



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.07.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.8680, 8902, 9036 & 13495 of 2022

and

**WMP(MD)Nos.6358, 6359, 6360, 6448, 6449, 6451, 6453, 6489, 6491,
6494, 9592, 9594, 9595 & 9627 of 2022**

WP(MD)No.8680 of 2022 : -

Vilvathampatti Panchayat

Rep.by its

President Mr.K.K.Ravichandran

... Petitioner

v.

1.State of Tamil Nadu,
Rep.by its Principal Secretary to
the Government,
Rural Development and Panchayatraj
(SGS.1) Department,
Fort St.George, Chennai – 9.

2.The Director of Rural Development and Panchayat Raj,
Panagal Maligai, Chennai.

3.The District Collector,
Dindigul District, Dindigul.

4.The Additional Collector /Project Director,
District Rural Development Agency,
Dindigul District, Dindigul.

5.The Block Development Officer,
Thoppampatti Union, Dindigul District.

... Respondents



WP(MD)No.8902 of 2022 :-

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- 1.P.Muniyandi, President,
Rapoosal Village Panchayat, Annavasal Union Panchayat,
- 2.B.Kannagi, Kalabam Village Panchayat
Karambakkudi Union,
- 3.R.Allimuthu, Papudaiyanpatti Village Panchayat
Kundrandarkovil Union,
- 4.S.Sivaranjani, Aravampatti Village Panchayat
Gandarvakottai Union,
- 5.P.L.Ramasamy, Kovanur Village Panchayat
Ponnamaravathy Union
- 6.K.Balu, 9A Nathampannai Village Panchayat
Pudhukkottai Union
- 7.S.Moorthy, Kammangadu Village Panchayat
Aranthangi Union

... Petitioners

v.

- 1.State of Tamil Nadu,
Rep.by its Principal Secretary to
the Government,
Rural Development and Panchayatraj
(SGS.1) Department,
Fort St.George, Chennai – 9.
- 2.The Director of Rural Development and Panchayat Raj,
Panagal Maligai, Chennai.
- 3.The District Collector,
Pudhukkottai District, Pudhukkottai.



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4.The Additional Collector /Project Director,
District Rural Development Agency,
Pudhukkottai District.

5.The Block Development Officer,
Annavasal Union, Pudhukkottai District.

6.The Block Development Officer,
Karambakkudi Union, Pudhukkottai District.

7.The Block Development Officer,
Kundrandarkovil Union, Pudhukkottai District.

8.The Block Development Officer,
Gandarvakkottai Union, Pudhukkottai District.

9.The Block Development Officer,
Ponnamaravathy Union, Pudhukkottai District.

10.The Block Development Officer,
Pudhukkottai Union, Pudhukkottai District.

11.The Block Development Officer,
Aranthangi Union,
Pudhukkottai District.

... Respondents

WP(MD)No.13495 of 2022 :-

1.Kombadi Village Panchayat
Rep.by its President Mr.G.Thangam,
Thirupparankundram Union,
Madurai District.

2.Eliyarpathi Village Panchayat
Rep.by its President Mr.M.Kannan,
Thirupparankundram Union,
Madurai District.



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- 3.Valayankulam Village Panchayat
Rep.by its President Mr.P.Muthupillai,
Thirupparankundram Union,
Madurai District.
- 4.Vedar Puliyangulam Village Panchayat
Rep.by its President Mr.A.Kannan
Thirupparankundram Union,
Madurai District.
- 5.Thanakkankulam Village Panchayat
Rep.by its President Ms.P.Ananthi,
Thirupparankundram Union,
Madurai District.
- 6.Vadapalanchi Village Panchayat
Rep.by its President Ms.M.Vanniselvi
Thirupparankundram Union,
Madurai District.
- 7.Othai Alankulam Village Panchayat
Rep.by its President Mr.V.Prabhu
Thirupparankundram Union,
Madurai District.
- 8.Melamathur Village Panchayat
Rep.by its President Ms.M.Abirami
Thirupparankundram Union,
Madurai District.
- 9.Karadipatti Village Panchayat
Rep.by its President Ms.P.Balamani,
Thirupparankundram Union,
Madurai District.
- 10.Sakkilipatti Village Panchayat
Rep.by its President Mr.A.Thangamayan,
Thirupparankundram Union,
Madurai District.



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11. Vilacheri Village Panchayat
Rep.by its President Mr.R.Murugan,
Thirupparankundram Union,
Madurai District.
12. Vadivel Karai Village Panchayat
Rep.by its President Ms.M.Chandra,
Thirupparankundram Union,
Madurai District.
13. Melakuyilkudi Village Panchayat
Rep.by its President Ms.V.Jaya Prabhu,
Thirupparankundram Union,
Madurai District.
14. Kusavankundu Village Panchayat
Rep.by its President Mr.S.Pandivel
Thirupparankundram Union,
Madurai District.
15. Valayapatti Village Panchayat
Rep.by its President Ms.V.Bakkiyam,
Thirupparankundram Union,
Madurai District.

