

15.04.2024
Item No.06-07
RP
Ct. No.1

MAT 300 of 2024
With
IA No.CAN 1 of 2024
CAN 2 of 2024
Central Public Works Department & Ors.
Vs.
SRMB Srijan Private Limited & Ors.
With
MAT 310 of 2024
With
IA No.CAN 1 of 2024
CAN 2 of 2024
Union of India & Ors.
Vs.
SRMB Srijan Private Limited & Ors.

Mr. Atarup Banerjee
Ms. Sarda Sha
Mr. Rajdeep Pramanick
Ms. Anuska Bose
.....for Appellants

Mr. Sakya Sen
Mr. Arnab Das
Mr. A. Chowdhury
Mr. Subhajit Nath
.....Respondents

1. There is a delay of 284 days in filing these appeals. We have perused the averments made in the respective applications for condonation of delay. After being satisfied with the averments made in the applications for condonation for delay, we condone the delay in filing the appeal. CAN 1 of 2024 filed in connection with MAT 300 of 2024 and CAN 2 of 2024 filed in connection with MAT 310 of 2024 are, accordingly, allowed.
2. These appeals have been filed by the Central Public Works Department as well as Union of India, both being aggrieved by the order passed in

WPA No.9990 of 2020 with WPA 24267 of 2019 respectively filed by the first respondent herein. The learned Single Bench has allowed the writ petitions and held that the modified Clause 27.2 of the CPWD Works Manual of 2014 reincorporated in the CPWD Works Manual of 2019 is being inconsistent with the policy framed by the Government of India, Ministry of Steel is liable to be struck over.

3. We have elaborately heard the learned advocates for the parties.
4. In paragraph 51 of the impugned order the learned Single Bench has rightly noted the legal position that the purchaser has a discretion in selecting the quality of steel. Nonetheless, the writ petitions have been allowed and offending clause 27.2 in the office memorandum issued by the CPWD dated 16th February, 2019 was set aside, more particularly, with regard to Clause 2(d) contained in the modified provisions. The Ministry of Steel, Government of India had issued notifications from time to time with regard to classification of steel plants/producers. The earliest of the notifications, which has been placed before us, is the notification dated 12th December, 2013 where the Government of India noted that the steel plants were classified

differently in trade and commerce on the basis of vintage, process route, size, level of integration etc and a number of steel producers have been approaching the Ministry of Steel for classifying them as “Integrated Steel Plants” or “Primary Steel Producers” and this was prompted by user industries’ preference for Integrated Steel Plants or Primary Steel Plants for steel procurement presumably on the ground that only such producers are capable of supplying quality steel in the right quantity. In order to resolve this issue, the Government of India, Ministry of Steel by a notification dated 12th December, 2013 has decided to classify and certify steel producers in the private as well as public domain under two categories, namely (i) on the basis of process route/technology and (ii) on the basis of size/capacity. By notification dated 24th April, 2015 the Ministry of Steel, Government of India superseded the notification dated 12th December, 2013 and among other things ordered that the categorisation of the steel producers who in no way be seen as a certification of the quality of steel-produced. Quality certification would be as per the Bureau of Indian Standard (BIS) or any other designated authorities as per the BIS Act. The writ petitioner submitted representation on

9th September, 2015 with a request to approve them as 'Primary Steel Producer' for the Central Public Works Department, being one of the appellants herein. In the meantime, the notification issued by the Ministry of Steel, Government of India dated 24th April, 2015 was superseded by a notification dated 12th May, 2016 among other things holding that the listing of the steel producers will be purely for statistical purpose and will have no bearing on the quality of steel produced and it is upto the users to ascertain the quality of the steel products to be procured, as per the relevant standards. Further, it was notified that no steel producers will be classified/certified as 'Integrated Steel Producers', 'Primary Steel Producers', 'Secondary Steel Producers', 'Main Producers', 'Major Producers' or 'Others' by the Ministry of Steel or Joint Plant Committee. Further, the classification/certification issued by the Ministry of Steel and/or Joint Plant Committee prior to the notification (12th May, 2016) on classification of steel producers/plants stands withdrawn and becomes null and void with immediate effect. The writ petitioner by representation dated 11th June, 2016 requested the CPWD to enlist them as Primary Steel Producer for supply of steel to the

