

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 29.07.2020

Pronouncing orders on : 31.07.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P Nos.5495, 9594 and 9735 of 2020
and

WMP Nos.6432,6433, 11718, 11719,11853,11857,11859 & 11860 of
2020,12124 of 2020

1. Mrs.Parvathy
W/o.Srinivasan,
Chairperson,
District Panchayat Council,
Tiruvannamalai District.
2. O.Jothi
S/o.Oyyaravel,
Chairman,
Cheyyar Panchayat Union Council,
Kadaganur Village and Post,
Cheyyar Taluk,
Tiruvannamalai District. ...Petitioners
in W.P.No.5495 of 2020

Mrs.Parvathy
W/o.Srinivasan,
Chairperson,
District Panchayat Council,
Tiruvannamalai District. ...Petitioner
in W.P.No.9594 of 2020

1. G.Ramesh
President,
Devanandhal Village Panchayat,
Tiruvannamalai Panchayat Union,
Tiruvannamalai District.
2. M.Kuppusamy
President,
Vedanatham Village Panchayat,
Keelpennathur Panchayat Union,
Tiruvannamalai District.

3. S.Alaguraman
President,
Ponneri Village Panchayat,
Harur Panchayat Union,
Dharmapuri District.

4. A.Rajendran
President,
Selathampatti Village Panchayat,
Salem Panchayat Union,
Salem District.

5. K.Karunanidhi
President,
Kazhudur Village Panchayat,
Mangalur Panchayat Union,
Cuddalore District.

6. P.Devaraj
President,
Malaiyanur Village Panchayat,
Mangalur Panchayat Union,
Cuddalore District.

7. S.Rajini Selvam
President,
Thiruvananthapuram Village Panchayat,
Uthangarai Panchayat Union,
Krishnagiri District.

...Petitioner
in W.P.No.9735 of 2020

1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 009.

2. The Director of Rural Development and Panchayat Raj,
Panagal Maligai,
Saidapet,
Chennai - 600 015.

3. The District Collector cum
District Rural Development Agency,
Tiruvannamalai District,
Tiruvannamalai.

4. The Project Director,
District Rural Development Agency (DRDA)
Tiruvannamalai District,
Tiruvannamalai.

...Respondents
in W.P.No.5495 of 2020

1. The Government of Tamil Nadu,
Rep. By its Prinicipal Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Director of Rural Development and Panchayat Raj,
Panagal Maligai,
Saidapet,
Chennai - 600 015.
3. The District Collector cum Chairman,
District Rural Development Agency,
Tiruvannamalai District,
Tiruvannamalai.
4. The Project Director,
District Rural Development Agency (DRDA)
Tiruvannamalai District,
Tiruvannamalai.
5. The District Panchayat Secreatary,
Tiruvannamalai District Panchayat,
Tiruvannamalai.

...Respondents
in W.P.No.9594 of 2020

1. Union of India,
Rep. by its Secretary to Government,
Ministry of Jal Sakthi,
Department of Driniking Water and Sanitation
National Jal Jeevan Mission,
New Delhi 110 003.

2. The Government of Tamil Nadu,
Rep by its Chief Secretary,
Secretariat,
Fort St. George,
Chennai - 600 009.
3. The Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
State Nodal Officer for implementation of
Jal Jeevan Mission (JJM) in Tamil Nadu,
Secretariat,
Chennai - 600 009.

4. The Managing Director / TWAD Board & Mission Director,
Jal Jeevan Mission (JJM)
State Water and Sanitation Mission,
JJM Cell, TWAD House,
No.31, Kamarajar Salai,
Chepauk,
Chennai - 600 005.
5. State Level Scheme Sanctioning Committee (SLSCC)
Government of Tamil Nadu,
Chennai.
6. Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015. ...Respondents
in W.P.No.9735 of 2020

Prayer in W.P.No.5495 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, declaring that the entire process of inviting, processing and finalization of tenders of any nature in respect of the works within area of Tiruvannamalai District Panchayat and its respective Panchayat Unions, being undertaken by the Respondents 3 and 4, pursuant to the Letters of the 2nd respondent in RC.No.46072/19/MGNREGS 3.2 dated 24.09.2019 followed by Lr.No.46072/2019/MGNREGS 3.2, Dated 13.01.2020, without the approval of the elected councils of the respective local bodies, as illegal, null and void and consequently direct the Respondents in commence the process of all un-finalized tenders afresh, only after the decision as to the works to be undertaken and the approval of the respective local bodies in Tiruvannamalai District, based on the resolutions to be passed by the elected councils of the respective local bodies.