... Petitioners

v.

1. State of Tamil Nadu,
Rep.by its Principal Secretary to
the Government,
Rural Development and Panchayat Raj
(SGS.1) Department,
Fort St.George, Chennai – 9.
2. The Director of Rural Development and Panchayat Raj,
Panagal Maligai, Chennai.
3. The District Collector,
Madurai District, Madurai.



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4.The Additional Collector /Project Director,
District Rural Development Agency,
Madurai District, Madurai.

5.The Block Development Officer,
Thirupparankundram Union,
Madurai District.

... Respondents

Common Prayer in WP(MD)Nos.8680, 8902, & 13495 of 2022 : Writ Petitions filed under Article 226 of the Constitution of India praying this court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Government Order in G.O.Ms.No.23, Rural Development and Panchayat Raj (SGS.1) Department dated 08.03.2022 on the file of the first respondent and quash the same as illegal in so far as the Clause 7.5 (ii), (iii) and (iv) of the Guidelines is concerned and consequently to forbear the respondents from conducting the tender works by including the tender works of different village panchayats together as one package and for a direction, directing the respondents to restore the power of the petitioner in inviting tenders in respect of the basic works to be carried out in the village panchayat in accordance with the provisions of the Tamil Nadu Panchayats Act, 1994 and the Tamil Nadu Panchayats (Preparation of Plans and Estimates for Works and Mode and Conditions of Contracts) Rules, 2007 and by way of extending the benefit of G.O Ms.No.139 Public Works (G2) Department dated 27.09.2021 within a time frame.



WP(MD)No.9036 of 2022 :-

S.M.Muniyandi, President,
Sivagangai District All Village Panchayat
Presidents Welfare Association,
Reg.no.100 of 2020,
Sivagangai.

...Petitioner

v.

1.State of Tamil Nadu,
Rep.by its Principal Secretary to the Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai – 9.

2.The Director of Rural Development and Panchayat Raj,
Fort St.George, Chennai.

3.The District Collector/Chairman of DRDA,
Sivagangai District, Sivagangai.

4.The Assistant Director of Rural Development,
and Panchayatraj,
Sivagangai District, Sivagangai.

... Respondents

Prayer in WP(MD)No.9036 of 2022 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the 1st respondent in GO.Ms No.23 of the Rural Development and Panchayat Raj Department dated 08.03.2022 and quash the same and consequently directing the 1st and 2nd respondents to issue the sanction work AGAMT-II to the Village Panchayat through the Secretary of the village to carry out scheme of AGAMT-II scheme.



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For Petitioners :
in WP(MD)Nos.8680 & 13495
of 2022

in WP(MD)No.8902 of 2022
in WP(MD)No.9036 of 2022
For Respondents

in all cases :

Mr.T.Lajapathi Roy for
Mr.C.Venkateshkumar
Mr.T.Lajapathi Roy
Mr.S.Ramsundarvijayaraj
Mr.Veerakathiravan, Additional
Advocate General, assisted by
Mr.K.Balasubramanian

COMMON ORDER

Heard the counsel for the writ petitioners and the learned
Additional Advocate General for the respondents.

2.A number of village panchayat Presidents from quite a few
southern Districts are before me. They challenge clause 7.5 (ii), (iii) and
(iv) of the guidelines set out in G.O Ms.No.23, Rural Development and
Panchayat Raj Department dated 08.03.2022 as illegal. The said G.O
was issued for according administrative sanction and to provide for
release of funds for implementation of Anaithu Grama Anna
Marumalarchi Thittam – II for the year 2021-22. The Hon'ble Minister
for Finance and Human Resource Management announced on the floor of
the assembly that the estimated cost would be Rs.1200.00 crores The
G.O talks of funding allocation, selection of village panchayts and
funding pattern. The Annexure to the G.O contains elaborate and



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exhaustive guidelines. We are concerned only with clause 7.5 of the guidelines. It reads as follows :

“7.5 Tendering :

i)The works under AGAMT – II Scheme will be executed following the Tamil Nadu Transparency in Tenders Act, 1998 and Rules, 2000. Table – II 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 dated 20.12.2007 will be followed for tendering.

(ii)The Additional Collector (Dev)/Project Director, DRDA shall be the Tender Inviting Authority. The District Collector/Chairman, DRDA shall be the Tender Accepting Authority.

(iii)e-Tendering should be followed for the works under AGAMT-II.

(iv)For the purpose of tendering, the works in a block shall be packaged component wise.”

The attack on the impugned clauses is anchored on twin premises :

a) the constitutional object of empowering local bodies to function as institutions of self-governance stands defeated and

b) by packaging the works in a block component wise, the village level contractor is being prevented at the entry level from participating in the tender process.



