



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.06.2022

PRONOUNCED ON : 23.06.2022

CORAM

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

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WP (MD) Nos.10543, 10801, 10971, 10972, 10973, 11798 & 12639 of 2022
and
WMP(MD) Nos.7669, 7672, 7673, 7778, 7779, 7780, 7908, 7909, 7911, 7912, 7913, 7914, 7916, 7917, 7919, 8401, 8403, 8404, 8954, 8955 & 8956 of 2022

WP(MD) . No.No.10543/ 2022

1. Ravi .K
2. A.Vadivel
3. V.Senthilkumar
4. S.P.Veeramalai
5. M.Mukesh,
6. E.John Kennady,
7. M.Kabbir Mohamed
8. R.Renthinavel
9. R.Veeraiah
10. K.Anantham,
11. A.Devarajan,

... Petitioners

- Vs. -

1. The Chief Engineer
T W A D Board, Integrated Office Complex,
First Floor, No.243/2, Thanjavur - Trichy Main Road,
Pillayarpatty, Thanjavur 613 403.

2. The Executive Engineer,
T W A D Board, Project Division, Pudukkottai.

3. The Executive Engineer,
T W A D Board, Urban Division,
Trichy.

... Respondents

Prayer in WP(MD) . No.10543/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ of Certiorari thereby call for the record relating to impugned tender notification in 16/F, O and M / out sourcing of CWSS/DO1/2022, dated 20.05.2022 issued by the 1st respondent and quash the same as illegal and arbitrary.



For Petitioners ... Mr..P.. Ganapathi Subramanian
For Respondents ... Mr. Veerakathiravan Addl Advocate General
for Mr. B. Vijaya Karthikeyan

WP (MD) . No.10801/ 2022

1. Ravi.K
2. Vadivel.A
3. Rethinavel.R
4. Jayakumar.P.L ... Petitioners

- Vs. -

1. The Chief Registrar
Tamilnadu Water Supply Drainage Board,
Integrated Office Complex,
1st Floor, No.243/2,
Thanajvur-Trichy Main Road,
Pillayarpaty, Thanjavur-613403.

2. The Executive Engineer
Tamilnadu Water Supply Drainage Board,
Project Division, Pudukkottai.

3. The Executive Engineer
Tamilnadu Water Supply Drainage Board,
Urban Division, Trichy. ... Respondents

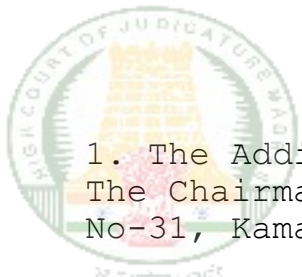
Prayer in WP (MD) . No.10801/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari call for the record relating to impugned tender notification in 16/F, O and M / out sourcing of CWSS/DO1/2022, dated 20.05.2022 issued by the 1st respondent and quash the same as illegal and arbitrary as it violates G.O.(Ms)No. 139, Public Works (G2) Department dated 27.09.2021 .

For Petitioners ... Mr..P.. Ganapathi Subramanian
For Respondents ... Mr. Veerakathiravan Addl Advocate General
for Mr. B. Vijaya Karthikeyan

WP (MD) . No.10971/ 2022

1. Tamil Nadu Water and Drainage Contractors Welfare Association,,
Madurai District, Reg. No. 56/2013,
Represent by its Secretary,
T.U. Rajendran, Shenmaga Nagar,
Karungalakudi, Madurai District ... Petitioner



- Vs. -

1. The Additional Chief Secretary to Government /,
The Chairman T W A D Board, T W A D House,
No-31, Kamarajar Salai, Chepauk, Chennai- 600 005.

2. The Managing Director
Tamil Nadu Water and Drainage Department,
T W A D House, No-31, Kamarajar Salai,
Chepauk, Chennai- 600 005.

