

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.Nos.13702 & 14241 of 2015
and
respective M.Ps

W.P.No.13702/2015:

K.Manoharan

... Petitioner

-Vs-

1. Chennai Metro Water Supply & Sewerage Board
rep by its Managing Director,
No.1, Pumping Station Road,
Chintadiripet, Chennai - 600 002.
2. The Superintending Engineer,
Contracts and Monitoring,
Chennai Metropolitan Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chintadiripet,
Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified Mandamus To call for the records for the impugned tender notice in reference DIPR/1807/ Tender/2015 on the file of the 2nd Respondent inviting sealed tenders for the works of Outstanding of Operation & Maintenance of following Sewage Pumping stations and allied works in Area-I to Area-XIV for a period of three years to quash the same and direct the 2nd Respondent to revise the tender monetary value split the nature of work and its equal monetary value.

W.P.No.14241/2015:

Chennai Metro Water Contractors
Association rep by its
President K. Elumalai,
Plot No.69, Vivekananda Nagar,
Annexe, Kolathur,
Chennai - 600 099.

... Petitioner

-Vs-

1. The Principal Secretary,
Municipal Administration and Water Supply Department
St. George Fort, Secretariat,
Chennai - 600 009.
2. The Chairman
Chennai Metropolitan Water Supply and
Sewerage Board,
Chindadripet, Chennai - 600 002.
3. The Managing Director
Chennai Metropolitan Water Supply and
Sewerage Board,
Chindadripet, Chennai - 600 002.
4. The Engineering Director,
Chennai Metropolitan Water Supply and
Sewerage Board, 4th Floor,
Chindadripet, Chennai - 600 002.
5. The Chief Engineering (O & M)
Chennai Metropolitan Water Supply and
Sewerage Board, 4th Floor,
Chindadripet, Chennai - 600 002.
6. The Superintending Engineer,
Contacts and Monitoring,
Chennai Metropolitan Water Supply and
Sewerage Board, 4th Floor,
Chindadripet, Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from receiving any tenders from Class-IB Contractors by clubbing of 33 packages as single works at Chennai in contract No. CNT/ SCW/ MWB/ 2614/2015-16 to CNT/SCW/MWB/2646/2015-16 for the outsourcing of Operation and Maintenance of Sewerage Pumping Station and allied works in area I to XIV by the 6th respondent CMWSSB under Single Cover System which is not confirming to the Tamil Nadu Transparency in Tenders Act, 1988.

W.P.No.13702/2015:

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondents : Mr.V.Perumal

W.P.No.14241/2015:

For Petitioner

: Mr.R.Karunagaran

For Respondents

: Mr.V.Perumal (R2 to R6)

Mr.M.Dig Vijay Pandian,

Additional Government Pleader (R1)

C O M M O N O R D E R

W.P.No.13702 of 2015 has been filed by the petitioner, who is Class 2 to 5 Contractor. W.P.No.14241 of 2015 has been filed by the association consisting of Class 2 to 5 Contractors. Though different prayers have been sought for, the grievance is similar.

2.Before considering the grievance of the petitioners, the factual background governing the case is as follows:

There are two categories of contractors registered with the respondents viz., Category A & B. Category A deals with Civil and Pipe laying works and Category B deals with electrical and mechanical works, which category has been divided into 5 classes starting from Class I to V depending upon the monetary capability. This Court is concerned with Category B meant for electrical and mechanical works. Earlier, tenders have been called for annual rate contract for operation and maintenance of sewage pumping stations. Usually the period is fixed for one year. Now, a decision has been made by the Board calling for tenders by inclusion of automation, improvement works and operation and maintenance of the existing sewage pumping station for three years. This was conceived to overcome the difficulty/lapses experienced in the existing on going contract. It was also decided to have for the present tenders by taking into consideration the financial and administrative advantages to the Board, apart from operational requirements. Accordingly, the eligibility for participation in these above 33 packages have been fixed as per the Board norms based upon the value of the works to be carried out in each package, which would come under Class 1B. The petitioners admittedly come under Class 2 to 5 and not Class 1B and want themselves to be made eligible along with Class 1B.

3.Challenge has been made, in these Writ Petitions, on the ground that exclusion of the petitioners would be arbitrary, malafide and unreasonable and violation of Article 14 of the Constitution of India.

4.The petitioners cannot seek as a matter of right that they should be allowed to participate in the tender process along with Class 1B contractors. When a conscious decision has been taken by

the Board by taking into consideration the relevant materials, the said decision is not one for judicial review as stands arbitrary or malafide.

