



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WP (MD) Nos. 3339 to 3342 of 2019

and

WMP (MD) Nos. 2622 to 2633 of 2019

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S. Rengaraj ... Petitioner in WP (MD) No. 3339 of 2019

M. Sankaranarayanan ... Petitioner in WP (MD) No. 3340 of 2019

M. Santhi ... Petitioner in WP (MD) No. 3341 of 2019

R. Mukundan ... Petitioner in WP (MD) No. 3342 of 2019

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary to
Government,
Public Works (G2) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Engineer-in-Chief (Buildings),
Chief Engineer (Buildings),
Public Works Department,
Chepauk, Chennai - 600 005.... Respondents 1 to 2 in all WPS

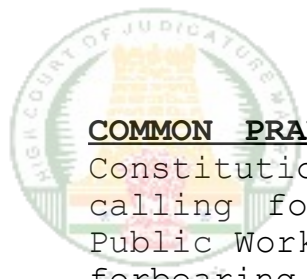
3. The Chief Engineer (Buildings),
PWD Compound, Thallakulam,
Madurai Region, Madurai - 625 002. ... R3 In WP 3339 of 2019 and
3340 of 2019

4. The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Madurai Circle, Madurai - 625 002. ... R4 In WP 3339 of 2019 and
3340 of 2019

5. The Chief Engineer (Buildings),
PWD Compound,
Trichy Region,
Trichy. ... 3rd Respondent in WP 3341 of 2019 and 3342 of 2019

6. The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Pudukottai Circle, Pudukottai ... 4th Respondent in WP 3341 of 2019

7. The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Trichy Circle, Trichy-1 ... 4th Respondent in WP 3342 of 2019



COMMON PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records from the 1st respondent in G.O.Ms.No.221 Public Works (G2) Department dated 16/08/2018 and quash the same and forbearing the respondent from introduce the Single Window Manner in Registration of Civil Contractors with the respondents.

In all cases :

For Petitioners : Mr.K.Sundaravel
For Respondents : Mr.R.Sethuraman,
Special Government Pleader

COMMON ORDER

The writ petitioners herein are registered civil works contractors. The Public Works Department has classified the contractors into five classes. Class-I contractors can participate in the tenders where the contract value is above 75 lakhs, Class-II contractors upto 75 lakhs, Class-III contractors upto 30 lakhs, Class-IV contractors upto 15 lakhs and Class-V contractors upto 6 lakhs. The Government of Tamil Nadu issued G.O Ms.No.1789 dated 29.12.1992 prescribing the procedure for registration of contractors. The same was modified following the recommendations of the high level committee for Administrative Reforms and Prevention of Corruption under the chairmanship of Justice G.Ramanujam. Most of the recommendations of the said Committee made in this regard were accepted and G.O Ms.No.222 dated 08.04.1999 came to be issued. Even though the Committee recommended that the registration of contractors shall be done at two levels one at the level of Executive Engineer with regard to the categories IV and V and the other at the level of Superintending Engineer with regard to the categories I, II and III and that registration at each level shall be decided by the Committee of Officers, the Government took the following decision :

"Registration of contractors of Class V only shall continue to be done by the Executive Engineers. The other classes of contractors shall be registered by the Superintending Engineers. There is no need of a Committee for taking decision on registration of contractors."

2.It was further recommended that the registration done by the Superintending Engineer shall be reported to the Chief Engineer, who shall prepare a state list of all registered contractors and circulate it to all Departments/Undertakings. This recommendation was accepted and it was resolved to implement the same. This procedure has been in vogue till the issuance of the impugned Government Order. By the impugned Government Order, the Government decided that henceforth the registration of all the contractors in all Classes I to V ie., Division Level, Circle Level and State Level shall be done as a single window system by the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai. This centralisation of the registration



process is assailed in these writ petitions.