3. The Chief Engineer
Tamil Nadu Water and Drainage Department,
Sembakulam, Madurai.

4. The Superintending Engineer
Tamil Nadu Water and Drainage Department,
Madurai Circle, Madurai.

... Respondents

Prayer in WP(MD). No.10971/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 3rd respondent in IFB.No. 01/F.O and M of CWSS /DOI/CW/2022-2023 /dated 20.05.2022 as far as the serial No.1 is concerned and quash the same.

For Petitioners ... Mr.. Sricharan Rangarajan for
Mr.Ramsundarvijayraj

For Respondents ... Mr.K.Balasubramani Spl G.P.
For 1st Respondent
Mr. Veerakathiravan
Addl Advocate General
for Mr. B. Vijaya Karthikeyan
for Respondents 2 to 4

WP(MD). No.10972/ 2022

1. Tamil Nadu Water and Drainage Contractors Welfare Association,,
Madurai District, Reg. No. 56/2013, Represent by its Secretary,
T.U. Rajendran, Shenmaga Nagar,
Karungalakudi, Madurai District

... Petitioner

- Vs. -

1. The Additional Chief Secretary to Government /,
The Chairman T W A D Board, T W A D House,
No-31, Kamarajar Salai, Chepauk, Chennai- 600 005.

2. The Managing Director Tamil Nadu Water and Drainage Department,
T W A D House, No-31,
Kamarajar Salai, Chepauk,

<https://hcma.csejournals.org/00000005/>



3. The Chief Engineer
Tamil Nadu Water and Drainage Department,
Sembakulam, Madurai.

4. The Superintending Engineer
Tamil Nadu Water and Drainage Department,
Madurai Circle, Madurai.

... Respondents

Prayer in WP(MD). No.10972/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 3rd respondent in IFB.No. 1F Tender Notice/DO/2022 /dated 20.05.2022 as far as the serial No.1 is concerned and quash the same .

For Petitioners ... Mr.. Sricharan Rangarajan for
Mr.Ramsundarvijayraj

For Respondents ... Mr.K.Balasubramani Spl G.P.

For 1st Respondent

Mr. Veerakathiravan Addl Advocate General
for Mr. B. Vijaya Karthikeyan
for Respondents 2 to 4

WP(MD). No.10973/ 2022 :

1. Tamil Nadu Water and Drainage Contractors Welfare Association,,
Madurai District, Reg. No. 56/2013, Represent by its Secretary,
T.U. Rajendran, Shenmaga Nagar,
Karungalakudi, Madurai District ... Petitioner

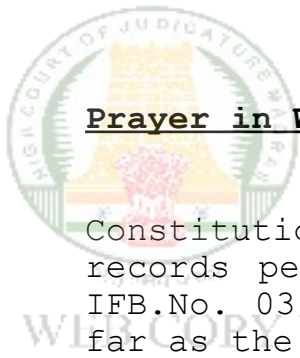
- Vs. -

1. The Additional Chief Secretary to Government /,
The Chairman T W A D Board, T W A D House,
No-31, Kamarajar Salai, Chepauk, Chennai- 600 005.

2. The Managing Director Tamil Nadu Water and Drainage Department,
T W A D House, No-31, Kamarajar Salai, Chepauk, Chennai- 600 005.

3. The Chief Engineer Tamil Nadu Water and Drainage Department,
Sembakulam, Madurai.

4. The Superintending Engineer Tamil Nadu Water and Drainage
Department,
Madurai Circle, Madurai. ... Respondents



Prayer in WP (MD) . No.10973/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 3rd respondent in IFB.No. 03/F.O and M of CWSS /DOI/CW/2022-2023 /dated 20.05.2022 as far as the serial No.2 is concerned and quash the same .