Prayer in W.P.No.9594 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, declaring that the entire work orders issued by the 3rd Respondent in respect of the tenders pertaining to the works within area of Tiruvannamalai District Panchayat, being undertaken by the Respondents 3 and 4, pursuant to the Letters of the 2nd Respondent in RC.No.46072/19/MGNREGS 3.2 dated 24.09.2019 followed by Lr.No.46072/2019/MGNREGS 3.2, Dated 13.01.2020, without the approval of the elected Council, is illegal, null and ab initio void.

Prayer in W.P.No.9735 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Letter in Letter No.4943/2020/JJM dated 02.07.2020 issued by the 6th respondent insofar as nominating the Project Director of DRDA of the respective District as the Tender inviting Authority and the District Collector as the Tender Accepting Authority, by following Table-II of Notification-II in the Tamil Nadu Panchayat (Preparation of Plans and Estimate of Works and mode and conditions of contracts) Rules, 2007 vide G.O.(Ms)No.203, RD & PR Department, dt.20.12.2007 for tendering and quash the same, consequentially direct the Respondents to strictly follow Table-I of Notification-II in the Tamil Nadu Panchayat (Preparation of Plans and Estimate of Works and mode and conditions of contracts) Rules, 2007 vide G.O.(Ms)No.203, RD & PR Department, dt.20.12.2007 for tendering, by nominating the President of Village Panchayat as Tender Inviting Authority and the Village Panchayat as Tender Accepting Authority for the implementation of Jal Jeevan Mission for the year 2020-2021.

W.P.No.5495 of 2020

For Petitioner: Mr.P.Wilson
Senior Counsel for Wilson Associates

For Respondents: Mr.P.H.Arvind Pandian
Additional Advocate General assist by
Mr.Jayaprakah Narayan
Government Pleader and
Mr.E.Balamurugan
Special Government Pleader for R1 to R5

W.P.No.9594 of 2020

For Petitioner: Mr.P.Wilson
Senior Counsel for Wilson Associates

For Respondents: Mr.P.H.Arvind Pandian
Additional Advocate General assist by
Mr.E.Balamurugan
Special Government Pleader for R1 to R4

Mr.S.N.Parthasarathi
Government Advocate for R5

W.P.No.9735 of 2020

For Petitioner: Mr.P.Wilson
Senior Counsel for Wilson Associates

For Respondents: Mr.P.H.Arvind Pandian
Additional Advocate General assist by
Mr.Jayaprakah Narayan
Government Pleader and
Mr.E.Balamurugan
Special Government Pleader for R1 to R3

Mrs.Tamilarasi for R4

C O M M O N O R D E R

The common grievance that has been expressed in all the 3 Writ Petitions pertains to the alleged disregard shown to the elected Panchayat by the respondents in the process of inviting tenders under the Jal Jeevan Mission (hereinafter referred to as "JJM") and for a consequent direction to the Respondents to commence the process of calling for tenders only after the decision and approval of the concerned Panchayat.

2.The petitioners are the elected Presidents of the concerned Panchayats. According to the petitioners, the Directive Principles of State Policy under Article 40 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution") envisaged organization of village panchayats and to endow them with such powers and authorities to enable them to function as units of self-government. Consequently, Part IX of the Constitution was inserted whereby panchayats were given a Constitutional Status by providing for their powers, authority and responsibility as enumerated under the 11th Schedule of the Constitution. The Tamil Nadu Panchayat Act, 1994 was also brought into force and various rules were framed by the Government of Tamil Nadu. The Rules also provided for constitution of various committees and sub-committees which were assigned with various responsibilities.

3.The Government of India launched the JJM with the aim of providing Functional Household Tap Connection to every rural household by the year 2024. For this purpose, the State Level Scheme Sanctioning Committee was constituted.

4.The relevant portions of the introduction of the JJM is extracted hereunder:

"In this backdrop, Jal Jeevan Mission (JJM) has been launched which aims at providing Functional Household Tap Connection (FHTC) to every rural household by 2024. The programme focuses on service delivery at household level, i.e. water supply on regular basis in adequate quantity and of prescribed quality. This necessitates use of modern technology in planning and implementation of water supply schemes, development of water sources, treatment and supply of water, empowerment of Gram Panchayat/local community, focus on service delivery, partner with other stake holders, convergence with other programmes, methodical monitoring of the programme and to capture service delivery data automatically for ensuring the quality of services. This will help in achieving the goal of Jal Jeevan Mission in its true letter and spirit.

The 73rd Amendment to the Constitution of India has placed the subject of drinking water in the Eleventh Schedule and has assigned its management to Gram Panchayats. Keeping this in view, under JJM, Gram Panchayats and local community will play the pivotal role in planning, implementation, management, operation and maintenance of in-village water supply systems including drinking water sources. Public Health Engineering Departments (PHED)/Rural Development Panchayat Raj/RWS Departments in-charge of rural drinking water in States will facilitate Gram Panchayats to perform their duties as envisaged in the Constitution.

