IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.2.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.4357 and 4389 of 2021
and
W.M.P.Nos.4957, 4958 & 4980 of 2021

Ind-Vigo Coal Pvt. Ltd.,
rep. by its Authorized Signatory,
Mr.S.Thirumalaisamy,
4-106-B, CGE Colony, 3rd Street,
(Near Thiraviyam Ortho Hospital),
Tuticorin 628 002.

Also at
New No.4/1, Old No.23/1, 1st Floor,
Kanniappa Nagar, 86th Street,
Ashok Nagar, Chennai 600 083. ..Petitioner in W.P.No.4357/2021

P.T.Catur Azung Rizki,
rep. by Mrs.Suba Priya,
Liasoning Manager,
JI, Raya Hamkam Pura Melati,
Indahll, A-4, Pondok Melah,
Bekasi, West Java,
Indonesia 17444. ..Petitioner in W.P.No.4389/2021

vs.

Tamil Nadu Electricity Generation
and Distribution Company Ltd
(TANGEDCO), rep. by its Chairman,
NPKRR Maaligai, 144 Anna Salai,
Chennai 600 002. ..Respondent in W.P.No.4357/2021

Tamil Nadu Generation and
Distribution Corporation Ltd.,
rep. by its Chief Engineer/Mech/Coal,
II Floor, NPKRR Maaligai,
144 Anna Salai,
Chennai 600 002. ..Respondent in W.P.No.4389/2021

Writ Petition No.4357 of 2021 is filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the respondent in relation to the impugned E-Tender issued by the respondent in SPECIFICATION No.COAL-74 dated 18.1.2021 and quash the same as being in contravention of the Tamil Nadu Transparency in Tenders Rules, 2000 and Amendments in Public Procurement (Preference to Make in India) Order, 2017 published by the Government of India.

Writ Petition No.4389 of 2021 is filed under Article 226 of the Constitution of India seeking issuance of a writ of certioraried mandamus calling for the records relating to the impugned Tender Specification No.Coal-74 DT dated 18.1.2021 passed by the respondent herein and quash Section I, Clause 6.0 of the impugned Tender Specification No.Coal-74 DT dated 18.1.2021 and direct the respondent to extend the time for filing of the bid upto 23.3.2021.

For Petitioner in W.P.No.4357/2021 : Mr.Sathish Parasaran, Senior Counsel for Mr.R.Parthasarathy

For Petitioner in W.P.No.4389/2021 : Mr.M.S.Krishnan, Senior Counsel for Mr.Adith Narayan Vijayaraghavan

For Respondent : Mr.Vijay Narayan, Advocate General and Mr.P.H.Aravind Pandian, Additional Advocate General assisted by Mr.N.Damodaran and Mr.Vijaya Mehanath Standing Counsels

COMMON ORDER

The respondent TANGEDCO invited Online bids from the eligible bidders for supply of 20 lakh tonnes of imported coal of any origin having GCC 6000 KCAL/kg at, Kamarajar Port, Ennure vide Notification in Specification No.COAL-74 dated 18.1.2021. The said notification is under challenge in the above writ petitions by two different Companies engaged in the business of trading and exporting coal.

2. Since the same notification is challenged in both these writ petitions, the same are taken up together and disposed of by this common order.

3. Mr.Sathish Parasaran, learned Senior Counsel representing the learned counsel on record in W.P.No.4357 of 2021, pointing out several violations in the said Notification, submits that the Tender conditions are coined in such a manner to eliminate the participation of Indian traders in this tender process. The Tender value is about Rs.1330 crores and the required EMD is Rs.13 crores, but the period for submission of Tenders is fixed

as 15 days in violation of the mandatory provision in Rule 20 of the Tamil Nadu Tender Transparency Rules 2000. As per this Rule the Tender inviting Authority shall ensure that adequate time is provided for the submission of Tenders and a minimum time limit is also prescribed between the date of publication of the Notification inviting Tenders and the last date for submission of Tenders. If the value of the Tender is in excess of Rupees two crores, 30 days is prescribed under the Rule, but in the impugned Notification, 15 days time alone has been provided.

