

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

**DATED THIS THE 25<sup>TH</sup> DAY OF FEBRUARY, 2019**

**BEFORE**

**THE HON'BLE MR. JUSTICE G.NARENDAR**

**WRIT PETITION No.107618/2018 (GM-TEN)**

BETWEEN:

IMRAN SHIVAPUR,  
S/O MEHABOOB SAB SHIVAPUR,  
AGED ABOUT: 45 YEARS,  
OCC: BUSINESS, R/O: MAKKALAGERI,  
TQ: GOKAK, DIST: BELAGAVI. ...PETITIONER

[BY SRI HEMANTH CHANDANAGOUDAR, ADVOCATE]

AND:

1. THE STATE OF KARNATAKA,  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF MAJOR IRRIGATION,  
M.S. BUILDING, BENGALURU-01.
2. THE KARNATAKA NEERAVARI  
NIGAM LIMITED (KNNL),  
COFFEE BOARD BUILDING,  
4TH FLOOR, DR.AMBEDKAR VEEDHI,  
BENGLAURU-560001,  
BY ITS MANAGING DIRECTOR.
3. CHIEF ENGINEER,  
KARNATAKA NEERAVARI NIGAM LIMITED,  
BELAGAVI NORTH, BELAGAVI.
4. EXECUTIVE ENGINEER,  
KARNATAKA NEERAVARI NIGAM LIMITED,  
RABAKAVI DIVISION NO.5,  
KOUJALGI, GOKAK TALUK,  
BELAGAVI DISTRICT.

5. M/S.MEIL-PVRPL (JV),  
HAVING ITS ADMINISTRATIVE OFFICE AT:  
S-2, TECHNOCRATS INDUSTRIAL ESTATE,  
BALANAGAR, HYDERABAD-500 037,  
REPRESENTED BY ITS AUTHORISED SIGNATORY,  
SRI SUDHEER MOHAN T.V. ...RESPONDENTS

(BY SRI RAVI V.HOSAMANI, AGA FOR R1,  
SRI S.S.NAGANAND, SR. COUNSEL FOR  
SRI G.K.HIREGOUDAR, ADV. FOR R2 TO R4,  
SRI K.L. PATIL, ADV. FOR R5, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE  
IMPUGNED TENDER NOTIFICATION DATED:05.11.2018  
BEARING NO.KNNL/GRBCC/ Div-5/DB/Salapur-  
Lis/Tender/2018-19/3, ISSUED BY THE RESPONDENT NO.4  
VIDE ANNEXURE-"B" AND ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS AND THE  
SAME HAVING BEEN HEARD AND RESEPVED FOR  
PRONOUNCEMENT OF ORDER ON 20.02.2019, THIS DAY, THE  
COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner, the  
learned Additional Government Advocate, learned  
counsel for the Board i.e., respondents 2 to 4 and the  
learned counsel Senior Counsel Sri S.S.Naganand, on  
behalf of the impleading 5<sup>th</sup> respondent.

2. The petitioner has sought for the following reliefs:

"i) *Quash the impugned Tender Notification  
dated 05.11.2018 bearing No.KNNL/GRBCC/Div-*

5/DB/Salapur.LIS/Tender/2018-19/3, issued by the Respondent No.4 vide Annexure-B,

ii) Grant such other reliefs as are deemed fit and necessary under the circumstances of the case including the cost of this writ petition.”

3. The petitioner has impugned the tender notification dated 05.11.2018 inviting bids for the purpose of executing on a turnkey basis the work of survey, investigation, design, supply, installation, testing and commissioning of head works and five year operation and maintenance of head works including all appurtenant structures, pipe line, motors with pumps and electro mechanical works including providing switch yard equipments, 220 KV transmission line under "Salapur - LIS" on a Turn-key basis.

4. Annexure-B is the impugned notification and the note to the description of work states that the estimates prepared as per the 2016-217 SR rates and as per the taxation system prior to 01.07.2017. The bidders are further notified under the instruction No.3.1.1, that the bidders can access and download blank documents

through e-procurement between 05.11.2018 onwards upto 4 p.m. of 19.11.2018 on payment of the prescribed fee.

