

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.02.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.2420 of 2021

and

W.M.P.Nos.2730, 2731 and 2732 of 2021

- 1.M/s Conductor Manufacturers Association of Tamil Nadu,
represented by its Hon.Secretary, Mr.Ashok Jain,
61, TTK Road, 2nd Floor, Alwarpet,
Chennai - 600 018
- 2.M/s Sridhara Electrotek,
represented by its Partner, Mr.K.Bhaskaran,
Plot No.158, EE Industrial Estate,
OMR, Perungudi,
Chennai - 600 006 Petitioners
- vs.
- 1.The State of Tamil Nadu
rep by its Secretary,
Department of Energy,
Secretariat, Fort.St.George,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
rep by its Secretary,
Department of Micro, Small, Medium Enterprises,
Secretariat,
Fort St.George,
Chennai - 600 009. सत्यमेव जयते
3. The State of Tamil Nadu,
rep. By its Secretary,
Department of Finance (Bureau of Public Enterprises),
Secretariat,
Fort St.George,
Chennai - 600 009
- 4.M/s Tamil Nadu Generation and Distribution Corporation Ltd,
rep by its Chairman cum Managing Director,
No.144, Anna Salai,
Chennai - 600 002.

5. The Chief Engineer,
Office of the Chief Engineer (Material Management),
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
6. The Superintending Engineer,
Office of the Chief Engineer (Material Management I),
Tamil Nadu Generation and Distribution Corporation Ltd.,
4th Floor, Western Wing,
No.800, Anna Salai,
Chennai - 600 002
- Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Impugned Tender Notification dated 03.01.2021, bearing Specification No.M.33/2020-21 issued by the 6th Respondent, inviting tenders for the supply of 7/4.09 MM ACSR Raccoon Conductor through E-tendering scheduled to be conducted on 06.02.2021 at 3.00 PM and quash the same and consequently, directing the Respondents to henceforth procure ACSR Conductors upto 19 strands in conformity with the Government Order bearing G.O.No.195 dated 04.05.1998 issued by the Finance (Bureau of Public Enterprises) Department, the 3rd Respondent herein, as also the assurance of the 2nd respondent vide its letter dated 10.01.2019.

For Petitioners

.. Mr.N.L.Rajah
Senior Counsel for
K.R.Arun Shabari

For Respondents 1 to 3

.. Mr.P.S.Siva Shamuga Sundaram
Special Government Pleader

For Respondents 4 to 6

.. Mr.V.Anil Kumar
Standing Counsel

ORDER

This Writ Petition is filed as against the tender notification dated 03.01.2021 issued by the 6th respondent inviting tenders for supply of 7/4.09 MM ACSR Raccoon Conductors through E-tendering scheduled to be conducted on 06.02.2021.

2.Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader takes notice for 1st to 3rd respondents. Mr.V.Anil Kumar, learned Standing Counsel takes notice for the 4 to 6th respondents.

3. The grievance of the petitioners is that by passing these SSI units, vide impugned notification, the respondent

TANGEDCO is intended to procure ACSR Conductors upto 19 strands without following the guidelines of the Government Order issued in G.O.Ms.No.195, Finance (BPE) Department dated 04.05.1998 and the assurance given by the Secretary to Government in his letter dated 10.01.2019.

4. When the matter is taken up for hearing, Mr.Anil Kumar, learned Standing Counsel for the Tamil Nadu Electricity Board submits that the impugned notification has been recalled by the respondent Board for some consultation with the Government to proceed with the tender and he also requested to dismiss the writ petition as infructuous, as they are not intending to process the tender as of now.

5. Mr.N.L.Rajah, learned Senior Counsel appearing for the petitioners, however, pointed out that by way of the impugned notification, the respondents Board has given a go-by to the earlier Government Order made in G.O.Ms.No.195 Finance (BPE) Department dated 04.05.1998, wherein the Government has taken a stand with regard to the procurement of ACSR conductors upto 19 strands and the relevant portion of the said G.O. reads as follows:

"2. The Government has reviewed the order issued in para 5 and 6 of the G.O sixth read above and in partial modification of the orders issued in the G.O sixth read above, issue the following orders:-

The purchase preference for Small Scale Industries in the state which existed prior to the issue of the G.O sixth read above, be restored in respect of 350 items reserved by the GOI for exclusive purchase from SSIs. The list of these items is annexed to the order. These items will be purchased from SSIs in the State through open tender.

3. Functional registrars of Co-operative Societies should communicate this order to all the Co-operative Institutions under their control. Director of Municipal Administration / Director of Town Planning / Director of Rural Development / Director General of Municipal Corporation should communicate this order to all the Local Bodies under their control. The Director of Stationery & Printing shall publish this order in the Government Gazette in the earliest issue."

