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W.P.No.13807 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13807 of 2022 and
WMP.Nos.13095 & 13096 of 2022

Tamilnadu Water Supply & Drainage Board
Construction, Operation and Maintenance Contractors
Welfare Association, Salem-Namakkal Circle
Represent by its president S.K.Selvakumar
Having office at No.1-79, Sappanipatty Kattuvalavu
Vanavasi Post, Mettur Taluk, Salem District ... Petitioner

Vs.

- 1.The Secretary to the Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-9
- 2.The Managing Director,
Tamilnadu Water Supply & Drainage Board,
Chepauk, Chennai-5
- 3.The Chief Engineer(O&M),
Tamilnadu Water Supply & Drainage Board,
No.30, Siruvani Nagar, Bharathi Park Road,
Coimbatore 641 043
- 4.The Superintendent Engineer,
Tamilnadu Water Supply & Drainage Board,
Salem & Namakkal Circle, Salem ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned resolution passed by the second respondent in



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BP.No.15 dated 29.03.2022 and quash the same and consequently direct the respondents to call for the tenders in every field as called in the previous year.

For Petitioner : Mr.T.Ganesan

For Respondents

For R1 : Mr.E.Vijay Anand,
Additional Government Pleader

For R2 to 4 : Mr.A.Abdul Hameed,
Senior Counsel
for Mrs.S.Mekhala,
Standing Counsel

ORDER

This writ petition has been filed challenging the BP.No.15 dated 29.03.2022 thereby passed resolution by the second respondent.

2. The petitioner is an association and it has members of contractors who are doing maintenance and supply of water to the people by bidding tenders called for from the respondents. The respondents maintain 542 combined water supply schemes benefitting 4.26 crores population in 11 Municipal Corporations, 71 Municipalities, 317 Town Panchayats and 48,948 rural habitations in an average of 1930 MLD of potable water. In order to supply water and for maintenance, the



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respondents outsource work through tenders. Only the registered contractors are eligible to participate in the tenders floated by the respondents. Accordingly, the contractors should provide ESI and other benefits to their labourers. The class V contractors are eligible for bidding the value of tender upto Rs.6 lakhs. Class-IV are eligible for bidding the value of tender upto Rs.15 lakhs, Class-III are eligible for bidding the value of tender upto Rs.30 lakhs. Class-II are eligible for bidding the value of tender upto Rs.75 lakhs. Class-I are eligible for bidding the value of tender more than Rs.75 lakhs. The authority for conducting the tender is fixed by its value by the TWAD Board. In the notification itself, TWAD Board fix the class of contractors eligible to participate.

2.1 While being so, on 29.03.2022, the respondents passed resolution BP.No.15 dated 29.03.2022 thereby resolved to adopt performance based operation and maintenance bid document for operation and maintenance of CWSS for attending repair work such as leaks and bursts, repairs and renewals in pumpsets, machineries, spares chemicals, etc are included in the agreement. Accordingly, the



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respondents called for tenders.

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3. The learned counsel for the petitioner would submit that as per the resolution, respondents clubbed all the works in a single tender and to a single person is highly illegal. It is impossible to do all works by a single contractor since every contractor is familiar only with their field and the labour also specialised only for particular field. Therefore, clubbing all the works will reduce the performance of the contractors which also leads to deterioration in the service. Because of the resolution, the contractors are suffering lot and they would be forced to leave their business. Before passing the impugned resolution, the tenders were called for every specific individual work. The nature of work dealing with leakage, buster, maintenance of pipes, electrical works, pumping, chemical works and labour are entirely different in nature. One person or one contractor will not do all works in a combined manner. It is also practically not possible to do all the works by the same contractor. Further, as per the resolution, the contractor's registration will be automatically cancelled in case if the contractor does not participate in a



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tender for continuous period of two years and if the contractor does not submit tender after purchasing tender forms in three consecutive tenders and their registration shall be cancelled. Due to merger works, participation chance of contractor is deprived.

4. The second respondent filed counter stating that Tamilnadu Water Supply and Drainage Board is entrusted with development of Water Supply and Sewerage facilities in the State of Tamilnadu except Chennai. By the order in GO.(D).No.84 Municipal Administration and Water Supply Department dated 10.03.1994, Government ordered to hand over the maintenance of combined water supply scheme to the respondents Board and it is maintaining combined water supply schemes involving more than one local body. On 29.05.2017, the respondents Board by the resolution in BP.Ms.No.45 resolved to approve the adoption of revised operation of maintenance personnel in combined water supply scheme maintained by the respondents and also resolved to be outsourced for its operation and maintenance. The duty of outsourced contractor is restricted to operate pumpsets and valves, patrolling



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pipelines. Repair and renewal of pipelines, pumpsets, uploading pumping returns, supply of chemicals and consumables were done by the respondents. However, it is very difficult for the respondents Board to attend these works and introduced pilot basis system. Accordingly, the performance based contract is introduced for effective operation and maintenance by the BP.Ms.no.15 dated 29.03.2022. Accordingly, the contractors called for performance based contract. It is also seen that the supply lines pass through the territorial limits of one local body, the respondents decided to combine water supply schemes by the respondents. The respondents maintained schemes by outsourcing the operation and maintenance works. Since lot of difficulties were noticed, the respondents in order to rectify those defects, introduced single contractor who will have the responsibility for operating and maintaining all works. In fact, it was implemented on pilot basis system in four districts such Cuddalore, Pudukottai, Namakkal, Thoothukudi Districts since 2019. The Hon'ble Supreme Court of India also held in the case of ***Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another*** reported in (2016) 16 SCC 818 as follows:



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“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....

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



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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.



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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.

5. Thus, it is clear 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. The interference is permissible only if the decision making process is malafide 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. Therefore, this Court does not have the expertise to examine the terms and conditions of the resolution.



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6. Each item of work set out in the tender notification 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. That apart, in this method, as per the resolution in BP.Ms.No.15 dated 29.03.2022, each scheme will be maintained by a single contractor including attending repairs and renewal of pipeline and pumpsets. The main object of the performance based contract is to ensure that the earmarked quantity of water is supplied to all the beneficiaries of the project area including the tail end beneficiaries regularly. It will improve the performance and efficiency of the maintenance of combined water supply scheme resulting improvement in delivery to the tail end beneficiaries, cost efficiency and enhancing of service level to public. Clubbing of various packages of combined water supply schemes into one package ensures the accountability to one contractor to deliver water till the tail end beneficiaries and maintain the scheme in better way. Further most of the tenders were called for single schemes which will be maintained by one contractor and some of the



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small schemes were merged for operational convenience and monitoring and tenders called for so that water supply to the project areas till the tail end beneficiaries will be ensured.

7. Further, as per the policy of the Government of Tamilnadu, drinking water supply should be ensured to all public through out the years. Considering the welfare of the public, it could be effectively implemented by maintaining one combined water supply scheme by one contractor instead of splitting one scheme into various packages. Therefore, this Court finds no infirmity or illegality in the resolution passed by the respondents. As such, this writ petition is devoid of merits and the same is liable to be dismissed.

8. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Neutral Citation:Yes/No
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G.K.ILANTHIRAIYAN, J.

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