Decentralized, demand-driven, community-managed implementation of the programme will instill 'sense of ownership' among the local community, create an environment of trust and bring in transparency leading to better implementation and long-term O & M of water supply systems. It will also ensure equity in accessing supply for every household and regular supply, thus willingness to pay for services. The incidents of diversion of water supply for other purposes will also get controlled."

5.The 73rd Amendment to the Constitution added Part IX to the Constitution providing for the establishment of Panchayats covering provisions from Articles 243-243(O) and a new 11th Schedule covering 29 subjects within the functions of the Panchayat. Entry 11 of the said Schedule deals with drinking water which devolves its management to the Panchayat Raj Institutions. Water Supply has been treated as the core function of Panchayat Commissions. It is also seen from the Mission Document that the State Government and its departments are expected to play a true role of a facilitator.

6.A Village Action Plan has to be prepared based on the type of scheme to be taken up in the village to provide functional household tap connection to every rural household. The Village Action Plan of all the villages in a district and all District Action Plans of all districts in the State will be aggregated along with the Regional Water Supply Schemes/Bulk Water Transfer and Treatment Plans based on the need to formulate District Action Plan and State Action Plan respectively.

7.The Mission Document also provides for executing the programme expeditiously and at a large scale, a centralized E-Tendering Mechanism to discover the best rates, best agencies and speed up the implementation on a high scale.

8.The District Water and Sanitation Mission (hereinafter referred to as "DWSM") in consultation with the Gram Panchayat and/or its Committee will award the work to the selected agency and enter into a tri-partite contract namely DWSM, Gram Panchayat and/or its Sub-Committee and Executive Agency.

9.When it comes to implementation, the Mission Document provides for the State Water and Sanitation Mission (hereinafter referred to as "SWSM") to identify the specific number of engineering structures to be taken up and approve their type designs after its presentation in the Gram Sabha and its approval. SWSM will finalize the contracts in engineering procurement and construction mode and empanel multiple agencies for execution of these identified structures. The empaneled agency will be allowed to take up specific number of villages to be covered in specified time which can be decided by SWSM. The tendering for empaneling and fixing cost is to be done at State

Level but the orders for in-village infrastructure development is to be placed by DWSM.

10. For the purpose of implementation of the JJM in Tamil Nadu, the Additional Chief Secretary to the Government issued a letter dt.03.04.2020 which speaks about the formation of the Village Level Committee and District Level Committee and preparation of Village Plan, District Plan and Revalidation of Baseline Data on Functional Household Tap Connection. The said letter also states about the appointment of the Mission Director and constitution of the Apex Committee, Executive Committee, and State Level Scheme Sanctioning Committee to gear up the activities. The letter also provides for timelines for preparing Baseline Data and detailed Project Report for Schemes and Functional Household Tap Connections, finalization of Village Action Plan, etc.,

11. The Mission Director, JJM issued proceedings dt.10.06.2020. the proceedings dealt with the object of the JJM. It also identified the baseline data of the status of functional household tap connections in rural households in Tamil Nadu as on 01.04.2020. it also states the total allocation of funds made by the Government of India for the implementation of the scheme.

It also provides for the allotment of funds to the various districts under the JJM. The letter also directs the DWSM to prepare the Village Action Plan covering all the habitations in the village panchayat to provide for functional household tap connection. Various guidelines have been given in that regard. The proceedings ultimately state that it has to be ensured that a tri-partite contract, work register, third party inspection and payment mode should be formed in the part of tender document.

12. A government order was issued in G.O (Ms) No.111 dt.16.06.2020 wherein the Government of Tamil Nadu accepted the proposal of the Mission Director of JJM and approved the Operational Guidelines for the implementation of the JJM in Tamil Nadu.

13. The most relevant part of the Annexure appended to the Government Order that is relevant for the present case is the portion which deals with tendering. For better appreciation, the same is extracted hereunder:

17. Tendering

I. The works under JJM will be executed following the Tamil Nadu Transparency Act, 1998 and Rules, 2000.

II. RD&PR Department shall follow Table-I of Notification-II in the Tamil Nadu Panchayats (Preparation of Plans and Estimate of Works and Mode and Conditions of Contracts) Rules, 2007 vide G.O. (Ms) No. 203, RD &PR Department, dt.20.12.2007 for tendering.

III. The BDO (VP) shall be the tender inviting authority and the tender accepting authority shall be BDO (VP)/District Collector/ DRD&PR as the case may be.