The learned counsel for the petitioners placed heavy reliance on the order dated 18.08.2020 passed by me in WP(MD)No.8929 of 2020 etc., (***P.Kaliyuganathan and ors v. State of Tamil Nadu and ors***).

3.In my view reliance on *Kaliyuganathan case* is misplaced as it pertained to utilization of grant made available by the 14th Central Finance Commission. Since the guidelines issued by the Commission were not borne in mind by the State government authorities, I quashed the orders impugned in the said writ petitions. I quoted Article 243B and 243G of the Constitution and relied on the judgment of the Hon'ble Supreme Court reported in **(2012) 7 SCC 550 (*Village Panchayat, Calangute vs. the Additional Director of Panchayat – II and ors*)**. In the case on hand, it is the State government which has sanctioned the funds for implementing AGAMT-II. As remarked by the learned Additional Advocate General, he who pays the piper calls the tune. I interfered with the orders impugned in Kaliyuganathan case because they were not in consonance with the parent scheme proposed by the 14th Central Finance Commission which was the source of funds. In the instant case, the funding source is the State government and therefore it is entitled to prescribe the mode of implementation of the scheme and



utilization of funds. Unless the same is shown to violate the rights of the petitioners, I cannot interfere.

4.The learned Additional Advocate General substantiated before me that the village panchayat Presidents as well as the Gram Sabhas are fully associated in the process of identification of works. The only grievance of the writ petitioners is that they do not have the power to call for tenders and finalize them. It is only the statute or the orders issued thereunder which can confer the power to be the tender inviting authority or tender accepting authority. Rule 3(1) of the Tamil Nadu Panchayats (Preparation of Plans and Estimates for Works and Mode and Conditions of Contracts) Rules, 2007 is as follows :

“3.According of administrative sanction for works.-

(1)In respect of Central Government sponsored and State Government funded scheme works, the authority competent to accord administrative sanction including revised administrative sanction, shall be the District Collector in respect of Village Panchayats, Panchayat Union Councils and District Panchayats.

(2) In respect of original, maintenance and electrical works taken up under the General Funds of Village Panchayats, Panchayat Union Councils and District



Panchayats, the authorities competent to accord administrative sanction, including revised administrative-sanction, shall be as specified in Table I, II and III below: -

Table-I
Village Panchayat

<i>Estimate Value</i>	<i>Competent authority</i>
<i>(1)</i>	<i>(2)</i>
<i>(1) Works costing not more than rupees two lakhs.</i>	<i>Village Panchayat.</i>
<i>(2) Works costing more than rupees two lakhs, but not more than rupees fifty lakhs.</i>	<i>District Collector.</i>
<i>(3) Works costing more than rupees fifty lakhs.</i>	<i>Director of Rural Development and Panchayat Raj.</i>

It is obvious from a reading of the aforesaid statutory Rule that only in respect of works taken up under the General Funds of the village panchayat, the village panchayat will be the competent authority provided the works do not cost more than rupees two lakhs. It is not the case of the petitioners that the tender works with which we are concerned now are to be carried out by utilizing the General Funds of the village panchayats. I do not find any violation of the statute. Since the works are only for the benefit of the village panchayats, the petitioners have no real cause for complaint. So long as the statutory rules remain what they



are, there is no scope for even nurturing a sense of injury.

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5.The learned Additional Advocate General relied on the orders made in WP No.5945 of 2020 dated 31.07.2020 (***Parvathy v. The Government of Tamil Nadu***) and WP No.5068 of 2020 (***R.Manimegalai v. The District Collector, Madurai***) dated 10.03.2020. In *Parvathy*, it was observed as follows :

“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 empanelling 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



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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.”

In *R.Manimegalai*, it was observed as follows :

“22.....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.

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.”

The aforesaid decisions would squarely apply to the instant cases.

6. There is some merit in the contention that packaging the works in a block component wise would lead to elimination of the smaller players. Reliance was placed on an earlier order passed by me in WP(MD)No.8752 of 2020 etc., where I had struck down packaging as it limited competition. It is also that this decision was accepted by the Government and PWD gave up package tender system by issuing G.O Ms No.139 Public Works Department dated 27.09.2021. I decline to consider this contention because there is no aggrieved contractor before me. Only if the petitioners can show that their fundamental or statutory rights have been breached, then and then alone, I would be justified in



interfering. Since that is not the case, the result is dismissal of the writ

petitions. No costs. Connected miscellaneous petitions are closed.

11.07.2022

Index : Yes / No

Internet : Yes/ No

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To:

- 1.The Principal Secretary to the Government,
Rural Development and Panchayatraj
(SGS.1) Department, Fort St.George, Chennai – 9.
- 2.The Director of Rural Development and Panchayat Raj,
Panagal Maligai, Chennai.
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G.R.SWAMINATHAN, J.

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