

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.9570, 8651, 15055 to 15062,
15655 to 15657 of 2018

- 1 M/S.SRI SIVASAKTHI ASSOCIATES
... PETITIONER in WP No.9570 of 2018
REP BY S.MATHUSOOTHANAN
MANAGING PARTNER
NO. 165/50B KAMARAJ NAGAR
UTHANGARAI KRISHNAGIRI DISTRICT
- 1 S.SHANKARBABU ... PETITIONER in WP No.8651 of 2018
- 1 V.PALANI ... PETITIONER in WP No.15055 of 2018
- 1 P.SENTHAMARAIKANNAN ... PETITIONER in WP No.15056 of 2018
- 1 T.SELVAM ... PETITIONER in WP No.15057 of 2018
- 1 S.BHARATHI ... PETITIONER in WP No.15058 of 2018
- 1 M.MANI ... PETITIONER in WP No.15059 of 2018
- 1 M.RAMESH ... PETITIONER in WP No.15060 of 2018
- 1 P.GOVINDAN ... PETITIONER in WP No.15061 of 2018
- 1 G.DURAI SAMY ... PETITIONER in WP No.15062 of 2018
- 1 SREE AMMAN CONSTRUCTION
... PETITIONER in WP No.15655 of 2018
REP. BY ITS MANAGING PARTNER
V.R. DURAI SAMY MALLAYAPATTI POST
VEPPANTHATAI TALUK
PERAMBALUR DISTRICT

1 SREE MURUGAN CONSTRUCTION
... PETITIONER in WP No.15656 of 2018
REP. BY ITS MANAGING PARTNER
R.RENGANAYAGI
W/O. M.K. RAMALINGAM
3/41 SANNATHI STREET
CHETTIKULAM
KUNNAM PERAMBALUR DISTRICT

1 NEW RASI CONSTRUCTION ... PETITIONER in WP No.15657 of 2018
REP. BY ITS MANAGING PARTNER J.NEELRAJ
32 NADU STREET KURUMBALUR POST
PERAMBALUR DISTRICT

-vs-

1. State of Tamil Nadu
rep. by its Secretary to Government
Public Works Department
Secretariat, Fort St.George
Chennai 600 009
2. The Engineer in Chief
Public Works Department
Chepauk
Chennai 600 005
3. The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance)
Salem Circle
Salem-7
... RR1 TO 3 (IN ALL)
4. The Chief Engineer
Public Works Department Buildings
(Construction & Maintenance)
Salem Circle
Salem-7
... R4 IN Wps.9570, 15655 TO 15657/18

- 4 The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance)
Trichy circle
Tirchy.
- 5 The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance) Coimbatore
Circle Coimbatore.

- 6 The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance) Madurai Circle
Madurai.
- 7 The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance) Tirunelveli
Circle Tirunelveli.
- 9 The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance) Chennai Circle
Chepauk Chennai-600 005. ... RR4 to 7 & 9 in WP. 8651/18
- 8 The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance) Vellore Circle
Vellore ... R8 in WP. 8651/18 &
R4 in WPs. 15055 to 15062/18
10. M/s.Sree Sumathi & Co.,
Contractor P.W.D,
Rep.by its Managing Partner,
Mr.S.Mohan.
- 11.M/s.Bidhisha Sri Builder,
Contractor P.W.D.,
Rep.by its Managing Partner,
Mr.A.Karmegam.
- 12.M/s.K.A.Constructions,
Contractor - P.W.D.,
Rep by its Partner, Mr.A.Arul.
13. M/s.Suthiksanraam Associates,
Contractor P.W.D.,
Rep by its Managing Partner,
Mr.C.Senthil
14. M/s.New City Engineers,
Contractor P.W.D.,
Rep. By its Managing Partner,
Mr.M.Mahendran.
- 15.M/s.S.S.Sivasri Constructions,
Contractor- P.W.D Rep By its Managing Partner,
Mr.D.Siva Kumar

16.D.Maheswaran,
Managing Partner,
M/s.D.M.R.Constructions,
Contractor P.W.D

Respondents in WP. 8651/18

Respondent 10 to 16 impleaded as per
order dated 21/12/2018 made in
WPMP.11318 of 2018 in WP.8651 of 2018

