

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF NOVEMBER 2016

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

WRIT PETITION No.21967/2016 (GM-TEN)

C/w W.P.Nos.20876/2016, 20877/2016 and 21968/2016

**W.P.No.21967/2016:**

BETWEEN:

Sri Venkateshwata Electrical Engg. Works,  
Shed No.14/c, Tamaka Industrial Area,  
NH – 4, Kolar 563 101.

Rep. by its Proprietor - C. Muniraju,  
45 years.

...Petitioner

(By Smt. Shwetha Ravishankar, Advocate)

AND:

1. The State of Karnataka,  
Rep. by its Principal Secretary,  
Department of Energy,  
Room No.238, Vidhana Soudha,  
Bangalore – 560 001.
2. The Bengaluru Electricity Supply  
Company Limited,  
(Wholly owned undertaking of  
Government of Karnataka),  
Having its Corporate Office at  
4<sup>th</sup> Floor, II Block, K.R. Circle,  
Bengaluru – 560 001.  
Rep. by its Managing Director.

3. Deputy General Manager (Operations),  
The Bengaluru Electricity Supply  
Company Limited,  
(Wholly owned undertaking of  
Government of Karnataka),  
Having its Corporate office at  
4<sup>th</sup> Floor, II Block, K.R. Circle,  
Bengaluru – 560 001.
4. Director (Technical),  
The Bengaluru Electricity Supply  
Company Limited,  
(Wholly owned undertaking of  
Government of Karnataka),  
Having its Corporate office at  
4<sup>th</sup> Floor, II Block, K.R. Circle,  
Bengaluru – 560 001.
5. Vilas Enterprise,  
No.41, Moorandahalli,  
Arahalli, Karnataka,  
Kolar – 563 101.  
Rep by its Proprietor – R. Prakash.
6. Geetha Enterprise,  
KIADB Area,  
Malur, Malur Taluk,  
Kolar District – 563 101. ... Respondents

(By Smt. Prathima Honnapura, HCGP for R-1,  
Sri H.M. Manjunath, Advocate for R-2 to R-4,  
Sri Kalyan R, Advocate for R-5,  
Notice to R-6 held sufficient)

This writ petition is filed under Articles 226 and 227 of the  
Constitution of India praying to quash the new tender invitation  
dated 21.3.2016 issued by the R-3 as per Annexure-F and etc.

**W.P.No.20876/2016:**

BETWEEN:

M/s. Vilas Enterprises,  
Moorandahalli,  
Kolar Taluk and District – 562 101  
Rep. by Proprietor. ...Petitioner

(By Sri Kalyan R, Advocate)

AND:

1. The State of Karnataka,  
Department of Power and Energy,  
Vikas Soudha, Bangalore.  
Rep. by Principal Secretary.
2. Bangalore Electricity Company Limited,  
K.R. Circle, Bangalore – 01.  
Rep. by Managing Director.
3. The Director Technical,  
Corporate Office, BESCOM,  
K.R. Circle, Bangalore.
4. The Chief General Manager,  
Operations,  
Corporate Office, BESCOM,  
K.R. Circle, Bangalore – 01
5. The Deputy General Manager (Operation -5),  
Corporate Office, BESCOM,  
K.R. Circle, Bangalore – 01. ... Respondents

(By Smt. Prathima Honnapura, HCGP for R-1,  
Sri H.V. Devaraju, Advocate for R-2,  
R-3, R-4 and R-5 – served)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash impugned tender notification dated 21.3.2016 issued by the R-5 vide Annexure-A and etc.

**W.P.No.20877/2016:**

BETWEEN:

M/s. Vilas Enterprises,  
Moorandahalli,  
Kolar Taluk and District – 562 101.  
Rep. by Proprietor.

...Petitioner

(By Sri Kalyan R, Advocate)

AND:

1. The State of Karnataka,  
Department of Power and Energy,  
Vikas Soudha, Bangalore – 01.  
Rep. by Principal Secretary.
2. Bangalore Electricity Company Limited,  
K.R. Circle, Bangalore – 01.  
Rep. by Managing Director.
3. The Director Technical,  
Corporate Office, BESCOM,  
K.R. Circle, Bangalore – 01.
4. The Chief General Manager,  
Operations,  
Corporate Office, BESCOM,  
K.R. Circle, Bangalore – 01

5. The Deputy General Manager (Operation -5),  
Corporate Office, BESCOM,  
K.R. Circle, Bangalore – 01. ... Respondents

(By Smt. Prathima Honnapura, HCGP for R-1,  
Sri H.V. Devaraju, Advocate for R-2,  
R-3, R-4 and R-5 – served)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash impugned tender notification dated 21.3.2016 issued by R-5 herein as Annexure-A to writ petition and etc.