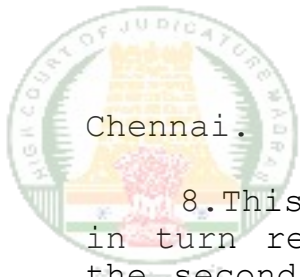
3. Heard the learned counsel on either side.

4. The respondents have filed a detailed counter affidavit and also the typed set of papers. The learned Special Government Pleader reiterated all the contentions set out in the counter affidavit. His foremost contention is that the even from the recitals of the impugned order, it can be seen that the Government order has been issued only to prevent malpractices and irregularities. He also highlighted the fact that the earlier Government Order is of the year 1999 and since more than 19 years have elapsed, it became necessary to have a re-look at the entire system. His fundamental contention is that this being a policy matter, scope of judicial review is rather limited.

5. The learned counsel appearing for the writ petitioner on the other hand contended that the implementation of the impugned Government Order would cause serious hardship to the contractors. The Superintending Engineers/Executive Engineers have so far been issuing what is known as Registration Certificate and Live Certificate. They are valid only for a period of one year. Without a valid Registration Certificate/Live Certificate, the contractors cannot take part in any tender process. If the contractors have to obtain renewal of their registration every year from the Engineer in Chief, Chennai, the certificates will not be issued in time and as a result, they will not be able to take part in the tender processes.

6. The learned counsel appearing for the writ petitioner drew my attention to the averments set out in the counter affidavit. The stand in the counter affidavit is that after the documents are received from the applicants, it would be sent back to the jurisdictional Superintending Engineers/Executive Engineers for verification. After the documents are received back, after verification, the renewals will be made. He contended that this is a needless exercise. There is no scope for online verification. Applications will have to be made only by post. It is definitely possible that the authority may take a stand that some relevant documents were not enclosed along with the renewal application.

7. After carefully considering the rival contentions, I am of the view that the impugned Government Order will have to be quashed. It is true that in policy matters, scope for judicial review is highly limited. But then, when a long standing policy is sought to be modified or rescinded, the government will have to justify the same. As already pointed out, G.O.Ms.No.222, Public Works (G2) Department, dated 08.04.1999 was issued after accepting the recommendations of the Committee under the chairmanship of Justice G.Ramanujam. It is not the case of the respondents that a need arose for re-visiting the entire issue. In the impugned G.O, there is a reference to a letter dated 16.07.2018 issued by the Engineer-in-Chief, Water Resources Department and Chief Engineer (General),



Chennai.

8. This Court went through the said letter. The said letter in turn refers to an earlier letter dated 21.06.2018 submitted by the second respondent to the first respondent herein. In the said letter, the certain observations have been made with regard to the working of the existing system. Paragraph No.4 of the said letter reads as follows :

4. As per the rules in force, Registration is being done by the SE, PWD/WRD for class I to class IV and EE, PWD/WRD for the Classes V. While the registered contractors are participating in tenders and are being received by the Engineer in Chief, Water Resources Department and Chief Engineer (General), Public Works Department for scrutiny and placed before the Tender Award Committee for approval. It seems that many of the contractors have not renewed their registration by providing Income Tax Clearance Certificate, GST, Encumbrance Certificate, Solvency Certificate etc. In many of the cases the contractors have failed to keep their registration alive. If the registration of contractors is done by the Engineer in Chief, Water Resources Department and Chief Engineer (General), Public Works Department, in a single window manner, it will be quite effective to monitor the registration of all the PWD /WRD contractors throughout the State of Tamil Nadu and it will be easy to verify the genuineness of the records furnished by the contractors for registration. All the particulars regarding the contractors registered hitherto in the respective Circle/Division offices along with relevant files and registers shall be handed over to the Engineer in Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai - 5."

9. The reasons set out in Para No.4 of the said letter appear to be too flimsy. It is not the case of the second respondent that bogus live certificates were submitted. If a participant was not having a live certificate, he ought to be debarred from taking part in the tender process. Even though the impugned government order makes a statement that a single window system is sought to be introduced, what has been done is only centralization. It is not as if when an application is submitted to the second respondent, he is going to straightaway grant renewal. On the other hand, the application will be sent to the District level and it will once again go back to Chennai.