4. The learned Senior Counsel has also pointed out that yet another violation of section 9(3) of the Tamil Nadu Transparency in Tenders Act 1998 and a Rule 11(1) of the Tamil Nadu Tender Transparency Rules.

5. Sub-section (3) of Section 9 of the Tamil Nadu Transparency in Tenders Act 1998 (hereinafter called as 'the Act') mandates the tender inviting authority to invite tenders in the form of a notice containing such particulars and shall also publish the notice inviting tenders in Indian Trade Journal and in daily newspapers having wide circulation depending upon the value of the procurement prescribed. The requirement of the publication of the Tender Notification in the Indian Trade Journal is also reiterated in Rule 11(1) of the Tamil Nadu Transparency in Tenders Rules, 2000 (hereinafter called as 'the Rules').

6. The learned Senior Counsel appearing for the petitioner has also made his submission that certain clauses have been incorporated in the Tender Notification and as per clause 1.18 (xvi) in Section II GENERAL INSTRUCTIONS TO TENDERERS, a scanned copy of original Export Licence from the respective country for export of the coal needs to be produced and clause 7.14.2 in Section III COMMERCIAL insists that the bidder should have valid Export Licence of the respective countries for exporting coal and submit copy of the same alongwith the bid.

7. According to the learned Senior Counsel for the petitioner, the above conditions have been incorporated in order to eliminate the bidders from India by stipulating a time limit of 15 days as no person from India can get a license from the respective country for the export of the coal and it requires a process and that cannot be completed within the stipulated time.

8. By referring the conditions at clause 2.7 (c) & (h) in Section III COMMERCIAL, the learned Senior Counsel has made his submissions that these conditions are also onerous to restrict the Suppliers and to favor a few individuals.

9. The learned Senior Counsel has also pointed out that the administrative approval has not been obtained as per the TNEB Manual. Clause 489 of the Tamil Nadu Electricity Board Manual stipulates that for almost all works, the administrative approval of the Board is necessary and in this case, only after the Notification, the approval is sought for from the Board.

10. The learned Senior Counsel has also made elaborate argument, by referring the Guidelines issued by the Central Vigilance Commission, Government of India for improvement in the Procurement System and pointed out that the publication of this e-Notification in any national newspaper, particularly in Indian Trade Journal, Calcutta is also emphasized in the said guidelines and as per the said Guidelines, the main purpose of issuing wide publicity, generate enough competition and to avoid favoritism and the time limit suggested by the Vigilance Commission is that 4 to 6 weeks minimum must be provided in the case of global tenders and 3 to 4 weeks in case of limited tenders.

11. The learned Senior Counsel has also pointed out a Circular issued by the Central Vigilance Commission dated 20.4.2018, by which the vigilance Commission as directed all the Chief Vigilance Officers to exercise oversight on all Contracts over an amount of Rs. 5 crores so as to ensure that restrictive under discriminative clauses against domestic suppliers are not included in the tender documents for procurement of goods and services.

12. The learned Senior Counsel has also relied upon an Office Memorandum issued by the Ministry of Finance dated 18.11.2020 and submit that it is the policy of the Government that first the domestic tender has to be floated before the Global Tenders.

13. The learned Senior Counsel has relied upon the following judgments in support of his submissions:-

i) Sri Venkatram Spinners Pvt. Ltd. and others vs. State of Tamil Nadu and others (W.P.Nos.17261, 18987 and 18988 of 2017 dated 11.8.2017)

ii) Sree Balaji International v. The State of Tamil Nadu and another (W.P.No.29054 of 2017 dated 16.11.2017)

iii) Salem District Tamil Nadu Water Supply and Drainage Board Construction and Maintenance Contractors Welfare Association v. The Superintending Engineer, TWAD Board, Salem (W.P.No.9955 of 2018 dated 23.4.2018)

iv) R.Kanagasabapathy v. The Commissioner, Tirunelveli Municipal Corporation and others (W.P. (MD) Nos.15537 & 15327 of 2020 dated 5.11.2020).