IV. The TWAD Board shall follow the tender documents and other procedures as per the prevailing methods for execution of water supply schemes.

V. E-submission of bids shall be followed for the works under JJM.

17.1 Procedure for Tender

For works done by TWAD Board the existing procedures as per Tamil Nadu Transparency in Tenders (TTT) Act shall be followed. Work should be awarded as per the criteria adopted to assess the bidding capacity of contractor for that work. For SVS works done by RD&PR Department, DPR for one or two SVS as a whole shall be given to a contractor and the size of package value will be of Rs.1.00 crore and the following conditions shall be incorporated.

i. Two cover tender schemes will be followed for all tenders under JJM i.e. Technical Bid and Price Bid.

ii. Package tender by compiling works of contiguous Village Panchayats i.e. one or two Village Panchayat as a whole shall be given to a contractor and the size of the package will be of Rs. 1 crore.

iii. Bid capacity will be followed to assess the capacity of the bidder based on their financial capacity and working capacity.

iv. Completion milestone will be followed.

v. Liquidated damages will be levied from defaulted contractors.

vi. E-bid submission will be followed by following due procedures of TTT Act, 1998 and Rules, 2000.

17.2 Conditions for contracts

For the works done by both RD&PR Department and TWAD Board, the existing norms for the contracts shall be followed as the case may be.

14. It is clear from the above that the works under JJM will be executed following The Tamil Nadu Transparency in Tenders Act, 1998 and Rules thereunder. It specifically provides for following Table-I of Notification II when it comes to Panchayats for tendering. It will be therefore relevant to extract Table-I of Notification II of Tamil Nadu Panchayats (Preparation of Plans and Estimates of Works and Mode and Conditions of Contracts) Rules, 2007 hereunder:

NOTIFICATION - II

In exercise of the powers conferred by section 7 of the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998), the Governor of Tamil Nadu hereby appoints Tender inviting authorities and Tender accepting authorities, as indicated in Tables I and II below:-

TABLE - I.

सत्यमेव जयते

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Tender Accepting Authority

				(i) For tender excess
			For tender excess	more than 5% in case of works costing not more than
Sl . Category of No works .	Tender inviting Authority	In case of no tender excess	upto 5% in case of works	rupees five lakhs;
			costing (or) not more than rupees five lakhs.	(ii) For any tender excess in case of works costing more
				than rupees five lakhs.
(1) (2)	(3)	(4)	(5)	(6)
General Fund (1 W orks of) Village Panchayat	President	Village Panchayat	Collecto r	Director of Rural Developme nt and Panchayat Raj
Scheme works (2 entrusted to) Village Panchayat	President	Village Panchayat	Collecto r	Director of Rural Developme nt and Panchayat Raj

(3)	Scheme works entrusted to Block Development Officer (Village Panchayats)	Block Development Officer (Village Panchayats)	Block Development Officer (Village Panchayats)	Collector	Director of Rural Development and Panchayat Raj
(4)	General Fund works of Panchayat Union	Block Development Officer (Block Panchayat)	Panchayat Union Council	Collector	Director of Rural Development and Panchayat Raj
(5)	Scheme works entrusted to Panchayat Union	Block Development Officer (Block Panchayat)	Panchayat Union Council	Collector	Director of Rural Development and Panchayat Raj
(6)	Scheme works entrusted to Block Development Officer (Block Panchayat)	Block Development Officer (Block Panchayat)	Block Development Officer (Block Panchayat)	Collector	Director of Rural Development and Panchayat Raj

15. It is pursuant to the above Government Order, the Director, Rural Development and Panchayat Raj issued a letter dt.02.07.2020 to all the District Collectors/Chairman, District Rural Development Agency of all districts informing that the Project Director, District Rural Development Agency (hereinafter referred to as "DRDA") will be the tender inviting authority and the District Collector will be the tender accepting authority as per Table II of Notification II in G.O (Ms) No. 203 dt.20.12.2007. With these clarifications a direction was given to complete the tender process before 31.07.2020.

16. The Director, Rural Development and Panchayat Raj issued advice for implementation of the rejuvenation of rural waterbodies including MI tanks, ponds and ooranis, etc., by his letter dt.24.09.2019. Pursuant to the same, the Collectors of various districts ordered for implementation of the renovation works and called for tenders by providing for timelines for the issuance of work orders. The floating of these tenders has become the subject-matter of challenge along with the very impugned letter dt.02.07.2020 issued by the Director, Rural Development and Panchayat Raj nominating the Project Director of DRDA of the respective district as the tender inviting authority and the District Collector as the tender accepting authority.