5 The Executive Engineer,
Tamilnadu State Agriculture Marketing Board (TNSAMB)
Guindy, Chennai 600 032 ... R5 in WPs 15055 to 15058/18

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the records from the third respondent Tender
Notification Nos.19, 18, 18 & 18/2017-18/SE/B(C&M) C/SLM dated
21.03.2018, quash the same and consequently forbearing the
respondents from issuing Tender Notification under the Package
System. (in Wps.9570 & 15655 to 15657/18)

Prayer in WP. 8651/18: For the reasons stated in the
accompanying affidavit is prayed that this Honourable Court may
be pleased to issue appropriate Writs, Orders or Directions and
in particular a Writ in the nature of Certiorarified Mandamus
after Calling for the records from the third respondent Tender
Notification No.18/2017-18/ Ka.Po/ Ka(Ka&Pa) Vattam/ Salem dated
21.03.2018 quash the same and consequently forbearing the
respondents from issuing Tender Notification under the Package
System and pass such further or othere orders as this Honourable
Court deems fit and thus render justice.

Prayer in WP.No. 15055 to 15062/18: For the reason stated in the
accompanying affidavit, it is prayed that this Honorable Court
may be pleased to issue appropriate Writs, Orders or Directions
and in particular a Writ in the nature of Declaration, Declaring
the Tender Package System adopted by the respondents for
executing the Building and Construction work as Ultra Virus the
Article 14 19 1(g) and 21 of the Constitution of the India 1949.

For Petitioners :: Mr.D.Baskar for the petitioner
in W.P.No.9570 of 2018
Mr.K.Raju for Mr.A.Esakkiappan
for the petitioners in W.P.Nos.8651,
15055 to 15062 of 2018
Mr.T.L.Thirumalaisamy for the
petitioners in W.P.Nos.15655 to
15657 of 2018

For Respondents

::

Mr.P.H.Aravindh Pandian
Additional Advocate General

assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader in-charge

Mr.N.L.Rajah
Senior Counsel for
Mr.M.R.Jothimanian

for the impleading petitioners
in W.M.P.No.11318 of 2018 in
W.P.No.8651 of 2018

ORDER

Several writ petitions have been filed challenging the correctness of introducing the package system of tenders in the State of Tamil Nadu for the first time in 2018 seeking to award several contractual tender works to one person instead of giving one work or two works.

2. Learned counsel for the petitioners heavily submitted that the Superintending Engineer, Public Works Department Buildings, (Construction and Maintenance), Salem Circle, the third respondent herein having issued the tender notification dated 22.1.2018 inviting tenders for two contracts, namely, slice nos.1 & 2, after cancelling the tender notification on 25.1.2018 citing administrative reason, issued another tender notification dated 14.2.2018 inviting tenders for one work viz., slice no.1, but again cancelled the same on 22.2.2018 citing only two words 'administrative reason'. The repeated issuance of tender notifications and the repeated cancellation of the earlier tender notifications dated 21.1.2018 and 14.2.2018 for the purpose of introducing for the first time package tender system without following any Government Order as well as the statutory rules is aimed to help only big contractors supporting only politically influential persons having monopoly in the contract work, which is wholly bad in law, arbitrary and unjustified. Explaining further, the learned counsel for the petitioners submitted that when the third respondent earlier issued a tender notification dated 22.1.2018 inviting tenders for slice nos.1 & 2, he has cancelled the same on 25.1.2018 due to administrative reason. Again the very same third respondent issued another tender notification dated 14.2.2018 inviting tenders and once again for the second time, he cancelled it on