**W.P.No.21968/2016:**

BETWEEN:

Sri Venkateshwara Electrical Engg. Works,  
Shed No.14/c, Tamaka Industrial Area,  
NH – 4, Kolar 563 101.  
Rep. by its Proprietor – C. Muniraju.

...Petitioner

(By Smt. Shwetha Ravishankar, Advocate)

AND:

1. The State of Karnataka,  
Rep. by its Principal Secretary,  
Department of Energy,  
Room No.238, Vidhana Soudha,  
Bangalore – 560 001.
2. The Bengaluru Electricity Supply  
Company Limited,  
(Wholly owned undertaking of  
Government of Karnataka),  
Having its Corporate Office at

4<sup>th</sup> Floor, II Block, K.R. Circle,  
Bengaluru – 560 001.  
Rep. by its Managing Director.

3. Deputy General Manager (Operations),  
The Bengaluru Electricity Supply  
Company Limited,  
(Wholly owned undertaking of  
Government of Karnataka),  
Having its Corporate office at  
4<sup>th</sup> Floor, II Block, K.R. Circle.  
Bengaluru – 560 001.
4. Director (Technical),  
The Bengaluru Electricity Supply  
Company Limited,  
(Wholly owned undertaking of  
Government of Karnataka),  
Having its Corporate office at  
4<sup>th</sup> Floor, II Block, K.R. Circle.  
Bengaluru – 560 001.
5. Vilas Enterprise,  
No.41, Moorandahalli,  
Arahalli, Karnataka, Kolar – 563 101.  
Rep by its Proprietor – R. Prakash. ... Respondents

(By Smt. Prathima Honnapura, HCGP for R-1,  
Sri H.M. Manjunath, Advocate for R-2 to R-4,  
Sri Kalyan R, Advocate for R-5)

This writ petition is filed under Articles 226 and 227 of the  
Constitution of India praying to set aside the new tender invitation  
dated 21.3.2016 issued by the R-3 as per Annexure-E and etc.

These writ petitions coming on for preliminary hearing in 'B'  
group this day, the Court made the following:

**ORDER**

As the same questions of facts and law involved in all the four petitions, they are clubbed, heard together and are being disposed of by this common order.

2. In all these petitions, the challenge is raised to the new tender notification, dated 21.3.2016 for taking up repairs and reconditioning works of failed distribution transformers, wounds, etc.

3. The grievance of the petitioners is that they have taken part in the tender process initiated pursuant to the notification, dated 29.10.2015. They claim to be L1 bidders. Without operationalising the bids of the petitioners, the respondents have resorted to call for fresh tenders.

4. Smt. Shwetha Ravishankar, the learned counsel for the petitioner in W.P.No.21967/2016 and W.P.No.21968/2016 submits that no reason whatsoever is assigned for not awarding the work-order to the petitioners. She complains of the violations of the principles of natural justice, as the petitioners are not put on notice,

much less being afforded with an opportunity of hearing. She submits that earlier tender process is not being terminated. Therefore, the initiation of the new tender process is not sustainable. She submits that the respondents have floated the fresh tender only to favour the respondent Nos.5 and 6.

5. Sri Kalyan R, the learned counsel for the petitioner in W.P.No.20876/2016 and W.P.No.20877/2016 makes the submissions akin to those of Smt. Shwetha Ravishankar. He submits that the respondents have not complied with the requirements of Section 14 of the Karnataka Transparency in Public Procurements Act, 1999.

6. Sri H.M. Manjunath, the learned counsel for the respondent Nos.2 to 4 in W.P.No.21967/2016 and W.P.No.21968/2016 submits that pursuant to the impugned tender notification, tenders are scrutinized, evaluated, accepted and that the work-orders are already issued to the selected tenderers. He submits that the work-orders in respect of the subject-matters of W.P.No.21967/2016 and W.P.No.21968/2016 are issued to M/s.



Banashankari Enterprises and M/s. Geetha Enterprises respectively.

He submits that without making them the parties, these petitions cannot be maintained.

