

**IN THE HIGH COURT OF KARNATAKA, BENGALURU**

**DATED THIS THE 27<sup>th</sup> DAY OF FEBRUARY 2018**

**BEFORE**

**THE HON'BLE Dr.JUSTICE VINEET KOTHARI**

**WRIT PETITION No.3831/2018 c/w WRIT PETITION  
Nos.5799/2018 & 5915-16/2018 (GM-TEN)**

**IN WRIT PETITION No.3831/2018**

**BETWEEN:**

BRUHAT BENGALURU MAHANAGARA PALIKE  
POWER CONTRACTORS ASSOCIATION  
No.56, B.M.S. PLAZA  
3<sup>RD</sup> CROSS, 1<sup>ST</sup> BLOCK  
3<sup>RD</sup> PHASE, B.S.K. 3<sup>RD</sup> STAGE  
BENGALURU-560 085  
REPRESENTED BY ITS PRESIDENT  
SRI B.M. SRINIVAS.

... PETITIONER

(By Mr. GANAPATHY BHAT, ADV.,)

**AND:**

1. THE EXECUTIVE ENGINEER (ELEC.)  
OFFICE OF EXECUTIVE ENGINEER (ELEC)  
EAST ZONE, 16<sup>TH</sup> FLOOR  
PUB M.G. ROAD, B.B.M.P.  
BENGALURU-560 025.
2. THE COMMISSIONER  
BRUHAT BENGALURU MAHANAGARA PALIKE  
N.R. SQUARE, BENGALURU-560 002.
3. M/S. BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED, (BESCOM)  
OFFICE AT K.R. CIRCLE, BENGALURU-560001  
REPRESENTED BY ITS MANAGING DIRECTOR.

4. THE PRINCIPAL SECRETARY  
URBAN DEVELOPMENT DEPARTMENT  
VIKASA SOUDHA  
BENGALURU-560001.

... RESPONDENTS

- (By Mr. K.N. PUTTEGOWDA, ADV., FOR R1 & R2  
Mr. VIKRAM U, ADV., FOR  
Mr. S. SRIRANGA, ADV., FOR R3  
Mr. VIJAYKUMAR A. PATIL, AGA FOR R4)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED TENDER NOTIFICATION DATED 11.01.2018, ISSUED BY R-1, AS PER ANNEXURE-C. GRANT AN INTERIM ORDER TO STAY THE FURTHER PROCEEDINGS IN PURSUANCE TO THE IMPUGNED TENDER NOTIFICATION DATED 11.01.2018, ISSUED BY THE 1ST RESPONDENT, AS PER ANNEXURE-C, DURING THE PENDENCY OF THE WRIT PETITION.

**IN W.P.Nos.5799/2018 & 5915-16/2018**

**BETWEEN:**

1. ARAVINDA ELECTRICALS  
P.W.D., B.D.A. AND B.B.M.P.  
LICENSED CONTRACTORS AND ENGINEERS  
OFFICE AT No.56, BMS PALZA  
3<sup>RD</sup> CROSS, 1<sup>ST</sup> BLOCK  
3<sup>RD</sup> PHASE, B S K 3<sup>RD</sup> STAGE  
BENGALURU - 560085  
REP. BY ITS PARTNER SRI. B.M. SRINIVAS.
2. KUMAR ELECTRICALS  
OFFICE AT No.8(S) 1<sup>ST</sup> PHASE, 2<sup>ND</sup> STAGE  
CHANDRA LAYOUT, VIJAYANAGAR  
BENGALURU - 560 040  
REP BY ITS PARTNER  
SRI. R.V. VASANTH KUMAR.
3. M/S. SHAH ELECTRICALS  
OFFICE AT No.43  
SHAH BAAZKHAN AVENUE

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FLAT No.201, R.B.I. COLONY  
GANGANAGAR, BENGALURU - 560024  
REPRESENTED BY ITS PROPRIETOR  
SRI. K. IBRAHIM KHAN.