22.2.2018 and the same was published in the State tender bulletin on 22.3.2018 even before the last date of submission of the applications, depriving and snatching away the petitioner and other eligible contractors to apply for the tender. The attempt of the third respondent is only to help the selected contractors who are influential persons among the Government circle and the politicians. Adding further, they have submitted that when the third respondent issued the tender notification No.18/2017-18/Ka.Po/Ka(Ka&Pa)Vattam/Salem dated 21.03.2018 inviting tenders upto 15.00 hours on 26.4.2018 for four works viz., slice no.1 construction of school building including electrification at Gangavalli, slice no.2 construction of Annai Sathya Memorial Children's home at Salem, slice no.3 construction of office building for Joint Chief Environmental Engineer, Thalavaipatti village and slice no.4 construction of building for Sub Registrar office at Tharamangalam with the total value of package at Rs.1605 lakhs, the same third respondent issued another tender notification No.19/2017-18/SC/B (C&M)/C/SLM dated 21.3.2018 inviting tenders upto 27.4.2018 15.00 hours for eight items of work mentioned in serial nos.1 to 8 as package no.2 in the tender notification namely slice nos.1 to 8. The above action of the third respondent clearly shows that he has purposefully cancelled the above tenders without any valid reason for the purpose of introducing the package tender notification dated 21.3.2018, which is illegal and wholly arbitrary, hence, the same is liable to be set aside. Arguing further, they have stated that when there are 3000 registered contractors, 25000 civil engineers and their workers viz., Kothanar, Chittal and subordinates working under them, only ten contractors are going to be finalised by giving all the works to them all over the State of Tamil Nadu. Taking support from the judgment of this Court in W.P.Nos.19737 of 2009 etc., dated 24.11.2009, for the proposition that the Court can certainly examine whether the decision making process was reasonable, rational, not arbitrary and not violative of Article 14 of the Constitution of India, the learned counsel for the petitioners prayed this Court to examine how many infirmities are found in the decision making process while passing the impugned tender notification by the third respondent. Referring to one another judgment of the Apex Court in the case of Air India Limited v. Cochin International Airport, (2000) 2 SCC 617, summarising the scope of interference, holding that the Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not, the learned counsels submitted that the overwhelming public interest requires quick interference from this Court, as the respondents for the first time in the State of Tamil Nadu, without even taking proper authority from the Government, introduced a wrong package system only to favour the selected big contractors causing huge prejudice to the class I and small contractors that would

violate Article 19(1)(g) read with 19(g) of the Constitution of India. Again citing one another judgment of the Apex Court in the case of Association of Registration Plates v. Union of India, (2004) 5 SCC 364 holding that Article 14 of the Constitution of India prohibits government from arbitrarily choosing a contractor at its own will and pleasure, as it has to act reasonably, fairly and in public interest in awarding contract, it was further submitted that when no one can claim a fundamental right to carry on business with the Government, although he can claim that in competing for the contract, he should not be unfairly treated and discriminated to the detriment of public interest, it is a fit case for interference by this Court on the basis of the aforementioned decided cases.

3. The learned counsel for the petitioner in W.P.No.8651 of 2018 submitted that Mr.S.Shankarbabu is a class I civil contractor holding B.E.degree in civil engineering and has also completed more than 70 contract works successfully from the year 1996 to 2018 throughout the State. While so, the third respondent issued the tender notification dated 22.1.2018 in tender No.11/2017-18/Ka.Po./Ka.(Ka&Pa)Vattam/Salem inviting tenders for serial nos.1 to 10. Again the third respondent issued another tender notification No.14/2017-18/SE/B/(C&M)/C/SLM dated 14.2.2018 for one contract work. While so, all of a sudden, he has cancelled the same and introduced a package system without any approval from the Government citing lame excuses. Having cancelled the earlier notification dated 22.1.2018 on 25.1.2018, another tender notification dated 14.2.2018 was also cancelled on 22.2.2018 by the third respondent without proper reason and without following the statutory rules only for the purpose of introducing the tender packaging system for the first time to help the big people. Therefore, the introduction of package tender notification dated 21.3.2018 seeking to open the tender on 26.4.2018 at 3.00 PM for serial nos.1 to 4 mentioned therein is highly motivated without any rationale which is impermissible in law and the action of the respondents inviting applications from the contractors and cancelling the same repeatedly and again introducing different package system disqualifying the eligible tenderers is unknown to law. Hence, the impugned tender notification introducing package tender for the first time in the State of Tamil Nadu without taking government approval is wholly arbitrary, irrational, bad in law and violative of Article 14 & 19(1)(g) of the Constitution of India, hence, the same is liable to be set aside.