7. He read out Clause 19.0 of the tender notification, dated 29.10.2015. It is as follows:

*“19.0 BESCOM reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of Contract without incurring any liability to the affected Bidder/Bidders or any obligation to inform the affected Bidder/Bidders.”*

8. Having taken part in the tender process subject to the clause extracted hereinabove, the petitioners cannot contend that the new tender process cannot be initiated without informing them of the cancellation of the earlier tender process. On being asked as to whether the petitioners are given any intimation of acceptance of the bid, he answers in the negative.

9. He submits that the earlier bid process had to be abandoned on account of a mistake in the tender notification. Instead of mentioning aluminium and copper wound, the earlier

notification mentioned only aluminium wound. He submits that fresh notification is issued in about 35 places and not merely in the place in which the petitioners claim to be the L1 bidders. He denies the allegation of favoritism. He submits that the petitioners have also submitted their bids in response to the second tender notification but in respect of other places.

10. Smt. Prathima Hornapura, the learned High Court Government Pleader would make the submissions akin to those of Sri H.M. Manjunath.

11. In the course of rejoinder, Smt. Shwetha Ravishankar submits that the petitioners have had no knowledge of the selection of the tenderers pursuant to the impugned notification. She submits that even in the statement of objections filed on behalf of the respondent Nos.2 to 4, there is no whisper of the name of the selected tenderers. She submits that nothing prevented the respondent Nos.2 to 4 from including the copper in the earlier notification itself. For the lapse on the part of the respondent Nos.2 to 4, the petitioners cannot be put to any prejudice.

12. Sri Kalyan R submits that the e-portals reveal the stage of the earlier tender process as 'tenders received'. Thus, keeping open the earlier tender process, the respondent Nos.2 to 4 are not justified in resorting to the initiation of the fresh tender process.

13. The submissions of the learned counsel have received my thoughtful consideration. On the grounds that no reasons are given for not accepting the tenders of the petitioners and that they are not heard in the matter, this Court's interference may not be warranted.

14. Admittedly no intimation of acceptance of the petitioners' bid is issued and produced. No rights are crystallized in favour of the petitioners merely because they are the L1 bidders. They have no vested right to demand that they must be given the work-order pursuant to the earlier tender notification.

15. Admittedly the petitioners have responded to the second tender notification, though in different places however. In public interest, if the respondent Nos.2 to 4 want to include the repair-work of copper wound also in the tender notification, they cannot

be compelled to take the earlier tender notification, which was only in respect of aluminium wound, to its logical culmination.

16. I am also not inclined to act on the ipse dixit of the petitioners that the fresh notification is issued only to favour respondent Nos.5 and 6. Admittedly one tenderer, M/s. Banashankari Enterprises is not even made a party to these writ petitions and there are no allegations against the said party in the memorandum of writ petition, though M/s. Banashankari Enterprises is selected. No applications for amendment of the petitions and no applications for impleading the selected tenderers are filed.

17. I may usefully refer to the Apex Court's judgment in the case of **JAGDISH MANDAL v. STATE OF ORISSA AND OTHERS** reported in (2007) 14 SCC 517, wherein it is held that the purpose of judicial review is to check whether the choice or decision is made lawfully and not to check whether the choice or decision is sound. If the decision relating to the award of contract is

taken bonafide and in public interest, courts will not interfere. A party cannot be permitted to invoke the writ jurisdiction to espouse private interest at the cost of public interest.

18. In the case of **PATHAN MOHAMMED SULEMAN REHMATKHAN v. STATE OF GUJARAT AND OTHERS** reported in (2014) 4 SCC 156, the Hon'ble Supreme Court has expressed the considered view that the State and the authorities can take economic and management decisions depending upon the exigencies of a situation guided by its policy formulated in public interest. If every decision taken by the State is tested by a microscopic and a suspicious eye, the administration will come to a standstill and the decision-makers will lose all their initiative and enthusiasm.

19. In the case of **AIR INDIA LTD. v. COCHIN INTERNATIONAL AIRPORT LTD. AND OTHERS** reported in (2000) 2 SCC 617, the Hon'ble Supreme Court has held that the courts should always keep the larger public interest in mind

in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that the overwhelming public interest requires interference, the courts should intervene.

20. Admittedly the work orders are already issued to the four tenderers selected pursuant to the second tender notification. Any interference in the matter at this juncture would not only put the interest of the selected tenderers into jeopardy but also in the denial of the services or benefits to the society at large.

21. I am therefore dismissing these petitions. No order as to costs.

**Sd/-  
JUDGE**

MD