... PETITIONERS

(By Mr. GANAPATHY BHAT, ADV.,)

**AND:**

1. THE EXECUTIVE ENGINEER (ELEC.)  
OFFICE OF EXECUTIVE ENGINEER (ELEC)  
EAST ZONE, 16<sup>TH</sup> FLOOR  
PUB M.G. ROAD, B.E.M.P.  
BENGALURU - 560025.
2. THE COMMISSIONER  
BRUHAT BENGALURU MAHANAGARA PALIKE  
N.R. SQUARE, BENGALURU - 560002.
3. THE PRINCIPAL SECRETARY  
URBAN DEVELOPMENT DEPARTMENT  
VIKASA SOUDHA  
DR. AMBEDKAR VEEDHI  
BENGALURU - 560001.

... RESPONDENTS

(By Mr. VIJAYAKUMAR A. PATIL, AGA FOR R4  
Mr. K.N. PUTTE GOWDA, ADV., FOR R1 & R2  
Mr. VIKRAM U, ADV., FOR  
Mr. S. SRIRANGA, ADV., FOR R3)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES  
226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO  
QUASH THE IMPUGNED TENDER NOTIFICATION DATED  
11.01.2018, ISSUED BY R-1, AS PER ANNEXURE-D & ETC.,

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

**ORDER**

**Mr. Ganapathy Bhat**, Adv. for Petitioners  
**Mr. K.N. Puttegowda**, Adv. for R1 & R2-BBMP  
**Mr. Vikram U**, Adv. for Mr. S. Sriranga, Adv. for R3  
**Mr. Vijaya Kumar A. Patil**, AGA for R4

1. The petitioner-**Bruhat Bengaluru Mahanagara Palike Power Contractors Association** has approached this Court by way of present writ petition on **23.01.2018** with a prayer to quash the Tender Notification dated **11.01.2018** issued by the Respondents-BBMP for selection of Energy Savings Company (ESCO) to develop an energy efficient street lighting network in the city of Bengaluru by implementing the energy conservation measures to reduce energy consumption of **4,85,246** street lights on a PPP basis (the Project).

2. The Earnest Money Deposit for **Rs.1,00,000,00/- (Rupees One Crore)** was required to be submitted by the intending Tenderers along with the

bid and the Calender of Events given in the said Notice inviting Tender published in the News paper on **11.01.2018** vide **Annexure-C** envisages that such bids to be submitted online on or before **12.02.2018, 5.00 PM** and the date of opening of the Technical Bids was to be done on **15.02.2018**. It is further stipulated in the said Notice that further details may be obtained from the office of the Executive Engineer (Elec.), East Zone, 16<sup>th</sup> floor, M.G.Road, BBMP, Bengaluru, during the office hours.

3. The learned counsel for the petitioner Mr.Ganapathy Bhat has urged before the Court that the eligibility criteria stated in the Tender Notification is too high to be complied with by any of the existing Contractors doing such electrification work for BBMP hitherto and the net worth of **Rs.100 Crores** required in the said Tender document, as also the 5 years experience are the twin conditions, which the Members

of the Petitioner-Association cannot just satisfy and therefore, it is a deliberate exclusion of the Members of the Petitioner-Association and therefore, the said Tender Notification is challenged before this Court.

He has further submitted that Rule-17 of the Karnataka Transparency in Public Procurement Rules, 2000, have not been complied with by the Respondents-BBMP, which *interalia* requires 60 days time for Tenders to give bids for the contracts in excess of **Rs.2 crores** in value. He also submitted that even this time limit has not been observed by the Respondents-BBMP.

He however, submitted that Rule 17(2) of the Karnataka Transparency in Public Procurement Rules, 2000, allows the reduction of the said timeframe by the order in writing recording reasons by a specifically authorized by an authority superior to the Tender Inviting Authority, but no such special reasons were recorded under Rule 17(2) of the Rules.

