

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22<sup>nd</sup> DAY OF JULY 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NOS.8664 & 8964-972 OF 2019 (GM-TEN)

**BETWEEN:**

1. T S NARAYANA  
S/O SHIVANNA,  
AGED ABOUT 49 YEARS,  
PROPRIETOR OF  
SRI MARUTHI ELECTRICALS  
OFFICE AT NO.24/1, 1ST FLOOR,  
6TH CROSS, SAMPIGE ROAD,  
MALLESHWARAM, BENGALURU-560003  
LICENSE NO.SGL 148,  
VALID UP TO 30-06-2020
2. G L SHANKAR LINGEGOWDA  
S/O A LINGAPPA,  
AGED ABOUT 48 YEARS,  
PROPRIETOR OF  
M/S MADHU ELECTRICALS  
OFFICE AT NH-206,  
KHATHA NO.3285, GUBBI TOWN,  
TUMAKURU DISTRICT-572216  
LICENSE NO.08948 TKR  
VALID UP TO 30-01-2021.
3. K N YOGANARASIMHA  
S/O NANJUNDEGOWDA,  
AGED ABOUT 50 YEARS,  
PROPRIETOR OF  
SRI RAGHAVENDRA ELECTRICALS,  
OFFICE AT KALKERE VILLAGE AND POST,  
NUGGEHALLI HOBLI,  
CHANNARAYAPATNA TALUK,  
HASSAN DISTRICT-573131  
LICENSE NO.07192 HSN  
VALID UP TO 31-08-2019

4. M K ANNE GOWDA  
S/O KEMPEGOWDA,  
AGED ABOUT 49 YEARS,  
PROPRIETOR OF  
SRI KANTESHWARA ELECTRICALS,  
SHANTHINAGAR,  
PANDAVAPURA,  
MANDYA DISTRICT-571434  
LICENSE NO.CL09938 MDY  
VALID UP TO 31-05-2020
5. B N SHIVASHANKAR  
S/O NANJUNDAPPA,  
AGED ABOUT 48 YEARS,  
PROPRIETOR OF  
SRI VEERABHADRESWARA ELECTRICALS,  
BENAKANAHALLY,  
T. NARASIPURA TALUK,  
MYSURU DISTRICT-571124  
LICENSE NO.1CL04981 MYS  
VALID UP TO 30/04/2019
6. S G PUTTAMADAIH  
S/O GOCLAIAH,  
AGED ABOUT 40 YEARS,  
PROPRIETOR OF  
M/S SRI SIDDAPPAJI ELECTRICALS,  
OFFICE AT NO.389, "B" BLOCK 14TH MAIN,  
NEAR MAHALAKSHMI BHANDAR,  
VIJAYANAGAR 3RD STAGE,  
MYSURU -570017  
LICENSE NO.10130 MYS  
VALID UP TO 30/04/2021
7. B JAYARAM  
S/O BOJAPPA,  
AGED ABOUT 48 YEARS,  
PROPRIETOR OF  
M/S SRI NIMISHAMBA ELECTRICALS,  
PETE MASIDI CIRCLE,  
ARKALGUD, HASSAN DISTRICT-573102  
LICENSE NO.ICL03679HSN  
VALID UPTO 29/02/2024
8. M U PURUSHOTHAMA

S/O M B UYYALEGOWDA,  
AGED ABOUT 51 YEARS,  
PROPRIETOR OF  
SRI LAKSHMI ELECTRICALS,  
KASTHURIBA ROAD,  
HASSAN DISTRICT-573201  
SUPER GRADE ELECTRICAL CONTRACTOR  
LICENSE NO.SGL 00140 HSN  
VALID UPTO 31/05/2020

9. H M NANJUNDA SWAMY  
S/O LATE H L MALLIKARJUNAIAH,  
AGED ABOUT 52 YEARS,  
PROPRIETOR OF  
M/S MALLIKARJUNA AGENCIES,  
ROTARY BHAVANA ROAD,  
SIDDARTHA NAGARA,  
CHAMARAJANAGARA-571313  
LICENSE NO.  
VALID UP TO 01/09/2018 TO 01.09.2023
10. H K PRABHA  
W/O R PRASANNA KUMAR,  
PROPRIETOR OF SHREE GURU ELECTRICALS,  
AGED ABOUT 46 YEARS,  
NO.32, 60 FEET ROAD,  
NGEF LAYOUT, MALLATHALLI,  
BENGALURU 560056  
LICENSE NO.1CL08896BNU  
VALID UP TO 31/01/2020.