17.Mr. P. Wilson, learned Senior Counsel appearing on behalf of the petitioners, principally attacked the impugned letter and the tender process on the ground that the respondents are violating the guidelines given under the JJM issued by the Government of India and disregarding the independence of local bodies which has been protected under the Constitution. The Learned Senior Counsel further submitted that the entire scheme as provided under the JJM is purely within the domain of the functions of the Village Panchayat and therefore, the role of the Village Panchayat is very vital in the implementation of the scheme and the same has been ignored completely by the authorities.

18.The Learned Senior Counsel further relied upon Table I of Notification II of the Rules, 2007 and submitted that the President of the Village Panchayat is the tender inviting authority and the concerned Village Panchayat is the tender accepting authority and this power has been completely taken away by adopting Table II of Notification II of the Rules, 2007. This directly violates the relevant rules and therefore, the inviting of the tender is liable to be declared as illegal.

19. The Learned Senior Counsel in order to substantiate his submissions relied upon the order passed by the Madurai Bench of the Madras High Court in W.P (MD) 7444 of 2020 dt.21.07.2020. the relevant portions in the order is extracted hereunder:

"13. Article 40 of the Constitution of India mandates that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The Hon'ble Supreme Court in the decision reported in (2012) 7 SCC 550 (Village Panchayat, Calangute Vs. The Additional Director of Panchayat-II and Ors) observed as follows:

"21.The Preamble, Part IV and Part IX of the Constitution must guide our understanding of the Panchayati Raj institutions and the role they play in the lives of the people in rural parts of the country. The conceptualization of the Village Panchayat as a unit of self-government having the responsibility to promote social justice and economic

development and as a representative of the people within its jurisdiction must be borne in mind while interpreting the laws enacted by the State which seek to define the ambit and scope of the powers and the functions of Panchayats at various levels.

22. An analysis of Article 40 and Articles 243 to 243O shows that the framers of the Constitution had envisaged Village Panchayat to be the foundation of the country's political democracy -a decentralized form of Government where each village was to be responsible for its own affairs. By enacting the Constitution (Seventy-third Amendment) Act, Parliament has attempted to remedy the defects and remove the deficiencies of the Panchayati Raj system evolved after independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self- governance by the people at the grass root through the institution of Panchayats at different levels. For achieving the objectives enshrined in Part IX of the Constitution, the State Legislatures have enacted laws and made provision for devolution of powers upon and assigned various functions listed in the Eleventh Schedule to the Panchayats. The primary focus of the subjects enumerated in the Eleventh Schedule is on social and economic development of the rural parts of the country by conferring upon the Panchayat the status of a constitutional body. Parliament has ensured that the Panchayats would no longer perform the role of simply executing the programs and policies evolved by the political executive of the State. By virtue of the provisions contained in Part IX, the Panchayats have been empowered to formulate and implement their own programs of economic development and social justice in tune with their status as the third tier of government which is mandated to represent the interests of the people living within its jurisdiction. The system of Panchayats envisaged in this Part aims at establishing strong and accountable systems of governance that will in turn ensure more equitable distribution of resources in a manner beneficial to all."

14.The respondents 2 to 4 have not kept in view the constitutional objective as adumbrated above. A duly elected local body has been treated as non-existent and totally ignored in the process of decision-making. While the District Collector is the authority competent to accord administrative sanction for tender works valued more than Rs.50,000/-, the proposals must emanate from the local body concerned. If there is no elected local body, the Block Development Officer can submit proposals. Unless it is a case of emergency, it is the local body that must deliberate and make the proposals. The learned counsel for the petitioner has convincingly established that the impugned tender notification was issued by the third respondent by usurping the role of the Panchayat Union Council and by violating the provisions of the Tamil Nadu Panchayats Act, 1994. The third respondent cannot invoke either Section 86 or Section 261-A of the Act to sustain the impugned tender notification which clearly lacks jurisdiction. It is quashed. The writ petition stands allowed. There shall be no order as to costs. Connected miscellaneous petitions are closed."

20.The learned Senior Counsel by pointing out to the above order submitted that the Panchayats have been allowed to formulate and implement their own programmes and the same cannot be usurped by the authorities by violating the provisions of the Panchayat Act and Rules. The Learned Senior Counsel submitted that the above order will squarely apply to the facts of the present case and hence the impugned letter issued by the Director, Rural Development and Panchayat Raj and the tender floated by the authorities will have to be declared as illegal and unconstitutional.

21.Per contra, Mr. Aravind Pandiyan, learned Additional Advocate General appearing on behalf of respondents 2 to 6 submitted that the JJM Guidelines itself provides for the manner in which the scheme must be implemented and there is no ground to interfere with the floating of the tender which has been done for allotting work for creation and maintenance of ooranis, ponds, MI tanks etc., and it should be completed before the onset of the North-East monsoon. The learned Additional Advocate General further submitted that the entire scheme is sponsored by the Central Government and the State Government in the ratio of 75:25.