4. On the other hand, learned counsel for the Respondents-BBMP Mr.K.N.Puttegowda has submitted and explained to the Court the scheme of the said Project in question with reference to **clause-9** of the said Tender document and has submitted that the Respondents-BBMP is presently paying about Rs.14 crores per month to the BESCO for supply of energy to **4,85,246** street light points as energy consumption charges.

On the basis of the report given by the expert body viz., Energy Efficiency Services Ltd., New Delhi, prepared for BBMP in **January, 2012**, the BBMP took a policy decision to substitute all the electric bulbs of the old pattern with the new electricity saving LED bulbs and out of the savings made on account of the less power consumption, with more bright light provided by LED technology, the Contractors who will be awarded with the contract in the said Tender process will not only replace and install the LED lights free of cost but

they will also be give 20% of the saving upon the reduced power consumption bills to be paid at their own level to BESCOM, they will make over 20% of such savings to BBMP, the awarder of the contract and thus, not only the energy consumption charges would be saved by BBMP, but such LED technology would provide more environment friendly street lighting to the city of Bengaluru.

He also submitted that the Respondents-BBMP have therefore invited Global Tenders in this regard and to ensure proper performance of the contract, the aforesaid eligibility criteria of minimum experience of 5 years and Rs.100 crores of Net Worth was stipulated as the condition with the said Tender document, which is fair and necessary for the said project of a larger public interest.

5. The learned counsel for Respondents-BBMP has also submitted that the petitioner-Association



comprising of the Members of the Contractors of about 130 individual contractors are also free to participate as individual or as a group in such Tender process, subject to their fulfillment of the minimum eligibility criteria as laid down in the said Tender document and thus the said Tender does not require any interference by this Court under Article 226 of the Constitution of India.

6. Having heard the learned counsels for the parties, this Court is of the opinion that this Court cannot and should not interfere with the policy decision taken by the State or State Instrumentalities like the Municipal Corporations or BBMP, to switch over from the old technology of providing energy to old type of bulbs replacing them with the LED technology under the impugned Tender Notification.

7. *Prima-facie*, the project in question appears to be a *bonafide* project and should save the costs for providing efficient street lights to the city of Bengaluru

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for the Respondents-BBMP. Apparently, as contended by the learned counsel for the Respondents-BBMP, not only the entire replacement of LED bulbs is to be undertaken by the Contractor, who is finally awarded the contract, free of costs but they have to maintain the same also for a period of ten years without any charges from the BBMP.

8. The operating and maintenance costs to be deposited in a ESCROW account, which are based on the present energy costs borne by the BBMP for maintaining these street lights, will continue to be paid and out of the savings on account of the change of technology, the BBMP is assured of being paid back 20% of the saved amount, after the reduced bills of power supply paid to BESCO by the Contractor. For such a big project, if the Respondent-BBMP has set the minimum eligibility criteria of a bidder to have a minimum Net worth of Rs.100 crores or the experience

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of 5 years in undertaking Projects of these kinds, no illegality or arbitrariness can be found in such a policy decision. There is no violation of Article 14 of the Constitution of India. On the contrary, the effort of petitioner-Association to stick on to old pattern of contracts for this purpose, resulting in more cost to BBMP at the cost of public, cannot be appreciated and countenanced.

9. Actually, except the chances of the small contractors who are the individual Members of the Petitioner-Association losing the chances to bid in the said Project and not being able to continue with their existing contracts of this nature with the Respondent-BBMP, the same cannot be made a ground to strike down such policy decision and to strike down the Tender process itself. There is no prohibition against any body satisfying the eligibility criteria to participate in the said Tender process.

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10. The settled legal position about the scope of interference by the Courts in the Tender or Contractual matters is that such interference is normally ruled out and is kept to the bare minimum that too upon the glaring illegality or arbitrariness shown in the tender process undertaken by the Government Departments or State Instrumentalities like BBMP in the present case. Nothing of this sort of illegality is found to be established in the present case.

