IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 479 OF 2015

1) Bharat Conductors Pvt. Ltd.,
having its registered office at 116,
Third Phase, Peenya Industrial Area,
Bangalore 560058, through its
authorised signatory Mr. Tarachand
Bhandari, having Office and Factory at
Plot No.41, Phase – III-A, Sancoale
Industrial Estate,
Zuarinagar, Goa 403726

2) Mr. Tarachand Bhandari,
having Office and Factory at
Plot No.41, Phase – III-A, Sancoale
Industrial Estate,
Zuarinagar, Goa 403726 …..... Petitioners.

V e r s u s

1) The Executive Engineer,
Office of the Executive Engineer,
Electricity Department,
Division – II (S&W),
Aquem, Margao, Goa 403601,

2) Goa Handicrafts,
Rural and Small Scale Industries
Development Corporation Ltd.
Through its Managing Director,
having its office at Craft Complex,
Neuginagar, Panaji, Goa 403 001.
(Deleted as per Order dated 16/6/2016),

3) State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez, Goa.

4) The Chief Electrical Engineer,
Electricity Department,
Vidyut Bhavn, Panaji, Goa 403 001

5. Traco Cable Company Limited,
Regd. Office XXXIX/5465,
4th Floor, KSHB Office Complex,
Panampilly Nagar,
Koci-682 036, Kerala, India. ….... Respondents.

Mr. D. Pangam, Advocate for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui and Mr. A. Gomes, Addl. Government Advocates for the Respondent No.1, 3 and 4.

Mr. V. K. Daniel, Advocate for the respondent No.5.

CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.

Date : 7/8th September, 2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. D. Pangam, learned Counsel appearing for the Petitioners, Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondent No.1, 3 and 4, and Mr. V. K. Daniel, learned Counsel appearing for the Respondent No.5.

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. The above petitioner, inter alia, prays to quash and set aside the order dated 20/5/2016 issued by the respondent No.4 in favour of the respondent No.5 and to issue a writ or direction to the respondent No.1, 3

and 4 to consider the tender of the petitioners on merits, by opening the technical and financial bids.

4. Briefly, it is the contention of the petitioners that the Government issued a preferential purchase scheme for the Small Scale Industrial Units and in terms of Clause (2), no Government Department can purchase the electrical conductors without the NOC from the respondent No.2-Goa Handicrafts, Rural and Small Scale Industries Development Corporation Ltd.. The petition was essentially filed by the petitioners by raising a grievance that the petitioner No.1 is registered as a Small Scale Industrial Unit in the State of Goa and is having preference in purchase by the State Government for electrical conductors and consequently, NOC is required from the respondent No.2 prior to issuing such tenders. It was further their contention that no NOC has been obtained from the respondent No.2 and consequently, the tender process initiated by the respondent No.1 stands vitiated. But, however, after notice was issued to the respondents, a NOC from the said Corporation came to be produced and thereafter, the petitioners amended the petition to incorporate subsequent facts. Mr. Pangam, learned Counsel appearing for the petitioners has pointed out that as far as such grievance is concerned, the petition has become infructuous, and consequently, he will rely upon the averments in the petition in support of the prayers made in the petition to set aside the allotment in favour of the respondent No.5. It is the contention of the petitioners that in view of the

interim order passed by this Court in the above petition, the petitioners have also submitted their bid for the tender process which was initiated by the respondent No.1. It is also pointed out that e-tender process was initiated and consequently, according to the petitioners, it was required to be conducted by an Officer of the Goa InfoTech Corporation in the presence of all the tenderers. It is further pointed out that a complete offer of the petitioners, including all the documents and their three Demand Drafts were to be uploaded by the Officers of the InfoTech Corporation only who are experts and also conduct the tender openings of all the Government Departments, including the tenders of the respondent No.1. It is further pointed out that for the first time, respondent No.1 did not call upon any Officer of the InfoTech Corporation for the tender opening inspite of payment of Rs.4,000/- as processing fee. It is further pointed out that with the help of one lady Officer of the respondent No.1 downloading of tender forms was carried out by the respondent No.1 in order to leave out some of the persons with vested interest. It is further submitted that as a result of such illegal expedient, the EMD demand draft of the petitioners could not be opened by the said Officer. It is further pointed out by the petitioners that as such, when the tenders were opened in presence of one of the representatives of the petitioners, it revealed that the EMD demand draft had not been downloaded. Though the petitioners had scanned a copy of the Demand Draft of the EMD and in fact other Demand Drafts were successfully downloaded, there was no reason to accept that the petitioners had not produced a copy of the EMD.