... PETITIONERS

(BY MR. D L N RAO, SR. COUNSEL FOR  
MR. ANIRUDH ANAND, ADV)

**AND:**

1. CHAMUNDESHWARI ELECTRICITY  
SUPPLY CORPORATION LTD.,  
A GOVERNMENT OF KARNATAKA  
UNDERTAKING CORPORATE OFFICE NO.29,  
VIJAYANAGARA 2ND STAGE,  
MYSURU-570017  
REPRESENTED BY MANAGING DIRECTOR.
2. CHAMUNDESHWARI ELECTRICITY  
SUPPLY CORPORATION LTD

A GOVERNMENT OF KARNATAKA  
UDERTAKING CORPORATE OFFICE NO.29,  
VIJAYANAGAR 2ND STAGE,  
MYSURU-570017 REPRESENTED BY  
GENERAL MANAGER ( PROCUREMENT)

... RESPONDENTS

(BY MR. UDAYA HOLLA, SR. COUNSEL FOR  
MR. JOSEPH ANTHONY, ADV. FOR R3,  
MR. SRIRANGA, ADV. FOR R1 & R3)

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THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH  
THE NOTIFICATION DTD: 21.01.2019 ISSUED BY THE R-2 VIDE  
ANNX-A; AND ETC.

THESE WRIT PETITIONS COMING ON FOR **ORDERS** THIS  
DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

Mr.D.L.N.Rao, Learned Senior Counsel for  
Mr.Anirudh Anand, learned counsel for the petitioners.

Mr.S.Sriranga, learned counsel for respondent  
Nos.1 and 2.

Mr.Udaya Holla, Learned Senior Counsel for  
Mr.Joseph Anthony, learned counsel for respondent  
No.3.

In these writ petitions, the petitioners who were  
Super Grade and Class-I grade electrical contractors

seek writ of certiorari for quashment of tender notification dated 21.01.2019, by which bids have been invited for providing additional transformers to existing overloaded DTCs by extending High Tension/Low Tension lines and erection of 25KVA distribution transformers on total turnkey basis in Hassan Operations and Maintenance Division.

2. Facts giving rise to filing of these writ petitions briefly stated are that Chamundeshwari Electricity Supply Corporation Ltd., (hereinafter referred to as '*the Corporation*' for short) is a distribution company, which floated the tenders dated 21.01.2019 in question inviting bids for purposes of carrying out the electricity distribution work in Mysuru. The total value of the work was 61.69 Crores. The Corporation in its tender notification described certain qualification by the prospective bidders in Clause 9 viz., that the bidders shall possess Class-I Electrical Contractor licence and shall have Transformer Manufacturing Unit in Karnataka

or bidders possessing Class-I Electrical Contractor licence (lead bidder) can have a joint venture with a Transformer Manufacturing firm based in Karnataka. It was further provided that the bidder possessing the Transformer Manufacturing Firm or Transformer Manufacturing Firm providing the joint venture to the bidder should have manufactured and supplied minimum of 4000 numbers of Distribution Transformers to any of the ESCOMs in the State of Karnataka in any one of the three financial years i.e., 2015-16, 2016-17 and 2017-18. However, on representation being made by the Contractors like the petitioners, the tender condition with regard to eligibility was modified on 16.02.2019 and it was provided that the bidder should have manufactured and supplied minimum of 2500 number of distribution transformers. The last date of submission of tenders was also modified to 26.02.2019. On 28.02.2019, the Techo commercial bid was to be opened, whereas, the price bid was to be opened on 01.03.2019. The petitioners have assailed the validity

