

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	16.07.2019
DELIVERED ON	26.07.2019

WEB COPY

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY
W.A.(MD) Nos.687, 688, 689 & 690 of 2019
and
C.M.P.(MD) Nos.6073, 6075, 6081 & 6083 of 2019

- 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
- 3) The Chief Engineer (Buildings),
PWD Compound,
Trichy Region,
Trichy - 1
- 4) The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Trichy Circle,
Trichy.

... Appellants/ Respondents in
all Writ Appeals

Vs.

- | | |
|--|---|
| 1) R.Mukundan
(Class- II Contractor) | ... Respondent/ Writ Petitioner
in W.P.(MD) No.3342/2019 |
| 2) M.Sankaranarayanan
(Class-IV Contractor) | ... Respondent/ Writ Petitioner
in W.P.(MD) No.3340/2019 |
| 3) M.Santhi
(Class - V Contractor) | ... Respondent/ Writ Petitioner
in W.P.(MD) No.3341/2019 |



4) S.Rengaraj
(Class-II Contractor)

... Respondent/ Writ Petitioner
in W.P.(MD) No.3339/2019

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act against the common order passed by this Court in W.P.(MD) Nos.3339 to 3342 of 2019 respectively, dated 27.03.2019.

COMMON PRAYER IN WP(MD) Nos.3339 of 2019 to 3342 of 2019:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court 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 16/08/18 and quash the same and forbearing the respondent from introduce the single window manner in Registration of Civil Contractors with the respondents.

In all Writ Appeals:

For Appellants/
Respondents : Mr.VR.Shanmuganthan,
Special Government Pleader

For Respondent/
Writ Petitioner : Mr.Ajmal Khan,
Senior Counsel

C O M M O N J U D G M E N T

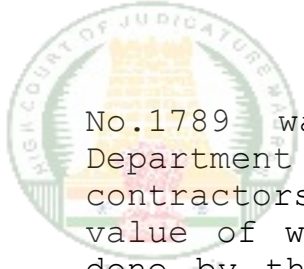
(Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

1. These four Writ Appeals arise out of the common order in W.P.(MD) Nos.3339 to 3342 of 2019 dated 27.03.2019 and are disposed of by this common judgment.

2. The Appellants herein were the Respondents 1 to 4 in each of the Writ Petitions. The said Writ Petitions were filed in order to quash G.O.Ms.No.221 Public Works (G2) Department dated 16.08.2018 (the Impugned G.O.), whereby a single window system was established in respect of registration of all the contractors in Classes I to V, including the renewal of such registration. The Respondent in each Writ Appeal was the Petitioner in the Writ Court and all four Writ Petitions were allowed by the aforesaid common order dated 27.03.2019, which is the impugned order herein.

3. The facts that are relevant for purposes of disposing of these Writ Appeals are as follows:

The registration of contractors in the Public Works Department was initially carried out as per G.O. Ms. No.1789 Public Works (G2) Department dated 29.12.1992. Thereafter, pursuant to the recommendations of the High Level Committee constituted under the Chairmanship of Mr. Justice G.Ramanujam, the above cited G.O. Ms.

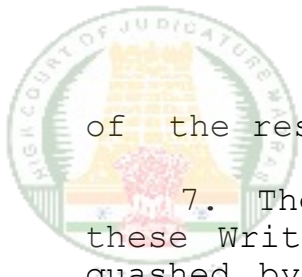


No.1789 was superseded by G.O. Ms. No.222 Public Works(G2) Department dated 08.04.1999. As per the said G.O. Ms. No.222, contractors were classified into five classes by reference to the value of works and the registration of such contractors was to be done by the Superintending Engineers, as regards Classes I to IV, and by Executive Engineers as regards Class V. Subsequently, a letter dated 16.07.2018 was received from the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Chennai, to the effect that many of the contractors had not renewed their registration by providing necessary documents such as Income Tax Clearance Certificate, Goods and Services Tax Registration, Encumbrance Certificate, Solvency Certificate etc. and that the registration of contractors can be carried out more effectively if it is done by the Engineer-in-Chief, Water Resources Department and Chief Engineer (General) Public Works Department under a single window system. Pursuant to the said letter and by accepting the proposal therein of the Engineer-in-Chief, the Government issued the Impugned G.O., whereby the registration of all contractors in classes I to V shall be done in a single window system by the Engineer-in-Chief, Water Resources Department and Chief Engineer (General) Public Works Department, Chennai. The Impugned G.O. was challenged by the Respondent in the respective Writ Appeals on the basis that it was done in a hasty manner and without proper application of mind and that the intention is to allow only wealthy contractors to obtain registration and renewal.

4. The respective Respondent herein also contended that the centralised system would entail submission of applications to the second Appellant herein who, in turn, would forward such applications to the Circle Superintending Engineer and Executive Engineer for verification and, thereafter, would send it back to the second Appellant so as to be considered for registration. In effect, it was contended that the system is inefficient, arbitrary, illegal and unjustified. It was also contended that the earlier system was based on the recommendations of the High Power Committee under the Chairmanship of Mr. Justice G.Ramanujam and that the said system had been in force for a period of about 19 years and that it has been replaced by the present single window system without proper application of mind. The said Writ Petitions were allowed by the Writ Court by taking judicial notice of the fact that even tender schedules are not being issued in many cases and that the entire process is often skewed to favour certain individuals.