5. The value of the work has been fixed at 30,851.39 lakhs. In other words, about 308.52 crores and as per the instruction No.3.1.6 the bidder/contractor/bidder was required to deposit a sum of Rs.308.52 lakhs by way of earnest money deposit. Under clause 3.1.2, the bidders are also made known of the fact of a Pre-bid meeting, to be held on 15.11.2018 at 11 a.m. and they are further instructed that the queries if any should be sent at least a week in advance by the intending bidders to the Executive Engineer. It is further made known under clause 3.1.4 that Cover 1 i.e., the Technical bid would be opened in the office of the Chief Engineer i.e., the 3<sup>rd</sup> respondent on 20.11.2018 at 4.30 p.m. Under clause 3.1.5 it is made known that the Cover-II i.e., the Financial Bid would be opened in the office of the Chief Engineer after approval of the technical bids. Clause 3.1.8 stipulates that all necessary

certificates/documents had to be scanned and attached to e-tender document. Clause 3.1.11 stipulates that prior to the awarding of the work the Lowest (L-1) bidder should produce the original documents in support of the uploaded documents along with the e-tender documents and in that, if he fails to do so, the L-1 bid would be treated as a non-responsive bid as per Rule 26 (4) of the Karnataka Transparency In Public Procurements Rules, 2000 (for short 'the Rules').

6. Under instruction 4 pertaining to prequalification criteria, it is made known that intending bidders can submit bids as individuals or joint venture and may also tie up with pump manufacturers . It is further stipulated that such joint venture/tie up is to be formed prior to the bidding. Clause 4.2 further stipulates that, in the event of a intending bid being a joint venture, then at least one of the joint venture bidders in the last five years, must have executed one such similar work costing not less than 50% of the present tender amount. That the work so executed ought to have included

execution of Lift Irrigation Scheme consisting of jack well, raising main, pumping machinery, transmission line, switchyard, delivery chamber, etc., and a work done certificate should be obtained.

7. Clause 4.3 stipulates that the annual turnover of the intending bidder or the joint venture entity shall be at least 308.51 crores in any of the two financial years during the last five years. Clause 4.4, 4.5, 4.6, 4.7 and 4.8 stipulate further pre-qualification criteria. Clause 5 pertains to the financial bid. Clause 6 lays down the general conditions.

8. The petitioner has produced the registration certificates at Annexure-A. A perusal of which demonstrates that he is registered as a Category 2 contractor and as per the tender conditions, he is not even eligible to even submit a bid or participate in the tendering process, as only Category-1 contractors have been invited to submit their bids as individual bids or joint bids. Annexure-C is the extract of the Website

whereby the last date for submission has been extended from 19.11.2018 to 22.11.2018.

9. It is contended by the learned counsel for the petitioner that the petitioner is a prospective bidder and that only on account of paucity of time and due to reduction of the time by invoking provisions of Section 17 (2) of the Rules, the petitioner stands deprived of an opportunity to participate in the tender. On being pointed, that the class of contractors who are invited to participate in the bidding process are Category-i contractors. He would contend that not only individual bids but joint bids have also been made permissible and that if sufficient time had been granted, he would have made attempts to tie up with a third party and make an attempt to participate in the tender process.

10. It is contended by the learned counsel for the petitioner that mere 15 days' time period is provided which is contrary to provisions of Rule 17 which stipulates that in respect of tenders whose value is in

excess of Rs.2 crores, 60 days' time ought to be provided for the participants and hence, the reduction of time is arbitrary and is liable to be set aside.

11. It is further contended that the tender notification and pre-qualification criteria stipulated therein are not only illegal but tailor made to suit the joint venture bid by PVR Projects and M/s. Lakshmi Civil Engineering Services. It is further contended that as alleged by the petitioner, the joint venture entity has emerged successful and hence, it has to be inferred that the allegations of malafides stand proved.

12. He would further contend that the order of the competent authority exercising powers under sub Rule (2) of Rule 17 of the Rules stands vitiated as the authority has not recorded any reasons for reducing time nor has the authority exactly stated the reduced time. He would invite the attention of this Court to Annexure-k3 produced by the respondents 2 to 4, along with their statement of objections, filed in the Court on



03.12.2018 to draw support for his twin contentions that the competent authority has not stated the reduced time nor has it recorded the reasons for reducing the time. It is contended that the authority ought to have recorded detailed reasons for reducing the time contrary to the provisions of sub Rule (1) of Rule 17 of the Rules. This being the only point of some substance, it was queried as to whether the provision contemplates any quasi-judicial or adjudicatory function by the competent authority under the provisions of under Rule 17 (2), to which it was fairly conceded that it is not adjudicatory in nature as the competent authority neither decides any lis nor the rights of any parties and at a pre-invitation stage at which point of time no rights are created. It is a statutory requirement, if not complied, will vitiate the process, thereby rendering the tender invitation a nullity or a still born, proceeding.