of the aforesaid eligibility condition of the prospective bidders as laid down in Clause 9 of tender Notification *inter alia* on the ground that the conditions contained in Clause 9 had been tailormade to favour two companies. Therefore, the eligibility criteria described in Clause 9 is arbitrary and discriminatory. It is also averred in the writ petitions that there are only two companies in the State of Karnataka who have supplied a minimum of 4000 numbers of distribution transformers in the State of Karnataka in any of the three preceding financial years. It is also pleaded that the aforesaid tender conditions have been incorporated to exclude the petitioners and other similarly situate persons and the tender notification is violative of Rule 17(i)(b) of the Karnataka Transparency in Public Procurements Rules, 2000 (hereinafter referred to as 'the Rules' for short) inasmuch as 60 days time was not given for submission of the bid. In the aforesaid factual background, the petitioners have approached this court.

3. Learned Senior counsel for the petitioners submitted that the eligibility criteria of the proposed bidders is fixed in such a manner so as to ensure that only two manufacturers viz., M/s Suvarna Transformers and M/s Kailash Transformers Pvt. Ltd., are eligible to participate or only such Contractors who have formed a joint venture companies with the aforesaid two manufacturers. While inviting the attention of this court to the eligibility requirements contained in the previous as well as in the subsequent years, it is argued that no such stipulation is contained in the tender notification issued either previous to impugned tender notification or subsequent thereto. It is also submitted that under Rule 17 of the Rules, the minimum time for submission of the bid was 60 days, which could be reduced by an order passed by the competent authority. However, no such order has been placed on record. It is further submitted that authorization to reduce the period has to be granted by a speaking order. It is also urged that impugned tender condition is arbitrary and



discriminatory. It is further submitted that such a criteria has already been held to be arbitrary and has been struck down by a Bench of this Court by order dated 30.01.2019 passed in W.P.Nos.55568-55571/2018. In support of the submission that an order of authorization issued under Rule 17(2) of the Rules requires a speaking order to be passed, reference has been made to division bench decision of this court in **'KARNATAKA POWER TRANSMISSION CORPORATION LTD., VS. PRODIGY HYDRO POWER (P) LTD.,', (2015) 2 KANT L.J 234.**

4. On the other hand, learned counsel for the respondent Nos.1 and 2 submitted that the contention of the petitioners that only two entities viz., M/s Suvarna and M/s Kailash Pvt. Ltd, or joint venture company formed with them alone are eligible to participate in the tender process is incorrect. It is further submitted that one Jothi Electricals, Kavika, a State Government owned company and M/s NGF are

some of the companies, which are also eligible under the terms and conditions of the tender notification. It is also pointed out that the past experience of the respondents have shown that the traders participate in the tender process and if they are successful, they place orders on the manufacturers who are unable to supply the transformers. Thus, the delay occurs in supply of transformers. It is also pointed out that the transformers have to be supplied in rural areas and therefore, with a view to ensure timely supply, the impugned condition in Clause 9 has been incorporated with regard to eligibility of supply of Transformers to ESCOMs. It is further submitted that the terms of the invitation to tender are not open to judicial review until and unless the same are shown to be arbitrary or perverse. Learned counsel for the respondent Nos.1 and 2 has also placed on record the copy of the Board dated 21.01.2019, by which permission as required under Rule 17(2) has been granted. It is also submitted that none of the petitioners in the instant petitions had

submitted its bid in pursuance of the impugned order and therefore, nothing survives for adjudication at the instance of the petitioners in these writ petitions.