5. Coming to malafide, this Court does not find any legal malice or malice in fact. It is for the person, who alleges so, to establish the same. Merely because the petitioners state that their exclusion would affect them, the same cannot be a ground to interfere in the administrative decision made considering all the relevant materials in public interest. When private interest is put against public interest, naturally, public interest would have to be taken into consideration, particularly, in a matter of awarding the contracts. The eligibility has been fixed based upon the value of work to facilitate the operation and maintenance with minimum expenditure to provide uninterrupted service to the public. The pumping stations have been grouped based on the operational requirements. Therefore, the petitioners' case that less number of pumping stations would be grouped for lesser years without operational requirements and automation cannot be accepted. There is no dispute on the fact that the petitioners are coming under Class 2 to 5 contractors. While the definition of arbitrariness and unreasonableness for the alleged violation of Article 14, it has to be seen that classification made by an authority under Article 12 as got nexus to the object sought to be achieved. Class 1 contractors form a group of their own.

6. The respondents submitted that it is only the said Class of contractors alone can do it. The fixation of value of the tender lies exclusive with the respondents and therefore, the Court shall not make any endeavour to go into the same as held by the Hon'ble Apex Court in *Jespar I. Slong Vs. State of Meghalaya & Others* (2004) 11 SCC 485, as follows:

"17. ... fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable..."

7. Coming to the power of judicial review, it has been repeatedly held by the Apex Court in the *Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others* [2000 (5) SEC 287]; *Directorate of Education & Others Vs. Educomp Datamatics Ltd. & Others*; *Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others*, (2012) 8 Supreme Court Cases 216; *Tata Cellular Vs. Union of India*, (1994) 6 SCC 651; *Association of Registration Plates Vs. Union of India & Others*, (2005) 1 SCC 679 and *Tejas Constructions & Infrastructure Pvt Ltd Vs. Municipal Council, Sendhwa & Another*, (2012) 6 SCC 464, that this Court shall

not interfere with the decision made by an authority, unless any violation of Article 14 is demonstrated.

8.Thus, this Court does not find any reason to interfere with the decision made by the respondents on a conscious consideration of the materials available before them.

9.Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Municipal Administration and Water Supply Department
St. George Fort, Secretariat,
Chennai - 600 009.
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Contacts and Monitoring,
Chennai Metropolitan Water Supply and
Sewerage Board, 4th Floor,
Chindadripet, Chennai - 600 002.

+1cc to Mr.V.Perumal, Advocate, S.R.No.46715

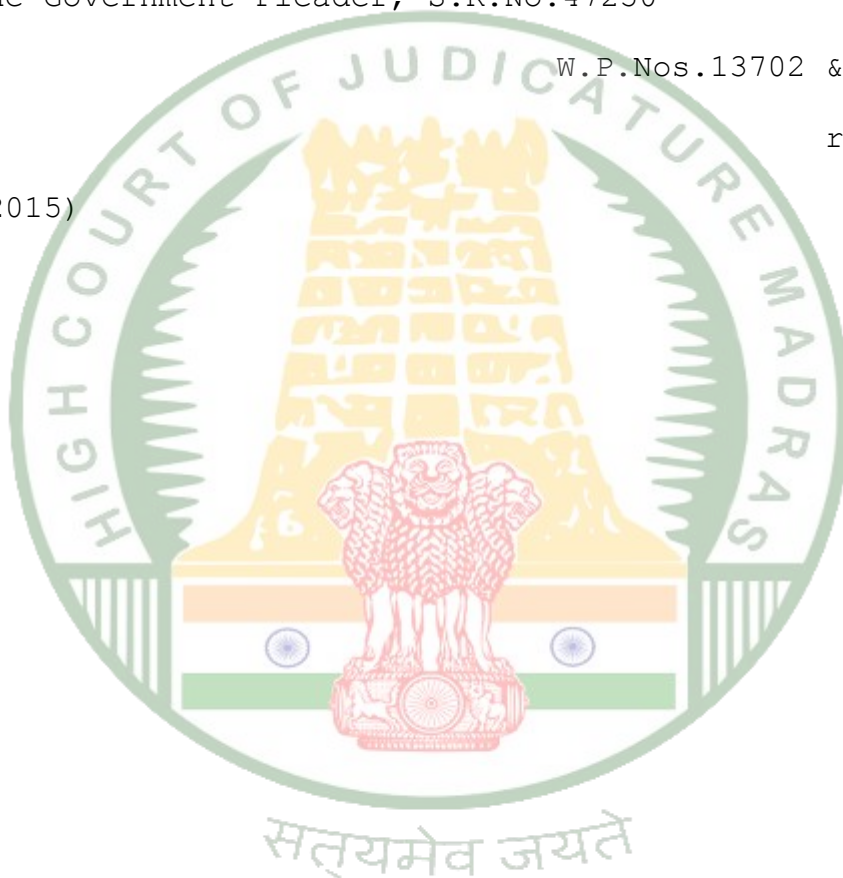
+2cc's to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.46670

+1cc to Mr.R.Karunagaran, Advocate, S.R.No.47360

+1cc to the Government Pleader, S.R.No.47250

W.P.Nos.13702 & 14241 of 2015
and
respective M.Ps

AD(CO)
CA(21/09/2015)



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