approved. The

> present case is clearly one of dereliction of his duties by the Collector and dictation by the Minister, showing nothing but arrogance of power."

In the case on hand, the Government was well within its powers under Sub-section (3) of Section 176B, read with Sub-section (1) of Section 189 of the Act, in issuing Exhibit P4 order approving the 6th respondent Society as an agency for arranging street lighting on public streets in Grama Panchayats. As we have already noticed, the decision taken by the General Body and the General Council of the 6th respondent Society, to procure bulbs and electrical fittings required for Grama Panchayats in the State and distribute it through the Society and to request the Government to issue necessary orders in this regard, is nothing but the collective will of the member Panchayats. Therefore, the contentions to the contra raised by the appellants are also untenable.

25. The specific stand taken by respondents 1 and 2 in their counter affidavit filed in W.P.(C)No.16661 of 2013 is that, going by the provisions contained in the Kerala Panchayat Raj

Act, 1994, it is the mandatory duty of the Grama Panchayats to implement street lighting programmes and that, the property tax levied by the Grama Panchayats are mainly utilised for the purchase of electrical items required for street lighting. Till the issuance of Exhibit P4 Government order, the practice followed by various Grama Panchayats was that, each Panchayat will publish tender notices in the leading dailies, incurring huge expenditure towards advertisement charges. Further, the quality of the items procured by Grama Panchayats are of poor quality, at relatively higher prices. In such circumstances, it was decided in Exhibit P4 to procure electrical items through the 6^{th} respondent Society, by a common tendering process and supply such items at a subsidised rate to Grama Panchayats in Malappuram, Kozhikode, Kannur and Kasaragod districts, on an experimental basis.

26. Under Article 19(1)(g) of the Constitution of India, all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. Going by Clause (6) Sub-clause (ii) of Article 19 of the Constitution, nothing in Sub-clause

(g) of Clause (1) of Article 19 shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the general public, a reasonable restriction on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, all citizens or otherwise.

27. In **Krishnan v. Government of Kerala (1997 (9) SCC 495)** the Apex Court upheld the constitutional validity of a circular issued by the Government of Kerala, whereby it was ordered that for distribution of pump sets under Comprehensive Coconut Development Programme and other similar schemes of the Agriculture Department, two co-operative institutions will arrange supplies in various districts. This was challenged on the

ground of violation of Articles 14 and 19(1)(g) of the Constitution of India. The Apex Court held that, the reasonableness of restriction is to be determined in an objective manner and from the stand point of the interests of general public and not from the stand point of the interests of the persons upon whom the restrictions are imposed. It was also held that the impugned circular does not result in any absolute restriction on the right of the parties for doing their business. Paragraphs 34 to 37 of the judgment read thus;

> "**34.** It has already been indicated that in Vikalad's case (supra), it has been held by this Court that infringement of fundamental right under Article 19(1)(g) must have a direct impact on the restriction on the freedom to carry on trade and not ancillary or incidental effects on such freedom to trade arising out of any governmental action. It has also been held in that case that unless the trader or merchant is not wholly denied to carry on his trade, the restriction imposed in denying the allotment of wagon in favour of such trader or merchant to transport coal for carrying out trading activities does not offend Article 19(1)(g) of the Constitution. No restriction has been imposed on the trading activity of dealer in pump sets in the State of Kerala including northern region comprising eight districts. Even in

such area, a dealer is free to carry on his business. Such dealer, even in the absence of the said circular, cannot claim as a matter of fundamental right guaranteed under Article 19(1)(g) that a farmer or agriculturist must enter into a business deal with such trader in the matter of purchase of pump sets. Similarly, such trader also cannot claim that the Government should also accept him as an approved dealer of the Government. The trading activity in dealership of pump sets has not been stopped or even controlled or regulated generally. The dealer can deal with purchaser of pump sets without any control imposed on it to carry on such business. The obligation to purchase from approved dealer has been fastened only to such farmer or agriculturist who has volunteered to accept financial assistance under the scheme on various terms and conditions.