4. Concluding their arguments, the learned counsels submitted that after cancelling the original tender notification, the third respondent introduced the package tender system to favour only the selected tenderers in the State of

Tamil Nadu wilfully and deliberately fixing the eligibility criteria to the petitioners and it has also deprived the opportunity to the bidders in taking part in the tender process and thereby the equal chance of participation of bidders in the above said tender has caused grave injustice to all the registered eligible tenderers who are otherwise eligible to participate had the third respondent not cancelled the previous two tenders dated 21.1.2018 and 14.2.2018 on 22.2.2018. Justifying their right to question the impugned packaged tender notification, they have pleaded that when the tender notifications were issued on 22.1.2018 inviting applications till 7.3.2018, four days before the closure of the last date for submission of applications, cancelling the tender notification has clearly deprived and snatched away the petitioners opportunity in taking part in the tender process and thereby the equal chance for their participation in the tender process has been jeopardised. Therefore, they have a right to challenge the impugned tender notification.

5. Mr.N.L.Rajah, learned senior counsel for the impleading petitioners also, who are also the class I contractors in the Public Works Department and completed more than 1000 works successfully from 2001 to 2018, assailing the impugned tender notification dated 22.1.2018 issued by the Superintending Engineer, Public Works Department (Construction and Maintenance), Salem Circle, also submitted that the same is bad in law, for the reason that the respondent, without any authority, has introduced the proposed package system for the first time in the Public Works Department, hence, the same is liable to be set aside. Continuing his arguments, the learned senior counsel also submitted that when the tender notification dated 22.1.2018 was issued inviting tenders for the name of works shown in Slice Nos.1 to 10, surprisingly, the same was cancelled by publishing in the State Tender Bulletin on 8.3.2018. Again the same respondent issued another tender notification No.14/2017-18/SE/B (C&M)/C/SLM dated 14.2.2018 inviting another tender for Slice No.1, but the same was also cancelled by publishing in the State Tender Bulletin on 22.3.2018. Therefore, the action of the respondents in repeatedly cancelling the tenders without any valid reason, clearly shows that they wanted to help and permit only a group of persons. As the respondents have not acted fairly for awarding the Government contract works, the impugned tender package system is detrimental to the public interest, hence, the same is liable to be set aside.

6. Detailed counter affidavits have been filed by the respondents. The learned Additional Advocate General for the respondents submitted that the petitioners failed to apply pursuant to the tender notification dated 22.1.2018 and

14.2.2018. Therefore, the question of their right being infringed and prejudiced is factually wrong, for the reason that when the third respondent issued the tender notification dated 22.1.2018 fixing the last date for submission of the tender on 7.3.2018, it was cancelled four days before the last date for submission of the tenders on 3.3.2018. Similarly, the second tender notification dated 14.2.2018 was also issued inviting tenders for the works upto 15.00 hours on 21.3.2018 in two sealed covers containing qualification details and EMD in separate cover and price tender sealed cover was also cancelled on 13.3.2018 simply mentioning unavoidable administrative reasons. Therefore, when they had sufficient time to apply even before the expiry of the last date, the third respondent had unilaterally cancelled it. Hence the stand taken by the petitioners that they could not apply is wholly a misconception. The second contention made by the learned Additional Advocate General that the packaged tender system has been in existence and the same also has been adopted in the World Bank funded project such as Tamil Nadu Water Conservation Project under the Tamil Nadu Health System Project based on which the present packaged tender has been introduced and one such package system introduced by the Highways and Minor Ports (H1) Department earlier in 2012 vide G.O.Ms.No.162 dated 1.10.2012 was unsuccessfully challenged before the Madurai Bench of Madras High Court in W.P.(MD) Nos.15514 & 15873 of 2012 and by upholding the validity of the G.O.Ms.No.162 dated 1.10.2012, the writ petitions were dismissed.

7. In my considered opinion, the contentions made by the learned Additional Advocate General are devoid of any merit. The crux of the grievance of the petitioners shows that when all the petitioners are registered as class I contractors, they are eligible in view of their rich experience in the last 20 years. Hence, they were invited to take part in the tender notification issued by the third respondent on two occasions viz., when the tender notification dated 22.1.2018 was issued fixing the last date on 7.3.2018 and another tender notification was issued on 14.2.2018 fixing the last date for submission of the tender on 21.3.2018 in two sealed covers containing qualification details/EMD in a separate internal cover and price tender schedule in another sealed cover, the respondents unilaterally cancelled it without citing any reason and all of a sudden as if the tenders mentioned in the earlier two tender notifications dated 22.1.2018 and 14.2.2018, which were subsequently cancelled were given by way of packaged tender putting different qualification for the tenderers to take part.