5. Learned Senior Counsel for respondent No.3 submitted that there is no whisper in the writ petitions about M/s Suvarna and M/s Kailash Pvt. Ltd. It is submitted that the transformers have to be installed in rural areas by The CESCO and the farmers requires the same for the purposes of irrigation. It is further argued that the terms and conditions of the Notice Inviting Tender are not open to judicial review and this court cannot sit an appeal over the decision taken by an authority. It is also argued that the authorities can choose its own method to arrive at a decision and are free to grant any relaxation for bonafide reasons. It is also urged that the power of judicial review should only be exercised in furtherance of public interest and not merely making out of legal point and the court must always keep in mind the public interest in order to

decide whether or not its intervention is called for. It is also pointed out that the decision relied upon by the petitioners in W.P.Nos.55568-55571/2018 is not applicable to the fact situation of the case as in the aforesaid decision, the contract in question was with regard to supply of RCC Poles. It is also pointed out that in response to the Notice Inviting Tenders, 37 bids have been received and there is no violation of Rule 17(2) of the Rules. It is also submitted that on a representation being made by contractor like the petitioners, the requirement of supply of transformers was reduced from 4000 to 2500. In support of his submissions, Learned Senior Counsel has been placed reliance on decisions of Supreme Court in **'TATA CELLULAR VS. UNION OF INDIA', (1994) 6 SCC 651, 'MUNICIPAL CORPN., UJJAIN VS. BVG INDIA LTD.,', (2018) 5 SCC 462, 'CARETEL INFORTECYH LTD. VS. HINDUSTAN PETROLEUM CORPORATION LIMITED AND ORS.', (2019) SCC ONLINE SC 494, 'RAUNAQ INTERNATIONAL LTD. VS. I.V.R. CONSTRUCTION**

**LTD.', (1999) 1 SCC 492, 'MONARCH INFRASTRUCTURE (P) LTD. V. ULHASNAGAR MUNICIPAL CORPN.', (2000) 5 SCC 287 'MASTER MARINE SERVICES (P) LTD. VS. METCALFE & HODGKINSON (P) LTD.', (2005) 6 SCC 138, 'S.S. & CO. V. ORISSA MINING CORPN. LTD.', (2008) 5 SCC 772, 'MEERUT DEVELOPMENT AUTHORITY VS. ASSN. OF MANAGEMENT STUDIES', (2009) 6 SCC 171, 'KRISHNAN KAKKANTH VS. GOVERNMENT OF KERALA AND ORS.', (1997) 9 SCC 495, 'MICHIGAN RUBBER (INDIA) LTD. VS. STATE OF KARNATAKA', (2012) 8 SCC 216, 'ASSN. OF REGISTRATION PLATES VS. UNION OF INDIA', (2005) 1 SCC 679, and a decision of this Court in '**M/S SREE DATTA SAI CEMENT VS. STATE OF KARNTAKA & ORS.', W.P.NO.1254-1256/2015.****

6. I have considered the submissions made by learned counsel on both the sides and have perused the record. Before proceeding further, well settled legal

principles may be noticed. The Hon'ble Supreme Court in ***MICHIGAN RUBBER (INDIA) LIMITED***, supra, after taking note of decisions of the Hon'ble Supreme Court in '***TATA CELLULAR Vs. UNION OF INDIA***', (1994) 6 SCC 651, '***RAUNAQ INTERNATIONAL LTD. Vs. IVR CONSTRUCTION LTD.***', (1999) 1 SCC 492 and '***ASSOCIATION OF REGISTRATION PLATES Vs. UNION OF INDIA***', (2005) 1 SCC 679, culled out the legal principles and held that basic requirement of Article 14 is fairness in action by the State and non-arbitrariness in essence and substance is the heart beat of fairplay and these actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. It was further held that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authorities is found to be malicious and a misuse of statutory powers, interference by the Courts

is not warranted. It is also held that if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by Court is very restrictive since no person can claim a fundamental right to carry on the business. The Hon'ble Supreme Court formulated the following two questions which the Court should pose itself before invoking the power of judicial review, namely:

*(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and*

*(ii) Whether the public interest is affected?*

It was accordingly held that if answers to the above questions are in the negative, then there should be no interference under Article 226.