5. The respondent-State has filed their reply, inter alia, contending that as the EMD was not uploaded, nor proof shown at the time of the opening of the e-tender, the petitioners stood disqualified from taking part in the tender process. The respondent No.5 was a successful bidder. They have already started the process for manufacturing the requisite conductors to be supplied to the respondent No.1. It is further pointed out that the price offered by the respondent No.5 is a minimum price and consequently, the process of awarding tender in favour of the respondent No.5 stands justified.

6. When the matter was taken up for hearing, on a number of occasions the parties had sought adjournments to arrive at a settlement. At one stage, it was even pointed out that the Consent Terms were also likely to be signed and the matter was posted for filing such terms. But, however, the learned Advocate General pointed out that as the petitioner did not satisfy the requirements of being a BIS registered contractor, it was not eligible to submit the tender. But, however, Mr. Pangam, learned Counsel appearing for the petitioner has pointed out that the petitioner is an ISO contractor, duly certified and, as such, according to him, the Petitioners meet the eligibility criteria. As no final decision in the settlement could be arrived at, we proceeded to examine the matter on merits.

7. Mr. Pangam, learned Counsel appearing for the Petitioners has submitted that in terms of the conditions as stipulated in the application, the Petitioners submitted all the documents as well as the EMD and the other amounts payable by the Petitioners by three Demand Drafts which were uploaded through the agency known as Goa Infotech Corporation. Learned Counsel further pointed out that the Petitioners have been submitting e-tender for the last many years and, according to him, such tenders were submitted through the said Corporation. Learned Counsel further pointed out that on the day of the opening of the tender, a representative of the Petitioners was present and that signatures were obtained of such representatives contending that the EMD for a sum of Rs.500/- was not uploaded. Learned Counsel further pointed out that in fact the Petitioners have produced material on record to show that as on the date of submitting the tender application, the requisite Demand Draft was already purchased in favour of the concerned Department and, in fact, the representative was carrying such DD for verification. Learned Counsel further pointed out that when the Petitioners learnt that neither their technical or their financial bid was opened, they sought the requisite information from the Respondents and found that in the documents signed by the representative, there was an interpolation recorded therein which suggests that the EMD was not produced for verification. Learned Counsel further pointed out that the contention of the Respondents that the proof of payment of EMD was not

uploaded is not at all relevant as, according to him, the payment of the EMD has to be effected only after the Petitioners are chosen as the lowest tenderer. Learned Counsel further submits that showing the payment of EMD is not an essential term of the tender process as, according to him, the condition itself stipulates that such payment has to be made if at all the Petitioners are chosen as the lowest tenderer. Learned Counsel further pointed out that as such the rejection of the bid of the Petitioners is arbitrary, unjustified and as such deserves to be quashed and set aside.

In support of his submissions, the learned Counsel has relied upon the Judgment of this Court passed in Writ Petition no. 79 of 2016 dated 08.02.2016 in the case of ***Sudha Facility Management Service vs. the Managing Director & Ors.***