CPWD. The Ministry of Steel, Government of India issued order dated 9th August, 2016 observing that abolition of classification in Steel Producers in India vide notification dated 12th May, 2016 no steel producer is to be classified/certified as 'Integrated Steel Producers', 'Primary Steel Producers', 'Secondary Steel Producers', 'Main Producers', 'Major Producers' or 'Others' by the Ministry of Steel. However, the Ministry of Steel has issued Quality Control Orders on 30 non-alloy steel and 3 stainless steel products which cannot be produced, sold, stored for sale, distributed and imported, without certification by Bureau of Indian Standards. The request for empanelment was reiterated by the writ petition by representation dated 20th August, 2016. The Ministry of Steel, Government of India took note of the grievance/complaints received by them and passed an order on 14th December, 2016 observing that the complaints/grievances have been received from various organisations of steel industry that despite clear orders that no steel producers will be classified as Main/Major/others by the Ministry, user Departments like CPWD/Railways etc. are not changing their procurement policies and continuing to offer a step-motherly treatment to

the products of smaller manufacturers. This is despite the fact that products of smaller producers are meeting BIS standards and are competitively priced. Therefore, it is reiterated that listing of producers by Joint Plant Committee will be purely for statistical purpose only and will have no bearing on the quality of the steel produced. It is upto the user to ascertain the quality of the steel products to be procured as per the relevant standard and it was requested that the notification and order of this Ministry may be adhered to while issuing tender/work order, etc. by the User Ministries/Departments, which would ensure a level playing field to all Producers/Industry Associations of Steel Industry. It was also requested that the above notification may be brought to the notice of the PSUs/Autonomous bodies under the administrative control of various Ministries/Departments which included the Ministry of Urban Development under which CPWD functions. Once again the writ petitioner requested enlistment for supply of steel to CPWD by representation dated 30th January, 2017 referring to various notifications issued by the Ministry of Steel. The Ministry of Steel, Government of India by communication dated 7th

February, 2017 observed that it has come to their notice that despite removal of any classification as Primary or secondary producer etc. the user Departments are still continuing with this Classification. Therefore, it was reiterated that the Ministry of Steel has no classification in terms of Primary or Secondary Producers and, further, the route of steel making i.e. whether primary or secondary, ordinarily has no bearing on the quality of steel and also with the mandatory BIS certification requirement on a large number of steel products, the concerns of quality of steel can easily be addressed by insisting on BIS certified steel products. Despite the above directions, CPWD has not amended its manual and continuing to refer to the manual as published in the office memorandum dated 11th September, 2017. By a representation dated 14th September, 2017 Steel Re-Rolling Mills' Association of India addressed to the Director General, CPWD, requesting for elimination of discriminatory "Process Route Bias" and referred to a Railway Board Notification dated 22nd January, 2016 which is done away with the process route and requested the CPWD to do the same. Despite such request CPWD had been referring to their notification/manual dated 11th September, 2017

and have rejected the request of the writ petitioner for enlistment on the ground that they do not satisfy the requirement and the same process route is found in CPWD manual as per office memorandum dated 6th February, 2019 and 17th February, 2021 which were impugned in the writ petition. The Ministry of steel has issued a Gazette Notification dated 22nd July, 2019 with regard to conformity to standards and essential requirements and also with regard to compulsory use of Standard Mark among other things. Thus, it is seen that the CPWD manual, more particularly, Clause 27.2 is not in tune with the notification issued by the Government of India, Ministry of Steel and despite several directions/notifications issued by the Government of India, CPWD is yet to amend their manual. As mentioned in the representation made by the Steel Manufacturers' Association the Railway Board has taken a decision and amended their procurement policy in tune with the notification issued by the Ministry of Steel. Therefore, we are of the view that the learned Single Bench rightly took note of the relevant notification and has granted relief to the writ petitioner. However, we have our own reservation with regard to the ultimate order passed by the

learned writ Court which has quashed/modified the Clause 27.2 in the CPWD Works Manual 2014. In our view quashing of Clause 27.2 of the CPWD works Manual 2014 will have a wider ramification and pan India effect and, therefore, appropriate direction may be passed upon the CPWD to amend their works manual to be in consonance with the notification issued by the Ministry of Steel, Government of India dated 12th May, 2016, 9th August, 2016, 14th December, 2016 and 7th February, 2017.

5. The learned advocate appearing for the respondent/writ petitioner submitted that the modified guidelines issued by the CPWD on 17th February, 2021 has referred to certain brands and some of the brands referred to therein are private players. On reading of Clause of the CPWD guidelines dated 17th February, 2021 we find that the names of certain reputed brands/producers of steel have been referred to are two public sector enterprises and the remaining three appear to be private players. However, the guideline uses the expression “may” which shows that the name of “reputed brands” are merely illustrative and not exhaustive.
6. Accordingly, we find no grounds to interfere with the order passed by the learned Single Bench

except with regard to the direction issued in paragraph 53 of the impugned order whereby the modified Clause 27.2 of the CPWD Works Manual has been quashed and instead of quashing the said modified Clause 27.2 we direct the CPWD to appropriately amend their Work Manual to be in consonance with the notification issued by the Ministry of Steel, Government of India as done by the notifications referred to above. This direction shall be implemented by the CPWD within period of 12 weeks from receipt of the server copy of this judgement.

7. In the result, the appeals and the connected applications are dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)