7. The principles regarding award of contract were again reiterated by the Supreme Court in '**IN DIRECTOR OF EDUCATION VS. EDUCOMP DATAMATICS LIMITED', (2004) 4 SCC 19: (AIR 2004 SC 1962)** and it was held that Government must have a free hand in setting the terms of tender and the Courts cannot strike down the terms of tender prescribed by the Government because it feels that some other terms in the tender would have been fairer, wiser or more logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or actuated by malice. In '**SHAMNIT UTSCH INDIA PRIVATE LIMITED VS. WEST BENGAL TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED', (2010) 6 SCC 303: (2010 AIR SCW 3974)**, the Supreme Court while taking note of the law



laid down in ***ASSN. OF REGISTRATION PLATES VS. UNION OF INDIA***, (2005) 1 SCC 679: (AIR 2005 SC 469), reiterated that State Government has the right to get the right and most competent person and in the matter of formulating conditions of tender documents,, unless the action of tendering authority is found to be malicious and is a misuse of statutory powers, the tender conditions are unassailable. In ***SIEMENS AKTIENGESELEISCHAFT AND SEIMENS LIMITED VS. DELHI AND SEIMENS LIMITED VS. DELHI METRO RAIL CORPORATION LIMITED AND OTEHRS***, (2014) 11 SCC 288 : (AIR 2014 SC 1483), it was held that tenders floated by the Government are amenable to judicial review only in order to prevent arbitrariness and favoritism and protect the financial interest of the State and the public interest. Thus, the scope of judicial review is confined as to whether there was any illegality, irrationality or procedural impropriety committed by the decision making authority. It has further been held that the

court cannot sit in appeal over the soundness of the decision made by the competent authority and the Court can only examined whether the decision making process fir, reasonable, transparent and bonafide with no perceptible injury to public interest. In '**CENTRE FOR PUBLIC INTEREST LITIGATION VS. UNION OF INDIA**', (2016) 6 SCC 408; (AIR 2 916 SC 1777) has held minimal interference is called for by the Court of Judicial Review with a decision taken by the technical experts after due deliberations inasmuch as the Courts are not well equipped to fathom into such domain which is left to the discretion of the executive. It has further been held that primary and secondary purpose of review is to ensure that administrative bodies act in efficient, transparent, fair, unbiased manner and keep in forefront public interest. Similar view has been taken in '**TANGEDCO VS. CSEPMI - TRISHI CONSORTIUM**', (2017) 4 SCC 318; (AIR 2016 SC 4879) AND **SAM BUILT WELL (P) LTD. VS. DEEPAK BUILDERS** (2018) 2 SCC 176; (AIR 2018 SC 44).

8. It is equally a well settled legal principle that award of contract whether it is by a private party or by a public body or the State, is essentially a commercial transaction and in arriving at a commercial decision, considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can enter into negotiations before finally deciding to accept one of the offers made and it is free to grant any relaxation for bona fide reason if the tender conditions permit such relaxation. The State, its Corporations, instrumentalities and agencies have the public duty to be fair to all concerned. It is further held that even if some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and must exercise only in furtherance of public interest and not merely on making out of a legal point. It is also held that Court should always keep the larger public interest in mind in order to decide whether

or not its intervention is called for and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene. (SEE: '**SANJAY KUMAR SHUKLA, supra and MAA BINDA EXPRESS CARRIER AND ANOTHER Vs. NORTH-EAST FRONTIER RAILWAY AND OTHERS**', (2014) 3 SCC 760, '**BAKSHI SECURITY AND PERSONNEL SERVICES PRIVATE LTD. Vs. DEVKISHAN COMPUTED PRIVATE LIMITED AND OTHERS**', (2016) 8 SCC 446, '**MONTECARLO LIMITED Vs. NATIONAL THERMAL POWER CORPORATION LIMITED**', (2016) 15 SCC 272, '**CONSORTIUM OF TITAGARH FIREMA ADLER S.P.A-TITAGARH WAGONS LTD. Vs. NAGPUR METRO RAIL CORPORATION LTD. AND ANOTHER**', (2017) 7 SCC 486, '**CRRC CORPORATION LIMITED Vs. METRO LINK EXPRESS FOR GANDHINAGAR AND AHMEDABAD COMPANY LIMITED**', (2017) 8 SCC 282 AND MUNICIPAL CORPORATION, UJJAIN, supra.