14. Mr M.S.Krishnan, learned senior counsel appearing for the petitioner in W.P.No.4389 of 2021 has also raised the same grounds more particularly, the time limit prescribed for submission of the Tenders. The e-Tender Notification dated 7.2.2021 was published on 8.2.2021 on at 11:30 hours in the Tamil Nadu Government E-Procurement Portal and the petitioner was able to access it only on 12.2.2021 and the deadline for submitting the tender documents is fixed as 23.2.2021. According to the learned Senior Counsel for the petitioner, the petitioner, a Company operating from Indonesia is involved in the business of coal mining and in view of the 15 days time limit as provided in the Tender Notification they are deprived from participating in the Tender and the time limit prescribed is in violation of Tamil Nadu Transparency in Tenders Rules, 2000.

15. Mr.Aravind Pandian, learned Additional Advocate General took notice in these matters when the matters were listed for hearing on 22.2.2021. Today, when the matters were taken up for hearing, the learned Advocate General appearing for the respondent, at the outset, has raised a preliminary objection on the maintainability of the writ petitions that the petitioners are not eligible to participate in the tenders since these petitioners do not have required qualifications prescribed under clause 7.0 in Section I INVITATION TO BID.

The said clause reads as under:-

> "7.0 bid qualification requirement:
>
> (i) Tenderer should have supplied 5.00 Lakh Tonnes of imported steam coal of any origin directly or through Public Sector Undertakings or through trader to any of the Public and/or Private Power Utilities and/or Public/Private industrial units in India in any one of the preceding three financial years i.e., 2017-18, 2018-19 and 2019-20. The details of supply shall be furnished as per Schedule-C. Documentary proof in the form of copy of purchase orders placed on the tenderers and the proof for successful execution of the same in the form of Certificate in Original from the end user for direct supplier (as per Schedule D) or from end user and Public Sector Undertaking for indirect suppliers (as per Schedules E & F), or from trader (as per the Schedule-R) for quantity of imported coal supplied and for satisfactory performance should be furnished.
>
> ii) Tenderer should have turnover of Rs.335 Crore in any one of three financial years (i.e., 2017-18, 2018-198 and 2019-20)"

16. The petitioners, in their Affidavits have not stated that they are having eligible qualification to participate in the tender and when these petitioners cannot participate in the tender, they cannot challenge this Tender Notification and they ought to have challenged same as a public interest litigation.

17. The learned Additional Advocate General would further submit that the 15 days time limit fixed for submission of tenders considering the requirement of coal for summer and the Code of Conduct to be observed on account of the ensuing Assembly Election.

18. Rule 20(2) of the Tamil Nadu Transparency in Tenders Rules, 2000 enables the Authorities in reduction in the time stipulated. As per sub Rule (1) of Rule 20, any reduction in the time stipulated as per sub-rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority, for reasons to be recorded in writing.

19. The learned Advocate Advocate General also produced the reasons recorded by the competent authority for reducing the time for submission to 15 days on account of demand for energy during the summer and to ensure uninterrupted supply of coal for the Thermal Power Plants and in view of the Code of Conduct to be observed on account of the ensuing Assembly Election.

20. However, the Advocate General has fairly submitted that if the Election Commission is impleaded as party to the writ petition and if any order has been passed by this court for extending the time, he would advise the respondent to extend the period for submission of tenders by another 15 days by issuing necessary Corrigendum. The learned Advocate General has pointed out that considering the need of more energy during the summer, it is the duty of the Government to ensure uninterrupted supply of coal to the Thermal Power Plants. He would further submit that this Tender has been floated for procurement of 20 Lakh tonnes of imported coal and this is almost 6% of the requirement of coal for the Thermal Power Plants and they are also procuring coal from various Indian Coal Companies to an extent of 180 lakh tonnes. As a technical specification, this coal is procured for using the same by mixing with the Indian coal to achieve the calorific value of 6000 kcal/kg. It does not depend only on the calorific value and it also depends on the ash content and certain other technical things.

21. The learned Advocate General Mr.Vijay Narayan, by referring the Tender Notification, would submit that the Tender Notification does not restrict supply of 20 lakh tonnes of coal from any particular country and it can be from any origin but

with a specification of 6000 kcal/kg and therefore, it is not correct to say that Indian Suppliers are discriminated and eliminated from participating in the tender process.