35. In our view, the impugned circular does not offend Article 14 of the Constitution. The direction contained in said circular cannot be held to be vitiated being arbitrary, capricious or unreasonable. The impugned circular specifically mentions that in order to implement the schemes introduced by the Government for streamlining specific rules and responsibilities of different agencies involved, the directions contained in the circular have been given. It has been placed on record that it was brought to the notice of the agricultural department of the State Government that false invoices had been issued by dealers without effecting actual sales with a view to draw loans, subsidies and other financial benefits from the Government. Reports were published in newspapers about wide spread manipulation and irregularities in the activities of various dealers in the pump sets. It is also not in dispute that RAIDCO is only government controlled Cooperative Society in the State of which eighty per cent capital was subscribed by the Government. The other approved dealer KAICO is also a Cooperative Society involved in dealership of pump sets. If the State Government on consideration of such facts and circumstances and to ensure genuine sales of pump sets at proper price with effective after sales service has felt that farmers covered by financial assistance scheme should be fastened with an obligation to purchase pump sets only from approved dealers in a region where according to State Government there is a felt need of purchase from such approved dealers, it cannot be held that such action of the State Government lies in its ipsi dixit, without being informed by any reason.

36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision can not be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionally, court should avoid "embarking on uncharted ocean of public policy".

37. The contention that the impugned circular suffers from hostile discrimination meted out to the farmers in northern region of the State covered by the financial assistance under the Governmental schemes, by fastening such assistance with an obligation to purchase pump sets only from the two approved dealers, cannot be accepted in the facts of the case. The reasons for fastening the farmers of northern region with the obligation to purchase pump sets from the said two dealers have been indicated by Mr. Bhat and Mr. Gupta and in our view, it cannot be held that such reasoning suffers from lack of objectivity. The law is well settled that even in the matter of grant of largese, award of job contracts etc. the Government is permitted to depart from the general norms set down by it, in favour of particular group of persons by subjecting such persons with different standard or norm, if such departure is not arbitrary but based on some valid principle which in itself is not irrational, unreasonable or discriminatory [Dayaram Shetty's case (supra)]."

28. It is well settled legal proposition that policy decision taken by the State Government or its instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable or in contravention of the statutory provisions or violates the fundamental rights of individuals guaranteed under the Constitution of India. In T**amil Nadu Education Department Ministerial and General Subordinate Services Association v. State of Tamil Nadu and others (AIR 1980 SC 379)** the Apex Court held as follows; "Once the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hand-off policy." In **Sterling Computers Ltd. v. M/s. M & N Publications Ltd. and others (AIR 1996 SC 51)** it was held as follows; "It is not possible for Courts to question and adjudicate

every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of play in the joints to the executive … . On the basis of those judgments it cannot be urged that the Court has left to the option of the authorities concerned whether to invite tenders or not according to their own discretion and to award contracts ignoring the procedures which are basis in nature, taking into account factors which are not only irrelevant but detrimental to the public interest." In **Ugar Sugar Works Ltd. v. Delhi Administration and others (2001 (3) SCC 635)** it has been held that, in exercise of their power of judicial review, the Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and mala fide render the policy unconstitutional. However, if the policy cannot be touched on any of these grounds, the mere fact that it may affect business interests of a party does not justify invalidating the policy. [See also Balco Employees' Union (Regd.) v. Union of India and others (AIR 2002 SC 350) and Federation of Railway Officers Association v. Union of India (2003 (4) SCC 289)]

29. In **Achuthan v. State of Kerala (AIR 1959 SC 490)** the Apex Court held that, it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking,

to fulfil contract which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Article 14, because the choice of the person to fulfil a particular contract must be left to the Government. The Apex Court further held that, in a contract which is held from a private party, the breach of the contract, if any, may entitle the person aggrieved to sue for damages or in appropriate cases, even specific performance, but he cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation, trade or business, such as is contemplated by Article 19(1)(g). Paragraph 8 of the judgment reads thus;

> "**8.** The gist of the present matter is the breach, if any, of the contract said to have been given to the petitioner which has been cancelled either for good or bad reasons. There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfil contract which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Article 14, because the choice of the person to fulfil a particular

> contract must be left to the Government. Similarly, in a contract which is held from a private party, the breach of the contract, if any, may entitle the person aggrieved to sue for damages or in appropriate cases, even specific performance, but he cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation, trade or business, such as is contemplated by Article 19(1)(g). Nor has it been shown how Article 31 of the Constitution may be invoked to prevent cancellation of a contract in exercise of powers conferred by one of the terms of the contract itself."