5. After adverting to several judgments of the Hon'ble Supreme Court with regard to the limited scope for judicial review in matters relating to public policy, the Writ Court, nevertheless, concluded that the impugned G.O. is arbitrary because the earlier system, which was put in place following the recommendations of a High Power Committee, was casually dislodged and dismantled.

6. We heard the learned Special Government Pleader on behalf of the Appellants and Mr.Ajmal Khan, learned senior counsel on behalf



of the respective Respondent in the four Writ Appeals.

7. The principal question that arises for consideration in these Writ Appeals is whether the Impugned G.O. was liable to be quashed by the Writ Court on the ground that it is arbitrary. In order to answer this question, it is necessary to examine the Impugned G.O. The relevant paragraph 5 of the Impugned G.O. is set out below:

"5. The Government after careful examination decided to accept the proposals of the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai and hereby issue the following orders:-

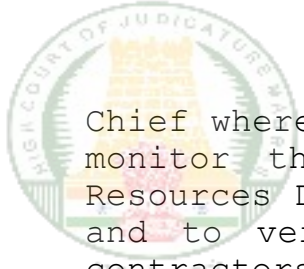
(i) Registration of all the contractors in all Classes I to V i.e. Division Level, Circle Level and State Level shall be done as a single window system by the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai.

(ii) The application received in the office of the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai-5 from the contractors with payment of prescribed application fee shall be sent to the respective Division / Circle in which territory the contractor intending to register, for thorough scrutiny of the application as per the rules / orders in force for ensuring the eligibility of the contractors for registration and for verifying the bona-fide of the evidences produced by the applicants. After that, the applications may be sent back to the Engineer-in-Chief, Water Resources Department and Chief Engineer (General) Public Works Department, Chennai-5 with recommendations of the Superintending Engineer/ Executive Engineer concerned.

(iii) Hereafter, the application for the renewal of contract registration for every year shall be submitted to the Office of the Engineer-in Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai - 5, before the expiry date of renewal so as to keep the contractor registration alive. The Contractor registration live certificate will be valid only for a period of one year from the date of issue of renewal order.

(iv) All the records / registers along with relevant files, in original, in respect of the existing registered contractors in all the Circle/ Divisions shall be handed over to the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai - 5 immediately."

8. The Impugned G.O. refers to the letter of the Engineer-in-



Chief wherein it was stated that it would be possible to effectively monitor the registration of all Public Works Department/ Water Resources Department contractors throughout the State of Tamil Nadu and to verify the genuineness of the records furnished by such contractors for registration if the proposed single window system was introduced. This proposal was accepted and the Impugned G.O. was issued. Therefore, the law on interference in matters of policy, in general, and, in particular, in relation to public procurement of services should be examined.

9. The learned Special Government Pleader submitted, on behalf of the Appellants, that the order of the Writ Court is liable to be interfered with because the introduction of a centralised single window system for the registration of contractors of the P.W.D. Department is a policy decision of the Government and that the said policy is neither arbitrary nor discriminatory. Accordingly, it should not have been interfered with by the Writ Court.

10. In response, the learned senior counsel for the respective Respondent herein, Mr. Ajmal Khan, submitted that the previously existing system under G.O.Ms.No.222 dated 08.04.1999 was discarded in a hasty manner. The second contention of the learned senior counsel was that the procedure established under the impugned G.O. would entail considerable delay in as much as the application would be submitted to the Chief Engineer at Chennai and would, subsequently, be forwarded to the respective Division/ Circle in which the contractor intends to register for purposes of scrutiny of the application and would, thereafter, be sent back to the Engineer-in-Chief's Office in Chennai with the recommendation of the Superintending Engineer/ Executive Engineer concerned. Therefore, it was submitted that the procedure is long-winded and would create greater inefficiency instead of augmenting efficiency. In order to examine whether this concern could be addressed and allayed we directed the learned Additional Government Pleader to inform us as to the time-lines for completion of registration or renewal of registration.

11. In response to the said direction, the learned Additional Government Pleader submitted the details of the renewals that were completed after the entry into force of the Impugned G.O. until the order of the Writ Court was issued. The said details show that about 362 renewal certificates were issued within an outer limit of four weeks from the date of submission thereof out of a total of 540 renewal applications that were received up to 29.03.2019. In addition, the learned Additional Government Pleader submitted a Circular Memo No.HDO/Sr.DO.1/F30793/2019 dated 12.07.2019 issued by the Office of the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai (the Circular Memo dated 12.07.2019), which states as follows with regard to time lines for registration of contractors or for granting renewal of such registration:

<https://hcservices.ecourts.gov.in/hcservices/>

" 1. **Fresh Application** received from the Contractor for



new registration will be scrutinized and if it is found to be genuine, the Registration certificate will be issued within 30 days from the date of application in the Office of the Engineer-in-Chief, WRD & Chief Engineer (General), PWD, Chennai-5.