For Petitioners ... Mr.. Sricharan Rangarajan for
Mr.Ramsundarvijayraj
For Respondents ... Mr.K.Balasubramani Spl G.P.
For 1st Respondent
Mr. Veerakathiravan
Addl Advocate General
for Mr. B. Vijaya Karthikeyan
for Respondents 2 to 4

WP (MD) . No.11798/ 2022 :

1. Ravi .K
2. A.Vadivel
3. V.Senthilkumar
4. S.P.Veeramalai
5. M.Mukesh,
6. E.John Kennady,
7. M.Kabbir Mohamed
8. R.Renthinavel
9. R.Veeraiah
10. K.Anantham,
11. A.Devarajan, ... Petitioners

- Vs. -

1. The Chief Engineer T W A D Board, Integrated Office Complex,
First Floor, No.243/2, Thanjavur - Trichy Main Road, Pillayarpatty,
Thanjavur 613 403.

2. The Executive Engineer, T W A D Board, Project Division,
Pudukkottai.

3. The Executive Engineer, T W A D Board, Urban Division,
Trichy. ... Respondents

Prayer in WP (MD) . No.11798/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari thereby call for the record relating to impugned tender notification in 16/F, O and M out sourcing of CWSS / DO1 / 2022, dated 20.05.2022 issued by the 1st respondent and quash the condition No.3, 4 (a) (b) of the bid document uploaded on 03.06.2022 as illegal and arbitrary as it

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violates G.O.(Ms) No.139, Public Works (G2) Department, dated 27.09.2021 .

For Petitioners ... Mr.P.Ganapathi Subramanian
For Respondents ... Mr. Veerakathiravan Addl Advocate General
for Mr. B. Vijaya Karthikeyan

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WP (MD) . No.12639/ 2022

Arunagiri .K ... Petitioner

- Vs. -

1. The Additional Chief Secretary to Government /,
The Chairman T W A D Board, T W A D House, No.31,
Kamarajar Salai,
Chepak, Chennai - 600005.

2. The Managing Director Tamil Nadu Water and Drainage Board, T W
A D House, No.31,
Kamarajar Salai, Chepak, Chennai - 600005.

3. The Chief Engineer
Tamil Nadu Water and Drainage Board, Sambakulam, Madurai.

4. The Superintending Engineer
Tamil Nadu Water and Drainage Board,
Madurai Circle, Madurai.

5. The Executive Engineer
Tamil Nadu Water and Drainage Board,
Ramanathapuram,
Ramanathapuram District.

... Respondents

Prayer in WP (MD) . No.12639/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 3rd respondent in IFB No.01/F.O and M of CWSS/DOI/CW/2022-2023 dated 20.05.2022 as far as the serial No.2 is concerned and quash the same .

For Petitioners ... Mr.. Sricharan Rangarajan for
Mr.Ramsundarvijayraj

For Respondents ... Mr.K.Balasubramani Spl G.P.
For 1st Respondent
Mr. Veerakathiravan Addl Advocate General
for Mr. B. Vijaya Karthikeyan
for Respondents 2 to 5



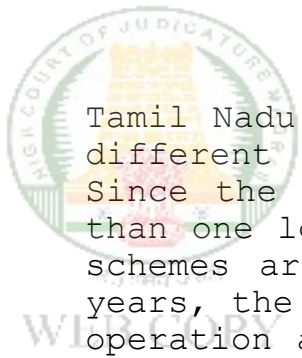
COMMON ORDER

The Tamil Nadu Water Supply and Drainage Board (TWAD Board) through its Chief Engineers (Madurai, Ramanathapuram & Thanjavur) issued the impugned notifications dated 20.05.2022 inviting tenders for outsourcing of operation and maintenance of CWSS/DO1/2022 including repair and rectification works. These notifications have been put to challenge in these writ petitions. The TWAD Board has filed a detailed counter affidavit opposing the writ prayers.