30. In **Indian Drugs and Pharm. Ltd. v. Punjab Drugs Manufacturers Association (1999 (6) SCC 247)** the Apex Court held that, monopoly as contemplated under Article 19(6) of the Constitution is something to the total exclusion of others. Creation of a small captive market in favour of a State owned undertaking out of a larger market can hardly be termed as creation of monopoly as contemplated under Article 19(6) of the Constitution. Paragraphs 8 to 10 and 16 of the judgment read thus;

> "**8.** We have perused the impugned policy whereby the State Government had directed the authorities concerned to

purchase certain medicines only from public sector undertakings or their dealers. In our opinion, the impugned policy only directs that certain drugs are to be purchased from the specified manufacturers. This does not preclude the other manufacturers or their dealers from either manufacturing or selling their products to other customers. It is of common knowledge that the requirement of drugs is not the need of the Government hospitals and dispensaries only. As a matter of fact, the need of the Government hospitals and dispensaries must be only a fraction of the actual demand in the market which demand is open to be met by the manufacturers like the appellants. Monopoly as contemplated under Article 19(6) of the Constitution is something to the total exclusion of others. Creation of a small captive market in favour of a State owned undertaking out of a larger market can hardly be termed as creation of monopoly as contemplated under Article 19(6) of the Constitution, more so because this captive market consists only of State owned hospitals and dispensaries. Thus, on facts, we agree with the High Court that there is no monopoly created by the impugned policy. We are supported in this view of ours by a catena of decisions of this Court.

9. A Constitution Bench of this Court in the case of Rai Sahib Ram Jawaya Kapur and Others V. The State of Punjab (1955 (2) SCR 225) while dealing with similar restrictions imposed by the State on the purchase of text books held that a publisher did not have the right to insist on any of their books being accepted as text books. This Court held :

"So the utmost that could be said is that there was merely a chance or prospect of any or some of their books being approved as text books by the Government. Such chances are incidental to all trades and businesses and there is no fundamental right guaranteeing them. A trader might be lucky in securing a particular market for his goods but he loses that field because the particular customers for some reason or other do not choose to buy goods from him, it is not open to him to say that it was his fundamental right to have his old customers for ever."

Further, while negativing the contention of the petitioners in that case based on Article 19(1)(g) of the Constitution, the Court came to the conclusion that the question whether the Government could establish a monopoly without any legislation under Article 19(1)(6) of the Constitution is altogether immaterial.

10. In Naraindass Indurkhya v. The State of M.P. and Others (1974 (4) SCC 788) another Constitution Bench of this Court held following the judgment in Rai Sahib Ram Jawaya Kapur's case (supra) that there is no right in a publisher that any of the books printed and published by him should be prescribed as text books by the school authorities or if they are once accepted as text books they cannot be stopped or discontinued in future. As a matter of fact, in the said case, this Court approved the action of the

State in restricting the sale of text books not only to the State run schools but also all other institutions which sought recognition from the Government, on the ground that one of the main conditions on which recognition is granted by the State Government is that the school authorities must use as text books only those which are prescribed or authorised by the State Government. In this case as well as in Ram Jawaya's case (supra), the Court further accepted the authority of the State to issue directions restricting the sale of the text books by an executive order under Article 162 of the Constitution on the basis that the executive power of the State extends to all matters with respect to which the State Legislature has power to make law and in the absence of there being any law, the said field could be covered by an executive action.

xxx xxx xxx

16. It is clear from the various judgments referred to above that a decision which would partially affect the sale prospects of a company, cannot be equated with creation of monopoly. In Ram Jawaya Kapur's and Naraindass's cases (supra) the Constitution Bench also held that the policy restrictions, as discussed above, can be imposed by exercise of executive power of the State under Article 162 of the Constitution. Therefore, the contention of the appellants in regard to creation of monopoly and violation of the fundamental right under Article 19(1)(g) and 19(6) should fail. The judgments cited above also show that preference shown to cooperative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution. We have noted above that this Court in the cases of. Oil & Natural Gas Commission & Anr. V. Association of Natural Gas Consuming Industries of Gujarat and Others (1990 Supp. SCC 397), Krishnan Kakkanth (supra) and Hindustan Paper Corpn. Ltd. v. Government of Kerala and Others (1986 (3) SCC 398) has held that the preference shown to cooperative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution."