9. In the backdrop of aforesaid well settled legal principles, the facts of the case in hand may be examined. The tender notification dated 21.01.2019 was invited for providing additional transformers to existing overloaded DTCs by extending HT/LT lines by erection of 25 KVA distribution transformers on turnkey basis in Hassan Operation and Maintenance Division. Thereafter, on representation being made by the contractor like the petitioners, the last date of submission of the bid was altered from 20.02.2019 to 26.02.2019 and 28.02.2019 was the date fixed for opening of Techno commercial bid. The financial bid was to be opened on 25.02.2019. Before proceeding further, it is relevant to quote the impugned tender conditions viz., condition No.9(iii) and 9(iv) of the tender notification, which reads as under:

*9 (iii) The bidder or lead bidder in a joint venture/consortium should have executed works of similar nature, worthy nor less than 25% of amount put to tender in previous*

*three financial (2015-16, 2016-17 & 2017-18) years put together.*

*Copy of DWA and Work Completion certificates issued by the officer not below the rank of Executive Engineer/equivalent officer in charge of respective works in any Government Utility/PSU/ESCOMS, SHALL BE furnished as proof of documentary evidence in support of their claim for eligibility criteria (ii) & 9iii)*

*(iv) Bidder possessing a Transformer Manufacturing firm or Transformer manufacturing firm providing the joint venture to the bidder should have (25 kva, 63 KVA & 100 KVA) put together to any ESCOMs in Karnataka in any one of the three financial (2015-16, 2016-17 & 2017-18) years.*

*Copy of PO and supply certificates issued by the officer not below the rank of Executive Engineer/equivalent officer in charge of*

*respective works in ESCOMs shall be furnished as proof of documentary evidence in support of their claim for eligibility criteria.*

10. It is trite law that the tender inviting authority has the sole discretion in the matter of formulation of the tender conditions and the power of judicial review would be exercised only when the same are shown to be arbitrary or perverse or actuated by malafides. In the instant case, the respondent Nos.1 and 2 in their objections have stated that the qualification criteria which has been impugned in these petitions has been prescribed to ensure that only transformers manufacturer companies having quality and capacity to manufacture the required quantity of transformers participate in the tender. It has further been stated that requirement of high quality transformers is very crucial because sub-par transformers will have larger energy losses, which in turn create energy losses in the system causing loss of

revenue to the respondent and also the public in large. It is also pointed out in para 9 of the objections that on representations being received from the contractors, the requirement to supply any ESCOMs in the State of Karnataka was brought down from 4000 to 2500 distribution transformers by way of an amendment. It is also stated that in order to ensure that the farmers are able to irrigate their lands during the summer season, it was deemed apposite to invite short term tenders. The tenders were invited viz., to develop infrastructure and quality power supply to irrigation pump sets of farmers for agricultural activities during coming summer season. Thus, the aforesaid justification offered by the respondents for incorporating the impugned tender condition so as to ensure that only manufacturers of transformers participate in the tender process by no stretch of imagination can be held to be either arbitrary, unreasonable or malafide. It is pertinent to note that in pursuance to impugned tender notification, as many as 42 persons have participated in the tender process. The



details of which have been furnished. From perusal of the details it is evident that several firms like Prakash Metal, Raghavendra Electricals, Skill Tech Engineers, Seal Well Corporation Pvt. Ltd., Hyderabad, Sri.Ranganatha Electricals do not have joint venture either with M/s Suvarna Transformers or M/s Kailash Transformers Pvt. Ltd., therefore, the contention that impugned condition in the tender has been tailor made to accommodate only M/s Suvarna Transformers and M/s Kailash Transformers Pvt. Ltd. cannot be accepted. This court cannot strike down the terms of the tender prescribed by the Government merely because some other terms in the tender would be fairer, wiser or more logical. The eligibility criteria prescribed by the respondents cannot be said to be either arbitrary, discriminatory or actuated by malafides. Therefore, in the fact situation of the case no interference is called for in the action of the tendering authority in formulating the tender conditions.