8. Learned Counsel further pointed out that the Petitioners have been supplying similar conductors for the last 19 years and, according to him, there was no grievance raised by the concerned Department at any time with regard to the quality or the material supplied by the Petitioners. Learned Counsel further pointed out that this condition by itself would as such not make the Petitioner ineligible and, in any event, this is a matter to be examined only after the technical and financial bids are opened. Learned Counsel further pointed out that in fact whilst rejecting the bids of the other tenderers, the only tender which remained was that of the Respondent no. 5 which itself suggests that there was no competitiveness in the tender

process. Learned Counsel brought to our notice some material on record to point out that even at the period when the tenders were opened, there were instances wherein the Respondent no. 5 has submitted tenders for similar conductors for a price much lower than the price as offered by the Respondent no. 5. Learned Counsel further pointed out that there would be loss to the public exchequer by accepting the tender of the Respondent no. 5 which, according to him, considering the conduct of the Respondent in rejecting the bid of the Petitioners, is arbitrary and deserves to be quashed and set aside. Learned Counsel as such pointed out that the rejection of the tender of the Petitioners be quashed and set aside and the Respondent no. 1 be directed to proceed with the tender process from that stage.

9. On the other hand, Shri S. D. Lotlikar, learned Advocate General appearing for the Respondent no. 1, has pointed out that a judicial review in a tendering process is very limited and the ultimate decision cannot be challenged in a Petition under Article 226 of the Constitution of India and the only aspect that the Court can examine is whether the decision making process is fair and in accordance with law. Learned Advocate General has taken us through the terms of the tenders which clearly provide that the scanned copy of the EMD had to be uploaded along with the tender application which the Petitioners have failed to upload. Learned Advocate General further pointed out that in the Minutes recorded by the concerned Department at the time of the opening of the bids, it was clearly revealed that

as there was no proof of payment of the EMD nor the records reveal that the scanned copy of the EMD was not uploaded, the Respondents were within their right to reject the tender of the Petitioners. Learned Advocate General further pointed out that in any event the Petitioners admittedly did not have a BIS Certificate as well as the certificate from the competent authority to meet the suitability of the product for the last ten years. Learned Advocate General further pointed out that as such, the exercise of opening of the tender of the Petitioners, would be an exercise in futility especially when there is an urgent need to supply such conductors. Learned Advocate General further pointed out that as there is no arbitrariness in the decision making process by the Respondent no. 1, there is no reason for interference in the impugned decision of the Respondent no. 1. Learned Advocate General has brought to our notice some information with regard to the effect of an ISO Certificate and a BIS Certificate to point out that an ISO Certificate only guarantees services of the concerned person whereas the BIS Certificate confirms the product itself. Learned Advocate General as such pointed out that the Petition be accordingly rejected.

10. Shri V. Daniel, learned Counsel appearing for the Respondent no. 5, has submitted that the Respondent no. 5 is a Government Company and in fact has invested a substantial amount to prepare the conductors in question to supply them to the Respondents. Learned Counsel further pointed out that Respondent no. 5 has a BIS

Certificate and an ISO Certificate which is the basic eligibility criteria. Learned Counsel further submits that the bid of the Respondent no. 5 has been rightly accepted by the Respondent no. 1 and, consequently, the question of interference in the tender process in the present Petition under Article 226 of the Constitution of India would not at all be justified. Learned Counsel has also distinguished the Judgment relied upon by Mr. Pangam, learned Counsel appearing for the Petitioners, to point out that in the said Judgment, proof of the EMD was shown at the time of the opening of the tender. Learned Counsel further submits that as there is no proof of payment of EMD which is a condition precedent to open the bid of the Petitioners, the Respondent no. 1 was justified to reject the tender of the Petitioners. Learned Counsel further submits that as the Petitioners have not satisfied either the eligibility criteria nor the terms and conditions of the tender process, the Respondent no. 1 was justified to reject the bid of the Petitioners.

Learned Counsel in support of his submission, has relied upon the Judgments of the Apex Court reported in ***2015 AIR SCW 6408*** in the case of ***Elektron Lighting Systems Private Limited & anr. vs. Shah Investments Financial Developments and Consultants Private Limited & Ors. Etc.***

11. With regard to the contention of the learned Advocate General, that in any event the Petitioners are ineligible to submit the tender as they

have no BIS Certificate, Mr. Pangam, learned Counsel, pointed out that the Petitioners have an ISO Certificate which is much superior to such certificate and, as such, this by itself would not make the Petitioners ineligible.