31. In the case on hand, the Government took a policy decision to the effect that procurement of materials for street lighting programmes of Grama Panchayats in the State should be made exclusively through the 6th respondent Society and as first phase it was decided to implement the policy in the Grama Panchayats in Malappuram, Kozhikode, Kannur and Kasaragod districts. Under the new policy, Grama Panchayats can at any time place orders for electrical items before the 6th respondent Society, without any tender formalities, by which huge

expenditure incurred by the respective Panchayats on publication of tender notifications can be avoided. Further, quality products at reasonable price can be supplied to Grama Panchayats. In the first phase it was found that the procurement and distribution were beneficial and economical to Grama Panchayats in those districts and therefore, it was extended to Grama Panchayats in Palakkad, Wayanad and Thrissur districts, by Annexure I Government order. In areas where procurement is not through the 6^{th} respondent Society, the same is being undertaken as before through SIDCO. As we have already noticed, the policy decision taken by the Government in Exhibit P4 is not in contravention of the statutory provisions. There is total dearth of material to conclude that the said policy decision is either arbitrary or unreasonable. Further, creation of a small captive market in favour of a State controlled institution out of a larger market can hardly be termed as creation of monopoly or a Governmental action in violation of the fundamental right guaranteed to the appellants under Articles 14 or 19(1)(g) of the

Constitution of India. Therefore, the challenge made against the policy decision in Exhibit P4 Government order and Exhibit P5 tender notice issued by the 6th respondent Society can only be repelled.

32. The appellants would contend that, as a matter of fact, majority of SSI units in the State are not financially sound to spend ₹25,000/- for purchasing the tender documents and also to furnish EMD at 1% of the total cost of the items quoted. But we notice that, vide G.O.(P)No.540/2008/Fin. dated 1/12/2008, the Government have enhanced the cost of tender forms for the works and supplies of all departments in Government with immediate effect. Pursuant to the said order, the Government vide G.O.(P)No.1/2009/SPD dated 8/1/2009 revised the cost of tender forms, by amending Para 21(a) of the Stores Purchase Manuel. After the said revision, for tenders in which the estimated cost of the materials is above ₹10 lakhs, the cost of original tender form will be 0.15% of the cost of tender rounded to the nearest multiple of 100, subject to a maximum of

₹25,000/- plus VAT at the rate of 12.5%.

33. The appellants would contend that, out of the eight participants in the tender process pursuant to Exhibit P5, four are sister concerns and three are traders and that, no single industrial unit in the State of Kerala including the Add. 7th respondent is manufacturing all the items in the said tender notice. Going by the averments in the counter affidavit filed by the 6th respondent Society, the estimated demand for street light fittings by Local Self Government Institutions is around ₹30 to 50 crores per year. These items procured by each Local Self Government Institutions after incurring huge advertisement charges are of poor quality and at relatively high prices. It was in such circumstances, the Government issued Exhibit P4 to procure street light fittings and other accessories by a common tender process and to supply it to the Local Self Government Institutions which are the members of the 6th respondent Society. Therefore, the 6th respondent would contend that, the Government issued Exhibit P4 to safeguard the very interest of the member

institutions and the public at large. Pursuant to Exhibit P5 tender notice, the 6th respondent Society received tenders from eight SSI Units and the appellants in these writ appeals did not submit any tender pursuant to the said tender notice. Relying on Exhibit R6(b) Government letter dated 20/10/2011, the 6th respondent Society would contend that, there is no Government order for effecting supply of electrical items directly to the Local Self Government Institutions/Panchayats/Municipalities and Corporations without following the tender formalities. Though the appellants in their reply affidavit to the counter affidavit filed by the 6th respondent Society has specifically contended that, out of the eight participants in the tender process, four are sister concerns and three are traders and that, no single industrial unit in the State of Kerala including the Add. 7th respondent is manufacturing all the items in Exhibit P5 tender notice, neither the 6th respondent Society nor the Add. 7th respondent has chosen to dispute the said allegation by filing an affidavit.

34. The Addl. 7th respondent is the sole proprietor of M/s.

Usha Electronic Systems, Palakkad, which was the lowest bidder among the eight tenderers participated in the tender process pursuant to Exhibit P5 tender notice issued by the 6th respondent Society. Going by the averments in the counter affidavit filed by the Add. 7th respondent, M/s. Usha Electronic Systems is an ISO 9001-2008 certified concern established in 2009 and registered as an SSI Unit under the Department of Industries, Government of Kerala, which has set up a manufacturing facility at Koottanad in Palakkad district. Exhibit R7(1) acknowledgment issued by the Manager, District Industries Center, Palakkad, dated 14/9/2009, would show that the Addl. 7th respondent has filed memorandum of an enterprise manufacturing street light fittings, indicating that CLF street light manufacturing activity with a capacity of 50,000 lights was commenced in his SSI Unit on 21.8.2009. Exhibit R7 (1) acknowledgment would further indicate that, the unit is having the capacity to manufacture 10,000 fluorescent fixtures, LED street lights and also 10,000 accessories, chokes, lamps, etc., but the initial date of production of these items is not indicated in Exhibit R7(1). Exhibit R7(3) is the certificate of registration dated 23/9/2009 issued under the Kerala Value Added Tax Rules, 2005. But, the list attached to the said certificate of registration containing the description of goods dealt with, is conspicuously absent. Exhibit R7(4) certificate would show that M/s. Usha Electronics Systems, Palakkad, has been presented with Kerala State Energy Conservation Commendation Certificate-2012, on 14/12/2012, in the category of manufacturers of energy efficient equipment in the State of Kerala during 2011-2012.