22.The learned Additional Advocate General further submitted that the very same issue became a subject-matter of challenge before the Madurai Bench of the Madras High Court in W.P. (MD) No. 5068 of 2020 (Batch) and the Writ Petition itself was dismissed by an order dt.10.03.2020. The learned Additional Advocate General placed reliance upon the following portions of the judgement which are extracted hereunder:

11. The learned counsel for the petitioners also drew the attention of this Court to the Constitution, particularly, Article 243, which relates to Panchayats. It had been stated that sufficient recognition should be given by the State Government, recognising the role of the Panchayat and hence there cannot be any order passed in the nature of the order now impugned in the present writ petitions, encroaching into the powers of the Panchayat not only, according to the learned counsel for the petitioners, directly interfering with the decision making capacity of the Panchayats, but also directly interfering with the funds available with the Panchayats.

12. The learned counsel for the petitioners further drew the attention of this Court to Article 243 G of the Constitution of India, which deals with the powers, authority and responsibilities of Panchayats, wherein, it had been stated that the Panchayat has the power to prepare plans for economic development and for social justice and also to implement such Schemes, which directly empower and brings about social justice.

13. The learned counsel for the petitioners therefore stated that by directing the Panchayats to execute works of de-silting of tanks and Ooranies by utilising the State Financial Commission Grants, the impugned order directly interfered with the independent functioning of the Panchayats.

14. Attention was also drawn to the Tamil Nadu Panchayat Act, 1994, and in particular, to the very Preamble of the said Act itself. It has been stated that the Act had been passed with the noble object of establishing a three tier Panchayat Raj system in the State of Tamil Nadu by elected bodies at the Village. Intermediate and in the District level and the Tamil Nadu Panchayat Act, 1994, has been introduced by the

Legislature in consonance with the objects of the Constitution relating to Panchayats, which require greater participation of the people in governance. According to the learned counsel for the petitioner, there has been a direct intrusion not only on the objects of the Constitution, but, to the functioning of the Panchayats themselves. It is therefore stated that the grievance expressed by the writ petitioners are genuine and have to be examined by this Court.

15. The learned counsel for the petitioner also drew attention of this Court to Section 83 of the said Act, by which, an Executive Authority of a Village Panchayat is appointed by the Government, by proper Notification and such Executive Authority has to perform duties relating to executing the resolutions of the Village Panchayat. It had been stated that deepening of tanks / Ooranies can also be done by the Village Panchayats, if a resolution is passed and can be executed through the Executive Authority.

16. The learned counsel also relied on Section 112 of the said Act, wherein a duty had been caused on the Panchayat Union Council to provide for certain matters, in particular excavation, renovation and maintenance of tanks, the construction of works for the supply of water for drinking, washing and bathing purposes etc., as provided in Section 112 (aa) of the said Act.

17. After pointing out all these provisions, the learned counsel stated that directing the Panchayat to execute the works through the State Financial Commission Grants, is an interference into the budget and would eat away the funds already granted, which funds can be used for any other purpose, since deepening of the tanks / Ooranies can be done with the State Funds and not necessarily from the State Financial Commission Grants.

18. The learned counsel further pointed out, under the impugned order, the Additional Collector / Project Director of Madurai, had been appointed as the Tender Inviting Authority, with power to invite bids from prospective tenderers for the said work of de-silting and deepening of Ooranies, tanks and ponds and the learned counsel stated that the appointment of such Additional Collector / Project Director, is once again a

direct interference into the working of the Panchayat.

19. It is seen that the said Officer had actually invited tenders, which invitation has been filed along with the writ petitions and according to which, tenders were invited from 04.03.2020 and they would be opened on 11.03.2020 at 04.00 p.m.

20. After hearing the learned counsel for the writ petitioner for quite some time and having granted opportunity of advancing arguments at length, after considering the materials on record, I am unable to convince myself to accede to the contentions raised.

21. The impugned order has been passed by the District Collector to execute restoration, renovation, deepening and de-silting of Ooranies, ponds and tanks in as many as 230 works, and the total cost had been estimated as Rs.1282.74 Lakhs. It had been stated that this amount can be utilised from the State Financial Commission Grants and sanction had been granted for utilising such Government amount. It is also been seen that the Village Panchayats were directed to include the said amount in their budgets and that the consent of the Grama Saba should also be obtained. It had been finally stated in the impugned order that to execute the works, an E-Tender would be called for and the Tender Inviting Authority had been stated to be the Additional Collector / the Project Director of Madurai.