12. We have considered the submissions of the learned Counsel and we have also gone through the record. Though there was an elaborate debate between the learned Counsel with regards to the eligibility of the Petitioners as, according to the Respondents, the Petitioners did have a BIS certificate as required, we find that such considerations in the present Petition would not be required or justified at this stage. The evaluation of the bid of the Petitioners would depend upon the opinion of the technical expert who would have to take a decision whether holding of a BIS Certificate is an essential term of the subject tender process. Though Mr. S. D. Lotlikar, learned Advocate General and Mr. Pangam, learned Counsel appearing for the Petitioners, have brought to our notice different information in connection with the effect of an ISO and a BIS Certificate nevertheless considering that the bid of the Petitioners was not rejected on such grounds, it would not be appropriate for this Court to examine the rival contentions with regard to the necessity or otherwise of holding a BIS Certificate.

13. But the fact remains that as per the information placed on record by us, BIS is stated to be a National Standard Body of India and is a founder member of the ISO. BIS represents India in ISO. It is also stated

that BIS has adopted the standards of ISO 9000 and that BIS also provides certification against ISO 9001 under the Management System Certification Activity. No doubt, it needs little emphasis that there can be no compromise with the quality of the product to be purchased. So is the importance of the consistency in the supply of the subject products. But the question for consideration would be whether the condition to hold BIS Certificate as opposed to an ISO Certificate can ensure both.

14. In any event, as we are not inclined to examine the effect of how holding a BIS Certificate would guarantee or not the quality of the subject product standard, this aspect would have to be examined by the Technical Expert Committee on its own merits, and, as such, the contentions raised by the learned Counsel with that regard are left open to be examined at an appropriate stage.

15. In the present case, the question we propose to examine is whether the refusal to open the bid of the Petitioners as there was no proof of payment of EMD stands justified. On perusal of the terms and conditions of the subject tender, it inter alia provides at clause B(i) that the earnest money in the form of a Treasury Challan or deposit or call receipt of a schedule Bank granted by the Reserve Bank of India or Bankers Cheque of a schedule Bank or Demand Draft of a schedule Bank or a fixed deposit receipt of a scheduled Bank shall be drawn in the name of the Executive

Engineer of the Electricity Department. It also provides that the physical scanned copy of the EMD uploaded shall be deposited by the lowest bidder within a week after opening of the financial bid failing which the bid shall be rejected and enlistment of the Agency shall be withdrawn by the Enlisting Authority and the Agency shall be debarred from tendering in the Electricity Department, Government of Goa. Clause (iii) of the said terms also reserves a purchase preference conditions to Small Scale Industries Unit with the Director of Industries and Mines, Government of Goa.

16. No doubt, the terms also provide that the tenderers have to submit the proof of payment of EMD in any of the forms mentioned in clause B(i) and further that in case the documents referred to therein are not submitted, the tender bid is liable to be rejected.

17. The terms referred to hereinabove, clearly show that the physical EMD of the scanned copy has to be deposited by the lowest bidder within a week after the opening of the financial bid. The Respondent no. 1 has produced the Minutes of the records to point out that when the tender were opened, at exhibit 'C' collectively, there is a note that the scanned EMD of the Petitioners was not uploaded as per the condition and also the proof of payment of EMD was not produced and hence not authorized to open the bid. It is vehemently contended by Mr. Pangam, learned Counsel appearing for the Petitioners that on going through the said notings, it disclosed some

