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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13539/2018 & CM Nos. 52759/2018, 52760/2018**

✓ **HERCULES STRUCTURAL SYSTEM PVT.
LTD. AND ANR.**

..... Petitioners

Through: Ms Geeta Luthra, Sr. Advocate with
Mr Shourya Gupta, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Ravi Prakash, CGSC with Mr
Manuj Kaushik, Advocates for R-1
and R-2.

AND

+ **W.P.(C) 13551/2018 & CM Nos. 52770/2018 & 52771/2018**

SANFIELDS (INDIA) LTD. AND ANR.

..... Petitioners

Through: Mr Kirti Uppal, Sr. Advocate with Mr
Shourya Gupta, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Ravi Prakash, CGSC with Mr
Manuj Kaushik, Advocates for R-1
and R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.12.2018

1. The petitioners have filed the present petitions, *inter alia*, impugning a circular dated 14.08.2018 issued by Ministry of Road Transport & Highways (MoRTH), whereby the panel of manufacturers engaged in

manufacturing and supplying of bearings for bridges and other expansion joints was dissolved.

2. The petitioners are engaged in the business of manufacturing expansion joints (the products). The said products are used in construction of highways and bridges. For the past several years, the respondents have been following a system whereby certain manufacturers, who meet the required criteria, are empanelled. All persons engaged in the construction of roads and bridges are, thus, required to source the material from such empanelled manufacturers. In some cases, the respondents themselves source the products directly from such empanelled manufacturers.

3. By a circular dated 14.08.2018 (which is impugned in the present petition), the respondents have done away with the process of empanelling manufacturers such as the petitioners. As per the new policy, the overall responsibility for construction of the road or bridges rests with the contractor/concessionaire including the obligation to ensure that quality products are used in such works.

4. The impugned circular indicates that the standard and specifications which are required to be met by any manufacturers/suppliers, have been specified. Further, all manufactures and suppliers are required to furnish a complete Quality Assurance Programme comprising of the process for quality control, raw material testing, various stages of manufacturing etc. The Quality Assurance Programme is required to be approved by the Engineer/Accepting Authority. So long as the given checks for ensuring quality for the products is complied with, the discretion as to from which manufacturer/dealer the products are procured, is left to the

contractor/concessionaire. The respective obligations of the supplier/manufacturers, contractor and the Engineer are clearly spelt out in the impugned circular, and the same is reproduced below for ready reference.

“6. The requirement of supplier/Manufacturer and their selection for Bridges and Expansion Joints, the role/responsibilities of various stake holders shall be as detailed below:-

(A) **Supplier/Manufacturer**

- a) The manufacture/supplier shall furnish a complete quality assurance programme to the contractor/concessionaire comprising the process of quality control, raw material testing, various stages of manufacture, testing on components as well as testing on complete bearing/expansion joint etc. in conformity with relevant Codal stipulations.
- b) Test certificates of reputed testing laboratories for all raw material shall be submitted to the contractor/concessionaire. If the test certificates are not available, then the manufacture shall perform the necessary confirmatory test as per relevant code of practice and shall furnish the test results.
- c) All the suitable weld data record shall be maintained and submitted.
- d) Manufacturer shall maintain a list of consumption of raw material including test records for a period of at least preceding two years.
- e) Manufacturer shall employ full time Graduate Engineer staff, qualified to manufacture bearings under Quality Control and as such have full time trained scientist for chemical and physical testing.
- f) Manufacturer shall have qualified/certified

welders.

(B) **Contractor/ Concessionaire**

- a) The contractor/ concessionaire shall ensure that the manufacturer has its own manufacturing unit and the same has been registered under Companies Act 2013 for manufacturing of concerned Bridge components. In case of supplier, the said details of manufacturer shall be provided to the contractor/ concessionaire.
- b) The raw material procured for each and every component of bridge bearing and expansion joints shall be tested from NABL accredited laboratory / CSIR/ISO recognized laboratory or any other reputed laboratory by the manufacturer/supplier before supply of expansion joints/ bearing.
- c) It shall be ensured that the finished item shall be in conformity to relevant IRC/ IS codes and shall be tested from NABL accredited laboratory / IITs/CRRI/CSIR/ ISO recognized laboratory or any other reputed laboratory.
- d) It shall be ensured by the contractor/ concessionaire that the full-time qualified chemist and design engineer render their services in the manufacturing unit.
- e) The Inspection Certificate/ Quality Control Certificate should be furnished by the manufacturer/ supplier.

(C) **Authority Engineer/Representative of Authority Engineer**

- a) Authority Engineer shall approve the Quality Assurance Programme (QAP), QAP comprising the process of quality control, raw material testing, various stages of manufacture, testing on bearing/ expansion joint components as well as testing on complete bearing/ expansion joint etc. in

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conformity with relevant Codal stipulations prior to the commencement of manufacture.

- b) The Authority Engineer may carry out independent tests on raw material and witness the manufacturing process.
- c) Authority Engineer shall reserved the right to witness such inspection at manufacture workshop,
- d) Authority Engineer shall check all test certificates of bearing/ expansion joint manufactured.
- e) Authority Engineers shall carried out destructive testing of any component/components of bearing supplied for conformity of test result submitted.”

5. Mr Kirti Uppal, and Ms Luthra, learned senior counsel appearing for the petitioners earnestly contended that the impugned circular is arbitrary and unreasonable as it has suddenly brought business of the petitioners to a halt. They contended that the petitioners had increased their production as per the requirements of the respondents, and an immediate change in the policy is highly detrimental to their business. It is also contended that significant investments have been made in setting up infrastructure on the assurance that products would be sourced from the petitioners and such infrastructure would be rendered idle if the products are not procured from the petitioners.

6. Although, it does appear that an immediate change in the policy as affected by the impugned circular may have an adverse consequence to the petitioners business, however, this Court is not able to accept that the petitioners have any right to insist that the products be procured only from them. There was no assurance held out that the respondent will continue to procure products from the petitioners. The respondents are at liberty to

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frame any procurement policy as they consider fit provided that it does not offend any of the constitutional guarantees. Clearly, the impugned circular cannot by any stretch said to be arbitrary or unreasonable. This Court is also unable to accept that the petitioners have any right to insist that their products be purchased by the respondents. In view of the above, no relief can be granted to the petitioners.

7. Having stated the above, it is clarified that the petitioners are always at liberty to make a representation requesting the respondents to defer the implementation of the impugned circular for short period in order to enable the petitioners to migrate to the new regime and exhaust the stock of products already manufactured by them. Needless to state that if any such representation is made, the respondents would give it due consideration that it deserves.

8. The petition is disposed of in the above terms. All pending applications also stand disposed of.

9. Order *dasti*.



VIBHU BAKHRU, J

DECEMBER 14, 2018

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