22. With respect to the argument that by the impugned order, the right of the Panchayats to pass resolutions for execution of projects have been interfered with it has to be stated that it is an argument, which cannot stand scrutiny. The District Collector had passed the impugned order, directing necessary works to be executed in specific tanks, in specific Ooranies and in specific ponds. The District Collector had taken up the responsibility of ensuing that these tanks/ooranies/ponds in the named villages are de-silted and are deepened. The objects cannot be questioned. There is no infringement on the rights of the Panchayat. A decision had been taken for public good and welfare, and it would be sanguine on the part of the Panchayats to join

hands in this welfare object. They can pass resolutions to second the objects, but taking efforts to scuttle the objects cannot be appreciated. The learned counsel for the petitioners admitted that the Village Panchayats also approve the works stated in the impugned order.

23. The second line of challenge to the impugned order is with respect to the source of funds, for execution of the works. Drawing attention to G.O. (Ms.).No.96, wherein it had been stated that deepening of Ooranies and ponds should be done through the State Funds and contrasting that with the statement in the present impugned order wherein it has been stated that such work should be carried out through the State Financial Commission Grants, learned counsel stated that the State Government could have by, the impugned order, executed such works, utilising State Funds, rather than eating into the State Financial Commission Grants, which are specifically allotted to the Village Panchayats.

24. I hold that State Financial Commission Grants are allotted to the Village Panchayats also for deepening of village tanks, Ooranies and ponds. If the Collector had taken a decision that the said funds are to be utilised for deepening of particular tanks situated within the Panchayat area, then the Panchayat Union cannot raise their objections for the same. If the Panchayats are aggrieved that this utilisation would erode their financial strength, then individual Panchayats can approach the Collector / Chairman, DRDA and seek readjustment of utilisation of funds. But, attempting to scuttle the entire project cannot be appreciated.

25. I find no grounds to justify raising such objections. Funds are allotted to the Panchayat only to carry out works for public good. Deepening of tanks and Ooranis are works for public good. Utilising of funds allotted in the State Financial Commission Grants cannot be faulted. The amounts involved are huge. A segregation of expense for each tank, for each Oorani, for each pond and the funds estimated had been specifically mentioned. The petitioners herein have not questioned that estimate. They have not questioned whether these tanks and these Ooranis require de-silting and deepening. These

issues have not been challenged or questioned by the petitioners. If the funds are utilised for a good purpose, then it is to be expected that the Village Panchayats would join hands with the Collector/ Chairman, DRDA in executing the works.

26. It is seen that by the impugned order, 230 villages have been identified in 13 Blocks. Naturally, it would only be in the interest of all concerned, that a Centralised agency invites tenders and processes the same. If this is decentralised then it would lead to the fixation of different standards by each Panchayat. That cannot be permitted. A Centralised Agency can examine the bids of all the tenderers, examine the capabilities and then award the same. I do not find any infirmity in the procedure adopted.

27. Interference of Courts in policy decisions should be avoided unless there is perversity writ large on the face of such policy decisions. The impugned order cannot be categorised as such."

23. The learned Additional Advocate General placing reliance on the above order passed by this Court, submitted that the same will squarely apply to the challenge that has been made in the present Writ Petitions also. Therefore, the petitioners cannot be allowed to again re-agitate the matter which has already been decided by a learned Single Judge of this Court.

24. The learned Additional Advocate General submitted that the scheme is implemented only in this manner throughout the country. It was submitted that the policy document specifically provided for Centralized E-Tendering Mechanism for the purpose of procuring the materials at the best rates from the best agencies. It was submitted that the implementation is actually carried out at the local level by the panchayat and there is no interference with the independence of the local body in any manner. The learned Additional Advocate General further submitted that the scheme document itself provided specifically at Chapter VI that the tendering for empaneling and fixing the cost has to be done at the State Level. It was further submitted that there are totally 12,525 village panchayats and each panchayat cannot be allowed to float the tender for the purpose of procurement of the materials since it will not only go against the scheme but also delay the entire implementation and bring in a lot of anomalies in fixing the rates and also identifying the agencies for procuring the materials.

25.The learned Additional Advocate General further submitted that the order cited by the learned Senior Counsel appearing on behalf of the petitioner will not apply to the facts of the present case since in the said case the works that was the subject-matter of the impugned tender notification was to be carried out under the General Fund of the panchayat and therefore, this Court held at paragraph 14 of the order that the elected local body was ignored in the process of decision-making and the proposals cannot be carried forward without deliberating with the local body. In the present case, the entire scheme is going to be implemented only by the local bodies and the job of the State Agency will confine itself only for the procurement of materials and rejuvenating the water bodies by desilting the ponds, ooranis, MI tanks etc.,.