interpolation. But, however, the learned Advocate General, has brought to our notice the Tender Log Report in respect of the subject tender during the course of dictation, which, inter alia, shows that on 25.06.2015 at 12.18 hours, general documents referred to therein were attached by the Petitioners which also include the EMD. The said Log Report is taken on record and marked 'X' for identification. Thereafter, on the same date at different timings and on subsequent occasions, documents were uploaded by the Petitioners in respect of the subject tender. The report further shows that on 02.07.2015, the tender form was successfully submitted by the Petitioner. On the date of the opening of the tender i.e. 03.07.2015 at 15.47 hours, the note suggests that the Petitioners have been declared to have ben qualified but, however, on the same date, at 16.29 hours, the note suggests that the EMD was rejected as the Petitioners had not uploaded it and also proof of payment of EMD as per the conditions. The in-congruency in the said notings on the said date based on the material produced by the Respondent no. 1 themselves, have not been explained in the affidavit. The note clearly discloses that the Petitioner was held to be qualified obviously because all the documents were submitted by the Petitioners but, however, the tender bid of the Petitioners was not opened as the EMD was not uploaded. The fact that the Petitioner had obtained a Demand Draft of the EMD much prior to the submission of his bid cannot be disputed as a xerox copy thereof has been placed on record.

18. In such circumstances, we find that the stand of the Respondent no. 1 that the EMD was not uploaded or that proof of payment was not produced by the Petitioners at the time of the opening of the bid, cannot be accepted. The said report at Exhibit 'X' itself discloses that EMD was uploaded on 25.06.2015. There is nothing placed on record to show that at any point of time when the representative of the Petitioners was present at the time of the opening of the bids, the Petitioners were asked to produce the proof of EMD which was refused. Apart from that, as pointed out herein above, the EMD has to be deposited by the lowest tenderer physically within one week from the date the financial bid is opened.

19. In view of the above, we are of the opinion that there is no legal justification on the part of the Respondent no. 1 in rejecting the bid of the Petitioners on the ground that the proof of EMD was not produced or that the scanned copy of the EMD was not uploaded.

20. In this connection, this Court in the said Judgment passed in Writ Petition no. 79 of 2016 in the case of ***Sudha Facility Management Service vs. the Managing Dirctor & Ors.,*** (wherein one of us Shri F. M. Reis, J. is a party) by relying upon the Judgment of the Apex Court, has observed at Para 8 thus :

8. Apart from that, the payment of earnest

money cannot be considered to be an essential term of the tender process. The Apex Court, in a Judgment reported in **(1991) 3 SCC 273** in the case of ***Poddar Steel Corporation vs. Ganesh Engineering Works and others,*** has observed at paras 6 and 8, thus :

> "6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in *C.J. Fernandez* v. *State of Karnataka (1990) 2 SCC 488,* a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the

judgment support our view. The High Court has, in the impugned decision, relied upon *Ramana Dayaram Shetty* v. *International Airport Authority of India (1979) 3 SCC 489,* but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs.

8. In the present case the certified cheque of the Union Bank of India drawn on its own branch must be treated as sufficient for the purpose of achieving the object of the condition and the Tender Committee took the abundant caution by a further verification from the bank. In this situation it is not correct to hold that the Diesel Locomotive Works had no authority to waive the technical literal compliance of clause 6, specially when it was in its interest not to reject the said bid which was the highest. We, therefore, set aside the impugned judgment and dismiss the writ petition of respondent 1 filed before the High

> Court. The appeal is accordingly allowed with costs throughout." In the present case, considering the purpose for which the earnest money is being deposited, we find that it is not an essential term of the tender process. On going through the terms of the tender, it appears that the earnest money would be adjusted as security deposit if the bid of the tenderer is accepted. Hence, once the tender documents, along with the demand draft, were accepted by the respondent-Corporation, it was not open to the respondent-Corporation to unilaterally reject the bid of the petitioner. In such circumstances, we find that the rejection of the bid of the petitioner cannot be sustained and deserves to be quashed and set aside. Consequently, the order passed by the Board of Directors of the respondent No.3 with that regard deserves to be quashed and set aside. Once, rejection of the bid of the petitioner is set aside and having regard to the fact that the tender was for cleaning of buses, we find that the respondent-Corporation shall have to take a fresh decision with regard to the tender process initiated pursuant to the tender notice dated 27/10/2015, in accordance with law. In such circumstances, the second tender process initiated by the respondents would not survive. Hence, the decision dated 18/01/2016 deserves to be quashed and set aside, and the respondents be accordingly directed to take a fresh decision in the said tender process."