6. Learned Senior Counsel for the petitioners has also pointed out the letter of the Secretary to Government, Micro,

Small and Medium Enterprises (F) Department, Secretariat, Chennai-9, in Letter No.7491/F/2018-2 dated 10.01.2019, wherein the Secretary has informed the petitioners Association that while considering the representation, in the meeting held on 25.09.2018, they have has discussed the subject and have directed to follow the earlier procedure and reservation made for procurement of ACSR Conductor exclusively from SSI Units and it will be continued, till such time a clarification is obtained from the Government of Tamilnadu. Without getting clarification from the Government, the present tender has been issued effecting procurement of ACSR conductors from SSI Units.

7. In this regard, the petitioners Association has made a representation on 09.01.2021 which is also filed in the typed set of papers along with the letter of authorisation from the 1st petitioner dated 25.01.2021 to the Government and the Chairman of TANGEDCO and requested for a direction to atleast consider their representation in the light of the above Government Order and the letter of the Secretary and the judgment of the Hon'ble Apex Court reported in 1992(4) SCC 477 (Navjyoti Coop. Group Housing Society v. Union of India), wherein the Hon'ble Apex Court has held at paragraph Nos.15 and 16 as follows:

"15. It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their view-points. Even assuming that in the absence of any explanation of the expression "first come first served" in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of Registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of date of Registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette Notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have may legal right in private law to receive such treatment. The existence of 'legitimate

expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1(1) of Halsbury's Laws of England - Fourth Edition (Re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Union and Ors. v. Minister for Civil Service reported in [1985] 3 All England Reporter page 935. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline. On the contrary, Mr. Jaitley the learned Counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20, 1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice.

8. This Court has paid its anxious consideration on the rival submissions made.

9. In view of the submission made by the learned Standing Counsel appearing for the TANGEDCO that this tender notification itself has been withdrawn for consultation with the Government, no order is required in this writ petition as against the said tender notification.

10. Therefore, without expressing any view on the merits of the claim made by the petitioners Association, this Court directs the respondents 1 and 4 to consider the petitioners' representation dated 09.01.2021 in the light of the Government Order in G.O.Ms.No.195 Finance (BPE) Department dated 04.05.1998, the letter of the Secretary to Government dated 10.01.2019 and the judgment of the Hon'ble Apex Court reported in 1992(4) SCC 477 (Navjyoti Coop. Group Housing Society v. Union of India) and to take a decision within a period of four weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

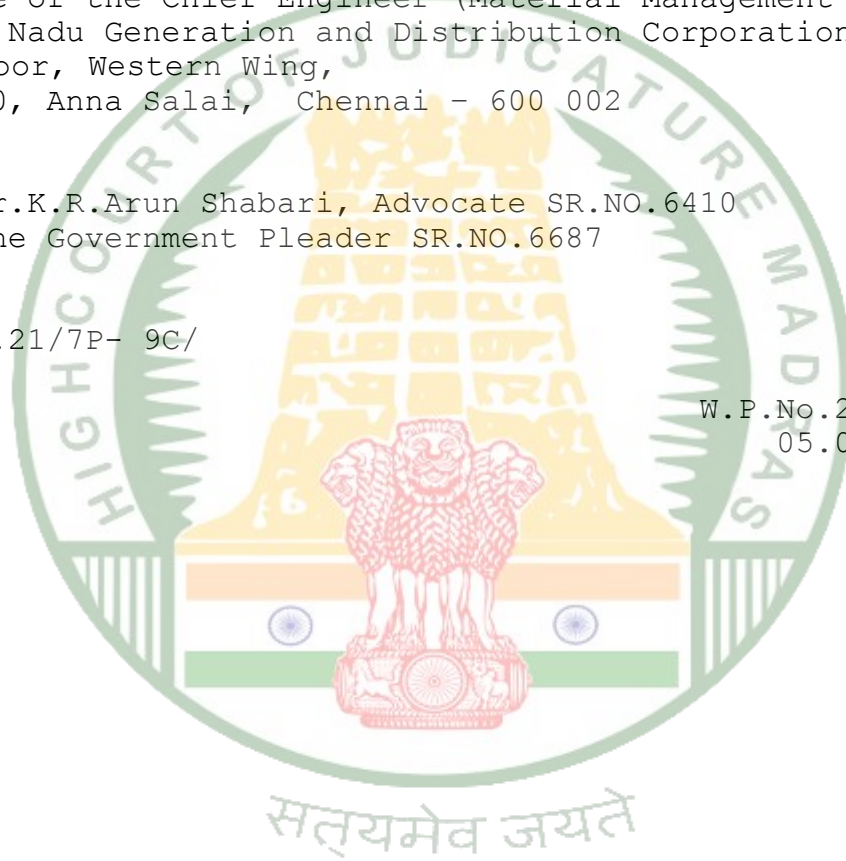
1. The Secretary, to Government.
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Secretariat, Fort.St.George,
Chennai - 600 009.
- 2.The Secretary,
State of Tamil Nadu,
Department of Micro, Small, Medium Enterprises,
Secretariat, Fort St.George, Chennai - 600 009.
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+1cc to Mr.K.R.Arun Shabari, Advocate SR.NO.6410
+1cc to The Government Pleader SR.NO.6687

AKM/02.03.21/7P- 9C/

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