10. As already pointed out, even the original application for renewal will be submitted only through post. The application will go from the applicant to Chennai and then from Chennai to the District Level and again from District Level to Chennai and then from Chennai to the applicant. This centralization does not serve any purpose. Even Justice G.Ramanujam Committee had stated that after the registration is made at the District level, it will be submitted to the State level. Thus, even at present there is a centralisation of the data. It is not evident what this G.O intends



to achieve. I find no reason that can justify the issuance of the impugned Government Order.

11. It is further seen that it was the second respondent who had initiated the entire proposal. The learned counsel appearing for the writ petitioner would assert that the entire process suffers from malice in law. He pointed out that when the government wanted to introduce the package system, it was challenged in WP No.9570 of 2018 etc batch and the same was allowed on 21.12.2018. In the said case, interim order was granted on 11.04.2018 itself. According to the petitioner's counsel, it was this grant of interim order that led to the issuance of the impugned government order.

12. Though in Section 114 of the Indian Evidence Act, 1872 there is a presumption that official acts are done in a regular manner, I am afraid that the said presumption may not hold water in this case. This Court can take judicial notice of the fact that even tender schedules are not being issued in many cases. The entire process is often skewed to favour certain individuals. That is why whenever a tender is conducted, a number of writ petitions come to be filed. In many cases, the prayer that is made is only for issuance of the tender schedule and for permission to participate in the tender process. That shows the sorry state of affairs.

13. The Hon'ble Supreme Court in the decision reported in (2010) 8 SCC 49 (Sindhi Education Society and Anr. Vs. Chief Secretary, Govt. of NCT of Delhi and Ors) held that it is a settled canon of administrative jurisprudence that State action must be supported by some valid reasons and should be upon due application of mind. In the decision reported in (2005) 1 SCC 625 (Bannari Amman Sugars vs. Commercial Tax Officer) it was held that the ultimate test is the touchstone of reasonableness. The State is within its powers to change its policy from time to time under the changing circumstances (1998) 4 SCC 117 (State of Punjab vs. Ram Lubhaya Bagga). It is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary offending the basic requirement of Article 14 of the Constitution. Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 SCC 443].

14. Applying the aforesaid principles, the impugned government order fails to pass muster. The reasons proffered are no reasons at all. A system that has been in currency for over two decades has been arbitrarily changed. A system that was put in place following the recommendations of a high level committee cannot be casually dislodged or dismantled. It is de-centralisation that will promote efficiency and not centralisation. Hence, I hold that the issuance of the impugned government order is arbitrary and unreasonable. Accordingly, the order impugned in this writ petition in G.O.Ms.No.221 Public Works (G2) Department dated 16.08.2018 stands



quashed. These writ petitions stand allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(W)

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Sub Assistant Registrar(CS-)

To

- 1.The Principal Secretary to Government,
Public Works (G2) Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The Engineer-in-Chief (Buildings), Chief Engineer (Buildings),
Public Works Department, Chepauk, Chennai - 600 005.
- 3.The Chief Engineer (Buildings), PWD Compound, Thallakulam,
Madurai Region, Madurai - 625 002.
- 4.The Superintending Engineer, Public Works Department,
Buildings (Construction & Maintenance),
Madurai Circle, Madurai - 625 002.
- 5.The Chief Engineer (Buildings),
PWD Compound,
Trichy Region,
Trichy.
- 6.The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Pudukottai Circle, Pudukottai
- 7.The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Trichy Circle, Trichy-1

+1cc to Mr.M.Karthikeya Venkitachalapathy, Advocate, SR.No.57521
+1cc to Special Government Pleader, SR.No.57781

WP (MD) Nos.3339 to 3342 of 2019
and

WMP (MD) Nos.2622 to 2633 of 2019
27.03.2019

SP/02.04.2019/ 6P/10C