In the present case, taking note of the observations and the purpose for which the EMD has to be deposited, we find that it cannot be said that failure to upload the scanned copy is an essential term of the tender process especially considering that there is nothing on record to show that at any point of time, the Petitioners who were otherwise holding a draft in favour of the concerned Department had failed to produce the proof of the scanned copy when demanded. In such circumstances, the action of the concerned Department in refusing to open the bid of the Petitioners is arbitrary, unreasonable and cannot be sustained.

21. In such circumstances, the Judgment of the Apex Court relied upon by the learned Counsel appearing for the Respondent no. 5 is not applicable to the facts and circumstances of the present case. The refusal to open the bid of the petitioners has vitally vitiated the decision making process by the Respondent no.1 whilst awarding the tender to the Respondent no. 5, which would justify interference of this Court in the present Writ Petition. When the power of judicial review is invoked in the matters relating to the tenders or award of a contract, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding of contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of a contract is bonafide and is in public interest, the Court will not exercise its jurisdiction or power of judicial review to interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. There has to be competitiveness in assessing

the tenders. We have to keep in mind that by rejecting the other bids except that of the respondent no.5, it has resulted in eliminating the participation of the other manufacturers of the subject product who were otherwise eligible to supply similar products. The evaluation of the respective bids would have to be performed by the Technical Committee whilst evaluating the bids of the respective tenderers. Rejecting the bid of the Petitioners though there is material to suggest that the EMD was uploaded by the Petitioners has resulted in a material irregularity in the decision making process which led to accepting the tender of the respondent no.5 without any competitive bids for evaluation which is unreasonable, arbitrary and irrational. The committee did not have as such the competitive bids of other tenderers to evaluate the bid of the respondent no.5. In such circumstances, we find that the process adopted by the respondent no. 1 in the decision to reject the bid of the Petitioners on the ground that the scan copy nor the proof of the EMD was produced by the Petitioners, for the aforesaid reasons is irrational which would call for interference of this Court in the present petition. The Court is entitled to investigate the action of the respondent no.1 with a view to see whether or not they have taken into account matters which they ought to have taken note of or conversely had refused to take note accordingly of the matters which they ought to have taken into account. Even though the respondent may have a discretion in accepting the offer in contractual matters, the same will have to be done within the four-corners of the requirements of law essentially Article 14 of the Constitution.

22. Considering the facts of the present case and as the offer of the Petitioners of the subject tender has been irrationally and arbitrarily rejected, we find that the impugned decision accepting the tender of the respondent no.5 stands vitiated and deserves to be quashed and set aside. As already pointed out herein above, the Technical Committee will have to re-evaluate the bids of the respondent no.5 and the Petitioners and take a decision in the light of the observations made herein above in accordance with law.

23. In view of the above, we pass the following :

O R D E R

(i) The work order dated 20.05.2016 issued to the respondent no.5 is quashed and set aside.

(ii) The rejection of the bid of the Petitioners on 03.07.2015 is also quashed and set aside.

(iii) The respondent nos. 1 to 3 are accordingly directed to consider the tender of the Petitioners on merits by opening the technical and financial bid and proceed with the tender process in the light of the observations made hereinabove in accordance with law.

(iv) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

ssm/arp/*/at*

DATE : 8th September, 2016

JUDGMENT CONTINUED

At this stage, Mr. V. Daniel, learned Counsel appearing for the Respondent no. 5, seeks stay of the Order passed today. Mr. Pangam, learned Counsel appearing for the Petitioners opposes the stay of the operation of the Order. Mr. S. D. Lotlikar, learned Advocate General, appearing for the Respondent no. 1, also pointed out that there is an urgent need to the subject conductor to the concerned Department.

Considering the directions issued and the urgency as pointed out by the learned Advocate General, we are not inclined to stay the operation of the Order and, as such, the prayer for stay sought by the learned Counsel appearing for the Respondent no. 5 stands rejected.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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