11. The Hon'ble Supreme Court has laid down the guidelines with regard to the interference in contractual matters under Article 226 of the Constitution of India in the case of **State of Kerala vs. M.K. Jose (2015) 9 SCC 433**, in the following manner:-

*“12. As the factual narration would reveal, the respondent has been invoking the jurisdiction of the High Court under Article 226 of the Constitution on various occasions challenging every action which pertain to extension of time, denial of revised estimate by the State*

*Government and many other facets of that nature and the **High Court, we must say, has been generously passing orders for consideration by the appropriate authority, for grant of opportunity of being heard to the contractor and to consider his representation in accordance with law. This kind of orders in a contractual matter, in our considered view, is ill-conceived. They not only convert the controversy to a disturbing labyrinth, but encourage frivolous litigation.** The competent authority might have mentioned that more than 50% work remained to be done but that should not have prompted the Appellate Bench hearing the intra-court appeal to appoint a Commission of two advocates and granting them liberty to take assistance of a competent engineer. As the Report would show, the Commission of two advocates have taken assistance of a retired Assistant Executive Engineer and submitted the Report. Though, the learned counsel for the State had not objected to the same, **yet we really fail to fathom how a writ jurisdiction can be extended to cause a roving enquiry through** a Commission and rely on the facts collected without granting opportunity to the State to file objections to the same and in*

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*the ultimate eventuate, cancel the order of termination of contract. What precisely was the quantum of work done and whether there had been a breach by the owner or the contractor, are required to be gone into by the appropriate legal forum.*

**13. A writ court should ordinarily not entertain a writ petition,** if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.

**14. In State of Bihar v. Jain Plastics and Chemicals Ltd. [(2002) 1 SCC 216],** a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated: (SCC p. 217, para 3)

*“3. ... It is to be reiterated that **writ petition under Article 226 is not the proper proceedings for adjudicating such disputes.** Under the law, it was open to the respondent to approach the court of competent jurisdiction for **appropriate relief for breach of contract.** It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he*

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*should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.”*

*In the said case, it has been further observed:  
(SCC p. 218, para 7)*

*“7. ... It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly*

***instituted civil suit rather than by a court exercising prerogative of issuing writs.”***

***21.*** *The procedure adopted by the High Court, if we permit ourselves to say so, is quite unknown to exercise of powers under Article 226 in a contractual matter. We can well appreciate a Committee being appointed in a public interest litigation to assist the Court or to find out certain facts. Such an exercise is meant for public good and in public interest. For example, when an issue arises whether in a particular State there are toilets for school children and there is an assertion by the State that there are good toilets, definitely the Court can appoint a Committee to verify the same. It is because the lis is not adversarial in nature. The same principle cannot be taken recourse to in respect of a contractual controversy. **It is also surprising that the High Court has been entertaining series of writ petitions at the instance of the respondent, which is nothing but abuse of the process of extraordinary jurisdiction of the High Court.** The Appellate Bench should have applied more restraint and proceeded in accordance with law instead of making a roving enquiry. Such a step is impermissible and by no*



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*stretch of imagination subserves any public interest”.*

12. The reduction of period below 60 days under Rule 17(2) is permitted under the Karnataka Transparency in Public Procurement Rules, 2000 and the learned counsel for the Respondents-BBMP has produced before this Court the Document dated **11.01.2018** passed by the Special Commissioner of BBMP reducing the said number of days of 60 to 30 days for the reasons recorded therein. Thus, there is no violation of the Transparency Rules also as alleged in the present writ petition nor such a permitted deviation from timeframe to facilitate an expeditious finalization of contracts should incur the wrath of the Court instead of being appreciated.

13. On an over all analysis of the relevant facts placed before the Court, this Court is satisfied that the impugned Tender process of the Respondents-BBMP for

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the Project in question, does not require any interference by this Court under Article 226 of the Constitution of India and the writ petition is found to be devoid of merit and is liable to be dismissed.

14. Accordingly, the writ petition is dismissed. In view of the same, the connected **W.P.No.5799/2018** is also dismissed in the same terms.

In view of the aforesaid dismissal of the writ petitions, I.A. also stands disposed of. No costs.

Sd/-  
JUDGE

Sri.