2. Shri. Sricharan Rangarajan and Shri. Ganapathi Subramaniam, the learned counsel appearing for the petitioners, submitted that the impugned tender notifications suffer from the vice of clubbing. They would point out that the works that were earlier performed by a number of independent contractors have been merged into a single item. The tender inviting authority had also prescribed a high threshold eligibility criteria. As a result, a number of medium and small level contractors will be edged out. The very purpose of holding tender process is to encourage healthy competition. The object of the Board now appears to restrict the entry of players. The learned counsel would submit that the change in policy is arbitrary. The principle of proportionality has not at all been borne in mind by the Board. Heavy reliance is placed on the decisions of this Court made in W.P.(MD)Nos.8752 of 2020 etc batch dated 26.08.2020 (Muthukumar Vs. The Principal Secretary) and in W.P.Nos.2535 & 1916 of 2021, dated 22.03.2021 (R.R.Palanisamy Vs. The Secretary to Government). They called for quashing the impugned notifications.

3. Per contra, the learned Additional Advocate General assisted by the learned Standing Counsel appearing for the TWAD Board submitted that no case for interference has been made out. He took me through the averments set out in the counter affidavit. He pointed out there has been a paradigm shift in the matter of outsourcing of work. It is not a capricious decision. A pilot project was conducted and it yielded results. Only after taking into account all the relevant factors, the impugned tender notifications were issued. He emphasized that the scope for intervention in exercise of jurisdiction under Article 226 of the Constitution of India is limited. He relied on the decisions of the Hon'ble Supreme Court reported in **(2016) 16 SCC 818 (Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another)** and **(2022) 5 SCC 362 (Agmatel India Private Limited Vs. Resoursys Telecom and others)**. He called for dismissal of these writ petitions.

4. I carefully considered the rival contentions and went through the materials on record. The TWAD Board is a statutory body constituted under Tamil Nadu Act 4 of 1971. It is obliged to implement water supply and sewage schemes for the entire State of



Tamil Nadu except Chennai Metropolitan Area. It sources water from different water bodies and supplies potable water to the people. Since the supply lines pass through the territorial limits of more than one local body, it was decided that such combined water supply schemes are maintained by the TWAD Board. For the last several years, the Board had been maintaining the schemes by outsourcing the operation and maintenance work. Certain difficulties were noticed. In order to rectify the same, an idea was mooted that one single contractor should be responsible for operating and maintaining a given scheme from zero point to tail end. This suggestion was implemented on pilot basis in Cuddalore, Pudukkottai, Namakkal and Thoothukudi Districts since 2019. Encouraged by the results, the Board vide proceedings in B.P.Ms.No.45, Operation & Maintenance Wing, dated 29.05.2007 granted its approval for implementing the combined water supply schemes throughout Tamil Nadu through what is known as "Performance Based Contract".

5.It has been clarified before me by Shri.Veera Kathiravan, the learned Additional Advocate General, in categorical terms that there has been no clubbing of schemes. In other words, supply of water from one source ie., from zero point to the tail end is taken as one scheme. There are a number of such schemes. That is why, in quite a few tender notifications there is more than one item of work. Each item of work represents one scheme. Payment to the contractor will be based on timely supply of water to the local body. Accent is now on efficiency and optimal use of resources. No doubt, as a result of implementation of this idea, works that were sliced into several packages will now be entrusted to one contractor. One may have difference of opinion as to how a particular work is to be carried out. Mahatma Gandhi was for "production by masses" instead of "mass production". The tender inviting authority has probably not read "Small is Beautiful" by the eminent economist E.F.Schumacher. The Gandhian economist J.C.Kumarappa may turn in his grave at what is happening. Article 39 of the Constitution of India which embodies socialist vision may apparently frown upon such concentration of work at the hands of a single contractor which hitherto was handled by several persons. But these are only moral and philosophical sentiments. They cannot metamorphose into legal grounds for interference in writ jurisdiction.

6.The Hon'ble Supreme Court of India in the decision reported in **(2016) 16 SCC 818 (Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another)** held as follows:-

"11....in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) it was held by this Court, relying on a host of decisions that the decision making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision making process is mala fide or is intended to favour



someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached....