22. The learned Advocate General has also relied upon the orders of the honourable Supreme Court in Jagdish Mandal V. State of Orissa and others reported in (2017) 14 SCC 517 wherein the Hon'ble Apex Court has held as follows:-

> "19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :
>
> i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.
>
> OR
>
> Whether the process adopted or decision made

is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

23. This court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

24. The respondent invited online bids for supply of 20 lakhs of imported coal of any origin having calorific value of 6000 kcal/kg vide the Tender Notification dated 18.1.2021. The main grievance of the petitioners is that the Tender value is 3500 crores, but the time limit prescribed for submission of tenders is fixed as 15 days from the date of notification of the tender which is in violation of the Tamil Nadu Transparency in Tenders Rules, 2000

25. Rule 20 of the Tamil Nadu Transparency in Tenders Rules, 2000 reads as under:-

"20. Minimum time for submission of tenders.-(1) The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin or in the newspapers whichever is later and the last date for submission of tenders. This minimum period shall be as follows.-

(a) for tenders upto rupees two crores in value, fifteen days; and

(b) for tenders in excess of rupees two crores in value, thirty days.

(2) Any reduction in the time stipulated as per sub-rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing."

26. Rule 20 prescribes a time limit for submission of Tenders and sub rule (2) of Rule 20 enables the Authority superior to the Tender Inviting Authority for reducing the time stipulated as per sub rule (1) of Rule 20 for the reasons to be recorded in writing. In this case, the authority superior to the Tender Inviting Authority has also recorded certain reasons on the requirement of demand of energy during the summer season under to ensure uninterrupted supply of coal to the Thermal Power Plants to ensure supply of electricity to all the citizens. The authority has also pointed out about the Code of Conduct to be observed on account of the ensuing Assembly Election from March 2021 and therefore had taken such a decision to reduce the time limit for submission of tenders.

27. During the course of arguments, the learned Advocate General has fairly submitted that he advised to provide sufficient time by issuing Corrigendum. This court, by order dated 23.2.2021, has recorded the same and granted a liberty to issue the Corrigendum if they are so advised.

28. Mr. M.S.Krishnan, learned Senior Counsel appearing for the petitioner in W.P.No.4389 of 2021 expressed his concern that if the time limit is extended by the Corrigendum, then his client has no other grievance.

29. Mr.Sathish Parasaran, the learned Senior Counsel for the petitioner in W.P.No.4359 of 2021, has canvassed that the other mandatory requirements in this tender process like publication of tender documents in Indian Trade Journal is also violated and as per clause 1.18(xvi), the Tender Inviting Authority is insisting for a copy of the original export license from the respective country for export of the coal which cannot be completed within a stipulated time and this condition was not in the previous year's tender documents.

30. Mr.Aravind Pandian, learning Additional Advocate General has submitted that this condition is not introduced in this year and it was also very much available in the previous tender notifications and this document is expected as a condition to ensure only the uninterrupted supply of coal to the Thermal Power Plants.

31. This court in Sree Balaji International v. The State of Tamil Nadu and another (W.P.No.29054 of 2017 dated 16.11.2017) has held that requirement of publication of Tender Notification in the Indian Trade Journal is mandatory and the Tender Notification, with regard to which such a mandatory requirement was not complied, cannot be sustained. The relevant portion of the said order is extracted hereunder:

"8.There is no dispute to the fact that the value of the procurement prescribed in this case requires such publication of notice not only in the daily newspaper and also in the Indian Trade Journal. Therefore, the respondents cannot escape by saying that publication in the daily newspapers is sufficient more particularly, when the petitioner is aware of the tender process by noticing such publication in the newspapers. Needless to say that compliance of the mandatory requirements under law, by the statutory authorities, has to be ascertained and get satisfied based on the action of the authorities and not to be valued based on the act of the other party. In other words, knowledge to the other party through daily newspapers publication cannot be construed as sufficient compliance of the mandatory requirement of Section 9(3) of the said Act, in the absence of publication of notice in the Indian Trade Journal. In this case, admittedly, no such publication was made in the Indian Trade Journal. The very same issue was considered by the learned Judge of this Court in W.P.Nos.17261, etc., of 2017, wherein after elaborately discussing the facts and circumstances and the relevant provision of law, the learned Judge has observed at paragraph Nos.14 and 15 as follows:

> "14.The Division Bench of the Karnataka High Court in the on-reported judgment made in Writ Appeal No.4066 of 2011 and 4739 of 2011(cited supra) also held that non-publication of the notification inviting tender in the Indian Trade Journal, as required under Rule 10 of the Karnataka Transparency Public Procurement Act, 1999, is fatal and vitiates the entire tender processing. The ratio laid down in the said judgment squarely applies to the present case.
>
> 15.Since the tender notification has not been published as per the provisions of the Act, on this ground alone, the notification is liable to be quashed."

Therefore, I am of the firm view that the tender notification impugned in this writ petition without complying with such mandatory requirement of publishing the tender notice in the Indian Trade Journal, cannot be sustained.

9.In so far as the next contention viz., want of 30 days time is concerned, it is contended by the learned Additional Advocate General that sufficient permission as required under Rule 20(2) from the Superior Officer has been obtained for reduction of time in view of the urgency in this matter for supply of sugar to the public. Therefore, he submitted that the petitioner is not justified in contending otherwise.

10.No doubt, Rule 20(2) of the Tamilnadu Transparency in Tenders Rules 2000, empowers the reduction of time and however, such power has to be exercised only by the Authority, who is superior to the tender inviting authority, by specifically stating and recording the reasons for reducing such time limit. It is true that in this case, the respondents seemed to have obtained such permission. However, as this court is satisfied to set aside the impugned tender notification on the first ground viz., want of publication in the Indian Trade Journal, the respondents have to go ahead with fresh publication only by following all the procedures. Therefore, they are not entitled to harp upon the permission already obtained from the superior authority in respect of the tender, which is being set aside herein for not complying with the mandatory requirement under Section 9(3) of the said Act. Accordingly, this writ petition is allowed and the impugned tender notification is set aside with liberty to the respondents to proceed afresh by strictly following the mandatory requirement of law. No costs. The connected miscellaneous petitions are closed."

32. The learned Additional Advocate General referring to the provision for publication of Tender Notification in the Indian Trade Journal, would submit that it is only directory in nature.

33. This court in Sri Venkatram Spinners Pvt. Ltd. and others vs. State of Tamil Nadu and others (W.P.Nos.17261, 18987 and 18988 of 2017 dated 11.8.2017), has elaborately discussed the issue as to whether the provision for publication of Tender Notification in the Indian Trade Journal is mandatory or directory and has held that it is mandatory and quashed the

Notification. The relevant portions of the order passed by this court is as follows:-

> "The Supreme Court in the case of SHARIF-UD-DIN v. ABDUL GANI LONE, AIR 1980 SC 303, dealing with the question whether a rule is mandatory or directory, has held as under:
>
> > "9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of Courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the

defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specific consequence should not follow."

...

8. From the aforesaid proposition of law, it becomes clear that where the statute uses the word 'shall' while laying down a duty it is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of law is to be defeated by non-compliance with it, it has to be regarded as mandatory. A procedural rule ordinarily should not be construed as mandatory.

(vi) AIR 2005 Pat 136 [Smt.Sunita Devi and others Vs. Abdesh Kumar Sinha alias Kamleshwari Pd. Sinha and others] wherein the Patna High Court held as follows:

...

15. However, with regard to the amended provision of Rule 1 of Order VIII of the Code, two expressions used therein, namely, 'shall' and 'not later than ninety days' have to be considered. It is a well settled principle of law that where 'May' and 'Shall' both are used in the same provision. It will be mandatory where 'Shall' is used and it will be directory where 'May' is used as has been made clear by Maxwell on Interpretation of Statute (12th Edition) at page 282. But even then the Courts can still ascertain the

real intention of the Legislature as has been held by the Hon'ble Apex court in the case' of Govind Lal Chaggan Lal Patel v. The Agriculture Produce Market Committee, reported in AIR 1976 SC 263, which relied upon the following passage of Crawford on 'Statutory Construction' (Edn. 1940, Art. 261, Page 516);