26.This court has carefully considered the submission made on either sides and materials available on record.

27.The Director, Rural Development and Panchayat Raj by his letter dt.24.09.2019 issued advice for implementation of the rejuvenation of the rural water body works including MI tanks, ponds, ooranis, etc., Based on the said communication, the Collectors/Chairman, DRDA got into action for implementing the works and completing the same before the North-East monsoon.

28.It is seen that there are nearly 12,525 village panchayats and already there is a baseline data that has been collected with regard to the status of functional household tap connections in rural households in Tamil Nadu. The DWSM of the respective districts have already submitted a District Annual Action Plan for the year 2020-21 to the Mission Director of JJM during April and May 2020. Based on the same, the State Annual Action Plan has been submitted to the Government of India on 15.05.2020 requesting for the sanction of funds to effectively implement the JJM Scheme. The Government of India by their letter dt.28.05.2020 has allocated a sum of Rs.917.44 crores towards their share for the year 2020-21. It is seen from the proceedings of the Mission Director of JJM dt.10.06.2020, the funds that have been allotted to the various districts under JJM.

29. It is seen from the scheme document that it has recognized the fact that the panchayats and local communities will play the pivotal role in planning, implementation, management, operation and maintenance of in-village water supply systems including drinking water sources. In order to avoid each panchayat undertaking the process of floating a tender, Chapter VI of the scheme document which deals with the implementation specifically provides that the tendering for empaneling and fixing cost has to be done at the State Level. This was provided to ensure that the programme is executed expeditiously. When this is done at a large scale, a centralized e-tendering mechanism will have to be adopted in order to discover the best rates, best agencies and for speeding up the implementation on such a high scale. It was for this purpose Notification II, Table II of the Rules, 2007 was implemented and the project officer of the District Rural Development Agency was made as the tender inviting authority and District Collector/Director, Rural Development and Panchayat Raj was made as the tender accepting authority. Allowing each panchayat to float tenders will delay the entire process and it will result in utter confusion and inconsistencies in the rates and identification of the agency to perform the work.

30. It was made clear by the learned Additional Advocate General that the ultimate implementation will actually be done at the local body level and therefore, there is not interference with the independence of the panchayats and local bodies.

31. The learned Single Judge of this Court in a batch of Writ Petitions decided in the Madurai Bench has considered the very same issue and has held that the object behind the scheme and the implementation of the same cannot be questioned and in fact the Panchayats must join hands in this welfare object. The learned Single Judge has further held that it will be in the interest of all concerned, that a centralized agency invited tenders and processes the same and if the same is decentralized, it will lead to fixation of different standards by each panchayat.

32. I am in complete agreement with the said order and I do not find any grounds to differ with the reasonings given in the order by the learned Single Judge while dismissing the Writ Petitions.

33. In view of the above discussion, this Court does not find any grounds to grant the relief claimed by the petitioners and accordingly all the Writ Petitions are dismissed. No costs. Consequently, all the miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Principal Secretary,
Government of Tamil Nadu
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 009.
2. The Director of Rural Development and Panchayat Raj,
Panagal Maligai,
Saidapet,
Chennai - 600 015.
3. The District Collector cum
District Rural Development Agency,
Tiruvannamalai District,
Tiruvannamalai.
4. The Project Director,
District Rural Development Agency (DRDA)
Tiruvannamalai District,
Tiruvannamalai.
5. The District Panchayat Secretary,
Tiruvannamalai District Panchayat,
Tiruvannamalai.
6. Union of India,
Rep. by its Secretary to Government,
Ministry of Jal Sakthi,
Department of Drinking Water and Sanitation
National Jal Jeevan Mission,
New Delhi 110 003.

7. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 600 009.
8. The Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
State Nodal Officer for implementation of
Jal Jeevan Mission (JJM) in Tamil Nadu,
Secretariat,
Chennai - 600 009.
9. The Managing Director / TWAD Board &
Mission Director,
Jal Jeevan Mission (JJM)
State Water and Sanitation Mission,
JJM Cell, TWAD House,
No.31, Kamarajar Salai,
Chepauk,
Chennai - 600 005.
10. State Level Scheme Sanctioning Committee (SLSCC)
Government of Tamil Nadu,
Chennai.

+1cc to the Government Pleader Sr.25861, 25862, 25863
+2cc to Mr.V.Jayaprakash Narayanan, Advocate Sr.25808, 25809
+2cc to Mr.P.Wilson Associates, Advocate Sr.25959, 25960

सत्यमेव जयते W.P Nos.5495,

9594 and 9735 of 2020
and

WMP Nos.6432, 11718, 11719,11853,11857,11859 & 11860 of 2020

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srg 21/08/2020