8. Secondly, the introduction of the packaged tender system for the first time in Tamil Nadu has disqualified over thousand contractors, inasmuch as after cancelling the earlier

two tender notifications dated 22.1.2018 and 14.2.2018 on 3.3.2018 and 13.3.2018, were again reissued with another tender notification, without resorting to the package system with different eligibility criteria or the packaged system and without modifying the eligibility criteria for the same works, the petitioners should not have been disqualified. Since the third respondent, after cancelling the previous tender notifications dated 22.1.2018 on 3.3.2018 and again cancelling another tender notification dated 14.2.2018 on 13.3.2018 citing administrative reasons, have failed to reintroduce the same tender notification for the same work with the same qualification and wrongly introduced a different qualification fixing different eligibility qualification for the tenders by citing one line reason for cancelling the earlier tender notification that due to unavoidable administrative reason, which is wholly unfounded, for the simple reason that the petitioners were eligible and entitled to participate in the tender notification. As the petitioners are all class I registered eligible contractors, in view of the different change of eligibility criteria introduced for the same work, after cancelling the tender notification and introducing a new packaging tender, the impugned tender notification is wholly arbitrary, as could be seen that they are proposing to engage only a handful of major contractors, but not the middle level or small contractors. Therefore, when the said issue has not been considered by the Madurai Bench of Madras High Court in W.P.(MD) Nos.15514 & 15873 of 2012, the said order cannot be applied to the instant cases.

9. Thirdly, the contention made by the learned Additional Advocate General that there is no hard and fast rule or regulation prescribed under the law against calling for tenders in packaged tender system by clubbing more number of works, as the intent behind introducing the packaged tender system is solely to ensure better quality, speedy and timely completion of works by well qualified contractors, should also fail, as they do not stand to any good reason on the facts and circumstances of these cases.

10. For all the aforementioned reasons, the impugned tender notification is set aside and all the writ petitions are allowed. In view of the said order, W.M.P.No.11318 of 2018 seeking to implead the proposed petitioners as party respondents in W.P.No.8651 of 2018 is ordered accordingly and Registry is directed to carry out the amendment. Consequently, all the connected miscellaneous petitions are closed. No costs.

Ss

21.12.2018

W.P.Nos.9570, 8651, 15055 to 15062, 15655 to 15657 of 2018

T.RAJA, J.

After the pronouncement of the order, the learned counsel for the petitioner in W.P.No.8651 of 2018, by filing additional typedset of documents dated 21.12.2018, submitted that the Tamil Nadu Government has also taken a decision not to call for tenders under the package system. The learned counsel also brought to my notice the news item published in the Tamil daily "Dinamalar" dated 1.8.2018, wherein it has been stated that the package tender system has been dispensed with. The said statement is recorded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss
To

1. The Secretary to Government
Public Works Department
Secretariat, Fort St.George
Chennai 600 009
2. The Engineer in Chief
Public Works Department
Chepauk, Chennai 600 005
3. The Superintending Engineer
Public Works Department Buildings
(Construction & Maintenance)
Salem Circle, Salem-7
4. The Chief Engineer
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- 5 The Superintending Engineer
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(Construction & Maintenance) Trichy
Tirchy.

- 6 The Superintending Engineer
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- 7 The Superintending Engineer
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Madurai.
- 8 The Superintending Engineer
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- 10 The Superintending Engineer
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Chepauk Chennai-600 005.
11. The Executive Engineer,
T.N.State Agriculture Marketing Board (TNSAMB),
Guindy, chennai 32.

+1cc to Mr.M.R.Jothimaninan, Advocate, S.R.No. 89774
+1cc to Mr.R.Thamarai Selvan, Advocate, S.R.No.89690
+2cc to Mr.K.Raja, Advocate, S.R.No. 86243
+2cc to Mr.A.Esakkiappan, Advocate, S.R.No. 89242
+1cc to Mr.T.L.Thirumalaisamy, Advocate, S.R.No. 89691

सत्यमेव जयते

W.P.Nos.9570 of 2018 etc.

GN(26/12/2018)

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