"The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

13.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it is not in dispute that the 3rd respondent had issued the tender notification published in the Newspaper on 22.06.2017 for the supply of polyester yarn for production of polycot Sarees and Dhoties under cost free distribution of Sarees and Dhoties Scheme Pongal 2018. The last date for submission of bid was 11.00 am on 07.07.2017. Admittedly, the tender notification was published only in the Newspapers and in the State Tender Bulletin. As per the provisions of Section 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998, the Tender Inviting Authority shall also publish the notice inviting tenders in Indian Trade Journal and in daily Newspapers having wide circulation depending upon the value of the procurement prescribed. As per Rule 11 (1) of the Tamil Nadu Transparency in Tenders Rules, 2000, the Tender Inviting Authority shall have the notice inviting tenders published in the Indian Trade Journal in all cases where the value of procurement exceeds Rs.50 crores. On 01.11.2011, a Government Order was also issued in G.O.Ms.No.307 Finance (Salaries) Department

> wherein while specifying the financial limits for advertising tender notice, the Government had framed guidelines that if the value of the tender is more than Rs.50 crores, the tender notice should be published in Indian Trade Journal. Therefore, as per Section 9(3) of the Act and Rule 11 (1) of the Rules and also G.O.Ms.No.307 dated 01.11.2011, if the value of the tender is more than Rs.50 crores, the tender notice should be published in the Indian Trade Journal. Admittedly, the tender notification dated 22.06.2017 was not published in the Indian Trade Journal. The provisions of Section 9(3) and Rule 11(1) are mandatory and the said provisions cannot be given a go-by, by the authorities.
>
> 14.The Division Bench of the Karnataka High Court in the un-reported judgment made in Writ Appeal No.4066 of 2011 and 4739 of 2011 (cited supra) also held that non-publication of the notification inviting tender in the Indian Trade Journal, as required under Rule 10 of the Karnataka Transparency Public Procurement Act, 1999, is fatal and vitiates the entire tender processing. The ratio laid down in the said judgment squarely applies to the present case.
>
> 15.Since the tender notification has not been published as per the provisions of the Act, on this ground alone, the notification is liable to be quashed."

34. Admittedly, in this case the Tender Notification has not been published in the Indian Trade Journal as mandated under section 9(3) of the Tender Transparency Act and Rule 11(1) of the Tamil Nadu Tender Transparency Rules.

35. However, since the learned Additional Advocate General has pointed out the need of uninterrupted supply of coal for the Thermal Power Plants with the Calorific Value to meet out the energy demand during the summer, this court is not inclined to set aside the Tender Notification. The respondent shall take necessary steps to publish the Tender Notification in the Indian Trade Journal as mandated under section 9(3) of the Tender Transparency Act and Rule 11(1) of the Tamil Nadu Tender Transparency Rules.

36. The other grounds raised by the learned Senior Counsel for the petitioner cannot be considered in the light of the ratio laid down by the Hon'ble Apex Court in Jagdish Mandal vs. State of Orissa and others ((2007) 14 SCC 517).

37. Further, it is also reported that the Corrigendum has been issued extending the time limit by providing additional 15 days time and therefore the respondent shall ensure the publication of Tender Notification in the Indian Trade Journal for enabling other bidders to participate in the Tender. Even if Code of Conduct is issued, it is open to the respondent to approach the Election Commission for proceeding with the work by referring the need for the coal.

The Writ Petitions are, accordingly, disposed of. No order as to costs. The connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The Chairman,Tamil Nadu Electricity Generation and Distribution Company Ltd
(TANGEDCO),
NPKRR Maaligai, 144 Anna Salai,
Chennai 600 002.

2.The Chief Engineer/Mech/Coal,Tamil Nadu Generation and Distribution Corporation Ltd.,
II Floor, NPKRR Maaligai,
144 Anna Salai,
Chennai 600 002.

+2 Ccs to Mr.N. Damodaran, Advocate sr 11260.
+1 CC to Mr.R. Parthasarathy, Advocate sr 11625(25/02/2021)
+1 CC to Mr.Adith Narayan, Advocate sr 11384(26/02/2021)

W.P.No.4357 & 4389 of 2021

GMR(CO)
SP(24/02/2021)