2. (a) **Renewal application** has to be applied by the contractor 30 days before the expiry date of previous year renewal certificate.

(b) **Renewal application** will be processed and live certificate issued in the Office of the Engineer-in-Chief, WRD & Chief Engineer (General), PWD, Chennai within 20 days, from the date of receipt of the application for renewal, if it is found to be genuine.

The Superintending Engineer's / Executive Engineer's of this department are therefore requested to submit the bona fide certificate to this office, so as to adhere the above said time limit."

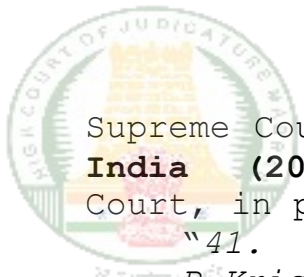
12. In these facts and circumstances, it is necessary to examine whether the order of the Writ Court is sustainable. As stated earlier, the Writ Court referred to judgments of the Hon'ble Supreme Court such as **State of Punjab vs. Ram Lubhaya Bagga etc (1998) 4 SCC 117**. In the said judgment, it was held, inter alia, as follows, in paragraph 25, in respect of interference in policy matters:

"25..... So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

13. Similarly, in the same judgment, at paragraph 23, the Supreme Court, held, in relevant part, that,

"23. The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be...."

14. Similarly, it was held in the judgment of the Hon'ble



Supreme Court in **Social Action Forum for Manav Adhikar vs. Union of India (2018) 10 SCC 443**, which was also referred to by the Writ Court, in paragraph 41, as follows:

"41. Another three-Judge Bench in Census Commissioner v. R.Krishnamurthy after referring to N.D.Jayal v. Union of India, Rustom Cavasjee Cooper v. Union of India, Premium Granites v. State of T.N., M.P. Oil Extraction v. State of M.P., State of M.P. v. Narmada Bachao Andolan and State of Punjab v. Ram Lubhaya Bagga, opined :

"33. From the aforesaid pronouncement of law, it is clear as noontday that 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 and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

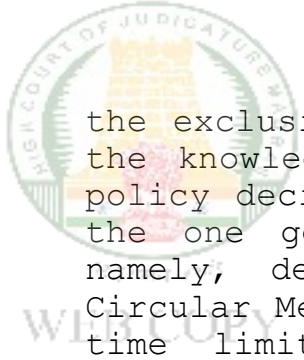
15. In addition, in **Centre for Public Interest Litigation vs. Union of India (2016) 6 SCC 408**, it was held, inter alia, as follows, in paragraph 21:

"21. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions."

16. If the test laid down by the Hon'ble Supreme Court for interference with policy matters is applied to the facts of the present case, the question that arises is whether the policy that is contained in the Impugned G.O. can be described as absolutely capricious or not informed by reasons or totally arbitrary. On perusal of the said policy, we do not find anything capricious or arbitrary in the said policy. It is the prerogative of the Government to change the existing policy and replace it with a centralised policy and the finding of the Writ Court that it is decentralisation that will promote efficiency and not centralisation is patently erroneous and contrary to the principles formulated by the Supreme Court on judicial review of policy. The contention of the respective Respondent herein that the previous system was in existence for about 19 years and that the change in policy is arbitrary cannot be countenanced because the Government is entitled to change the procedure for registration of Contractors provided the said changed procedure is not arbitrary.

<https://hcservices.ecourts.gov.in/hcservices/>

17. In our considered view, the efficiency or otherwise of centralisation as opposed to decentralisation is a matter within



the exclusive province of the executive and this Court has neither the knowledge nor expertise to interfere with and set aside such policy decisions. In this regard, it is relevant to reiterate that the one genuine concern of contractors who intend to register, namely, delay on account of centralisation is allayed by the Circular Memo dated 12.07.2109 whereby the Chief Engineer has fixed time limits both in respect of registration and renewal of registration.

18. Accordingly, we are of the view that the order impugned in these Writ Appeals is not sustainable and is liable to be set aside albeit with the following directions with regard to time lines based on the Circular Memo dated 12.07.2019, which was filed before this Court by the Appellants:

- (i) Fresh applications from contractors for registration shall be considered, processed and disposed of, by specifying reasons in case of rejection thereof, within 30 days from the date of receipt of a complete application with all necessary supporting documents; and
- (ii) Renewal applications shall be considered, processed and disposed of, by specifying reasons in case of rejection thereof, within a period of 20 days from the date of receipt of a complete application with all necessary supporting documents.

19. In the result, the above Writ Appeals are allowed and the order impugned herein is set aside, subject to the above directions, but there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

TO

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

2) The Engineer-in-Chief (Buildings),
Chief Engineer (Buildings),
Public Works Department,
Chepauk,

<https://hcservices.ecourts.gov.in/hcservices/>
Chennai 600 005



3) The Chief Engineer (Buildings),
PWD Compound,
Trichy Region,
Trichy - 1

4) The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance),
Trichy Circle,
Trichy.

+1 CC to M/s.SPL GP (SR-78204[F] dated 29/07/2019)

+1 CC to M/s.K.SUNDARAVEL, Advocate (SR-78449[F] dated 30/07/2019)

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