11. The respondent Nos.1 and 2 have placed on record the minutes of meeting which shows that the decision to invite the short term tender notice was taken to release the over load on the existing DTCs by providing new 25 KVA additional DTCs in Hassan and Mandya Circle. The aforesaid decision was taken as the work was to be carried out on an urgent basis to provide irrigation facilities to the farmers. After taking note of the minutes of meeting held on 30.11.2018, as well as the Board of Directors on 19.01.2019, the approval has been granted for inviting short term notice. Thus, there has been compliance with Rule 17(2) of the Rules.

12. So far as submissions made by Learned Senior Counsel for the petitioners that the eligibility criteria has been prescribed only to accommodate M/s Suvarna Transformers and M/s Kailash Transformers Pvt. Ltd., does not deserve acceptance as there are other tenderers also who have participated in pursuance of the tender notification, the details of whom have

been given in preceding paragraph. Similarly the contention that there has been a non compliance of Rule 17 of the Rules also cannot be accepted as the competent authority has permitted issuance of short term tender notice as stated in the preceding paragraph. So far as reliance on the decision in rendered by a bench of this court dated 30.01.2019 in W.P.Nos.55568-55571/2018 is concerned, suffice it to say that in the aforesaid decision, a bench of this court dealt with tenders for supply of RCC and PSCC poles and therefore, it was held that requirement of supply of poles to BESCO was arbitrary as the same was not based on any scientific criteria. In the instant case, the respondent Nos. 1 and 2 have given cogent reasons in their reply for fixing the eligibility criteria to ensure that only manufacturers can participate in the tender notification, which in turn ensures timely supply of transformers which is of utmost importance to the farmers to enable them to irrigate their fields. Therefore, the aforesaid decision is of no assistance to

the petitioners in the fact situation of the case. Insofar as the decision **KARNATAKA POWER TRANSMISSION CORPORATION** supra is concerned, in the aforesaid case no reasons were assigned while exercising the power under Rule 17(2) of the Rules. Therefore, the aforesaid decision is also of no help to the petitioners in the fact situation of the case.

13. In the obtaining factual matrix of the case, no case for interference is made out by the petitioners as the power of judicial review has to be exercised in circumspection and only in furtherance of public interest. There is no element of public interest involved in the fact situation of the case, which requires exercise of power of judicial review under Article 226 of the Constitution of India at this stage, that too at the instance of the petitioner who has not participated in the tender process despite an interim order granted by this court permitting him too participate in the process of tender provisionally. In case, interference is made at

this stage, the entire tender process would be required to be scrapped, which is in fact against public interest as the transformers had to be installed for supply of electricity to the farmers who irrigate their fields. It is also relevant to take note of Section 16 of the Karnataka Transparency in Public Procurements Act, 1999 which reads as under:

*"(1) Any tenderer aggrieved by an order passed by the Tender Accepting Authority other than the Government under Section 13 may appeal to the prescribed authority within thirty days from the date of receipt of the order :*

*Provided that the prescribed authority may, in its discretion allow further time not exceeding thirty days for preferring any such appeal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.*

*(2) The prescribed authority may after giving opportunity of being heard to both*

*the parties pass such order thereon as it deems fit and such order shall be final.*

*(3) The prescribed authority shall as far as possible dispose of the appeal within thirty days from the date of filing thereof."*

On this ground also, no interference is called for as the petitioners has an alternative efficacious remedy of filing an appeal against an order passed by the tender accepting authority under Section 16 of the aforesaid Act.

In view of preceding analysis, no case for interference in exercise of powers of judicial review under Article 226 of the Constitution of India is made out. However, the petitioners shall be at liberty to take recourse to the remedy which is available to him under the Karnataka Transparency in Public Procurements Act, 1999. Needless to state that in case such an appeal is filed, the Appellate Authority shall decide the appeal

without being influenced by any of the observations contained in this order.

Accordingly, the writ petitions are disposed of.

**Sd/-  
JUDGE**

SS