35. Though the Addl. 7th respondent would contend that he has set up manufacturing facility having dedicated assembly lines with capacity to produce street light fittings besides other products, there is not even a scrap of paper to show that his SSI Unit is having the capacity to manufacture anything except CFL street lights. Even for CFL street lights, the only document which has been produced by them is Exhibit R7(1) acknowledgment issued by the Manager, District Industries Center, Palakkad. The

Addl. 7th respondent has not chosen to deny the specific allegations made in the reply affidavit filed by the writ petitioners in W.P.(C)No.16661/2013 that, he is not manufacturing all the items shown in Exhibit P5 tender notice and that, out of the eight tenderers M/s. Usha Electronics Systems and M/s. Usha Electronics Lights are sister concerns. Further, the Addl. 7th respondent has also not chosen to produce any documents to show that, M/s. Usha Electronics Systems is an authorised supplier for bulbs, tubes and other electrical materials. We also notice that, neither the official respondents nor the 6th respondent Society have chosen to deny the specific allegation made by the writ petitioners in W.P.(C)No.16661/2013 that among the eight tenderers M/s. Usha Electronics Systems is the sister concern of M/s. Usha Electronics Lights and M/s. Ammini Solar Private Limited is the sister concern of M/s. Ammini Energy Systems Private Limited.

36. The Addl. 7th respondent would contend that, he quoted lowest price for all the items included in Exhibit P5 tender

notice and that, so far there are no complaints from the Grama Panchayats on the electrical items supplied by him. A reading of Exhibit P3 circular issued by the Government would make it clear that, the intention behind the issuance of such a circular was that, the Local Self Government Institutions and other public sector undertakings should purchase the electrical fittings manufactured by the SSI Units in the State. The responsibility to ensure the quality of the electrical fittings supplied and fix standard rates for such items was entrusted to SIDCO. But, the very object of the said circular would be defeated if the electrical fittings supplied by the SSI Units are manufactured by other industrial units outside the State. In the case on hand, there is not even a scrap of paper to show that the SSI Unit run by the Addl. 7th respondent is having the capacity to manufacture anything except CFL street lights.

37. It is not in dispute that, the industrial policy of the State is to encourage SSI Units so as to generate employment opportunities within the State. In the case of products like light

fittings and other accessories the products manufactured by all SSI Units in the State for domestic and non-domestic use should conform to ISI specifications. Section 3 of the Electrical Wires, Cables, Appliances and Protection Devices and Accessories (Quality Control) Order, 2003, issued under Section 14 of the Bureau of Indian Standards Act, 1986 prohibits manufacture, storage, sale or distribution of electrical wires, cables, appliances, protection devices and accessories which do not conform to the specified standards and which do not bear Standard Mark of the Bureau of Indian Standards on obtaining certification marks license.

38. By Ext.P5, tenders were invited from the manufacturers/autorised suppliers for supply of bulbs, tubes and electrial materials of ISI/ISO specification for the street lighting programcmes of the Grama Panchayats of Malappuram, Kozhikode, Kannur and Kasargod districts. The Addl.7th respondent has no case that his SSI Unit has the capacity to manufacture all the items included in Ext.P5 tender notice. When

the intention of the Government in issuing Ext.P3 circular is to ensure that the Local Self Government Institutions and other public sector undertakings should purchase electrical fittings manufactured by SSI Units in the State, the Addl.7th respondent who is not a manufacturer of all the items included in Ext.P5 tender notice should not have been awarded tender for all such items pursuant to the said tender notice. Though the appellants have contended that the Addl.7th respondent is not manufacturing all the items included in Ext.P5 tender notice, they have not chosen to amend the Writ Petition in order to challenge the award of tender in his favour.

In the result, these Writ Appeals are dismissed, affirming the impugned judgment of the learned Single Judge.

Sd/-
ANTONY DOMINIC, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

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