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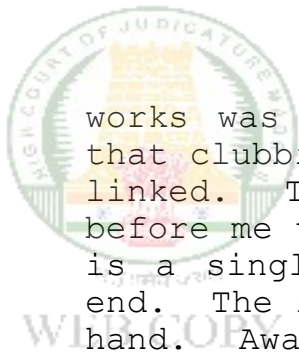
12. In *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* it was held that the constitutional Courts are concerned with the decision making process. *Tata Cellular v. Union of India* went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional Courts can interfere if the decision is perverse. However, the constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in *Jagdish Mandal v. State of Orissa* as mentioned in *Central Coalfields*.

13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision."

In Agmatel India Private Limited Vs. Resoursys Telecom and others (2022) 5 SCC 362, the principles laid down in *Afcons Infrastructure Ltd.*, were reiterated. It was added that the author of the tender document is taken to be the best person to understand and appreciate its requirements. In ***Montecarlo Ltd. v. NTPC Ltd. (2016) 15 SCC 272***, it was held that while interpreting and appreciating tender documents relating to technical works and projects requiring special skills, the owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints. In such matters, the Court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. In ***N.G. Projects Ltd. v. Vinod Kumar Jain*** (Civil Appeal No.1846 of 2022), it was observed that the writ Court does not have the expertise to examine the terms and conditions of the present day activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues.

7. Of-course, the petitioners are armed with a decision rendered by me in WP.(MD) Nos.8752 of 2020 etc., dated 26.08.2020 (*R.Muthukumar Vs. The Principal Secretary*) wherein the move to club

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works was struck down. But even in the said decision, I had held that clubbing can be resorted to if the clubbed works are integrally linked. The learned Additional Advocate General had substantiated before me that each item of work set out in the tender notifications is a single combined water supply scheme from zero point to tail end. The integral link element is obviously present in the cases on hand. Awarding each work to a single contractor cannot be said to suffer from the vice of clubbing.

8. The learned Additional Advocate General further asserts before me that the eligibility criteria fixed by the tender inviting authority will not stifle competition. According to him, when the tenders are opened, it would be seen that a number of technically qualified persons had participated.

9. I must of-course deal with one other contention advanced by the learned counsel appearing for the petitioners. According to them, the time gap between the date of tender notification and the date of opening the tenders was less than 30 days. This is contended to be a statutory violation. But I am not inclined to accept this contention for the simple reason that it has emanated from persons who do not have the eligibility criteria. The object of publication is to inform the prospective tenderers about the proposed process. When the petitioners have knowledge and have come before this Court well before the tender opening date, they cannot be said to have suffered any prejudice. I do not find any ground to interfere.

10. These Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Additional Chief Secretary to Government /,
The Chairman T W A D Board, T W A D House,
No-31, Kamarajar Salai, Chepauk, Chennai- 600 005.

2. The Managing Director
Tamil Nadu Water and Drainage Department,
T W A D House, No-31, Kamarajar Salai,
Chepauk, Chennai- 600 005.



3. The Chief Engineer
Tamil Nadu Water and Drainage Department,
Sembakulam, Madurai.

4. The Chief Engineer
Tamil Nadu Water and Drainage Department,
Sembakulam, Madurai.

5. The Superintending Engineer
Tamil Nadu Water and Drainage Department,
Madurai Circle, Madurai.

6. The Executive Engineer, T W A D Board, Project Division,
Pudukkottai.

7. The Executive Engineer, Tamilnadu Water Supply Drainage Voard,
Urban Division, Trichy.

8. The Executive Engineer, TamilNadu Water and Drainage Board,
Ramanthapuram, Ramanathapuram District.

+1 CC to M/s.B. VIJAY KARTHIKEYAN, Advocate (SR-27861[F],dated
24/06/2022)

+4 CC to M/s.S. RAMSUNDARVIJAYRAJ, Advocate (SR-28014[F],
28013,28012,28015 dated 24/06/2022)

+1 CC to M/s.SPL.GP (SR-28252[F], 28252 dated 27/06/2022)

W.P .(MD) Nos.10543, 10801, 10971,
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23.06.2022

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