13. The learned counsel for the petitioner would place reliance on two rulings of the division bench one reported in 2015 (2) KLJ 234 (**KARNATAKA POWER**

**CORPORATION LIMITED, BANGALORE VS. PRODIGY HYDRO POWER (P) LTD.,)** and another unreported judgment to buttress his contention with regard to non-recording of reasons and reliance is placed on the order rendered by the division bench in W.P.No.40586/2017 (PIL) in support of his contention that it is mandatory to stipulate the reduced time in the order itself. This Court has perused the ruling reported in 2015 (2) KJL 234 wherein at paragraph 13, the division bench has observed as follows:

*"13. So far as the second point is concerned, the original records produced by the KPCL is verified by us. The Managing Director has only signed the tender notification as if he is approving the same. But he has not assigned any reasons to reduce the time. When there is no order passed by the Managing Director recording the reasons for reduction of time in the usual course, if he has only approved the notification, it cannot be contended by KPCL or by the other appellant that there is an order writing by the Managing Director for*

*reduction of time as contemplated under sub-rule (2) of Rule of the Rules”*

14. From the above, it is apparent that in the facts obtaining in that case, on perusing the files, the Hon'ble division bench found that there is no compliance with the mandate of sub Rule (2). In that, no reasons have been recorded and the Managing Director has merely appended his signature to the file/note put up. In the instant case, there is no dispute to the fact that the competent authority has by independent proceedings dated 31.10.2018 approved the reduction of time under sub Rule (2) of Rule 17. Hence, the said proposition of law as laid down by the division bench is inapplicable in the facts of the instant case.

15. As regards the other limb that the number of days by which the period is reduced ought to be stated, this Court finds the same to be contrary to the very provision itself. Sub rule (2) of Rule 17 reads as under:

*“Any reduction in the time stipulated under sub rule (1) has to be specifically authorized by an authority*

*superior to the Tender Inviting Authority for reasons to be recorded in writing.”*

16. On a bare reading of the provision, what can be inferred is that there is no mandate under provision calling upon the authority to stipulate the number of days by which the time stipulated under sub Rule (1) can be reduced. In fact, from the use of phrase 'specifically authorised' what one can safely deduce is that the authority, for reasons to be recorded has to accord permission or authorize the reduction as proposed by the tender inviting authority and it is not open nor is the authority called upon to fix the amount of time to be reduced. This Court holds so in view of the fact that, if it is to be construed that the competent authority under sub Rule (2) is required to specify the reduced time, then it would virtually be required to evaluate the entire technical aspects of the contract and seek justification from the tender inviting authority, thereby converting the process into an adjudicatory

process, which is neither the scope nor the ambit of sub Rule (2).

17. The learned counsel for the petitioner would place reliance on the order passed by the division bench while disposing of W.P.No.40586/2017. Learned counsel would take this Court through paragraph 9 of the said order which reads as under:

*"As could be seen from the said order, the reduced time limit is not even stated in the order. The order is clearly arbitrary. Therefore, the order dated 21.07.2017 cannot be sustained in law. Hence, it is unnecessary to examine the other contentions urged by the learned counsels appearing for the petitioners. They are kept open."*

18. From a reading of the above highlighted portion, it is not apparent as to whether the same is the dictum or the ratio decidendi of the said judgment. On the contrary, it appears to be an observation. This Court construes it so in the light of the interpretation placed by it on sub Rule (2). In this regard, this Court places reliance on the law laid down by the Hon'ble Apex Court

reported in AIR 2011 SC 3056 (**ARUN KUMAR AGGARWAL VS. STATE OF MADHYA PRADESH**) with regard to the binding effect of observations and on another ruling of the Hon'ble Apex Court with regard to precedents and the ratio of a decision, reported in **[2013 (15) SCC 414] (ARASMETA CAPTIVE POWER COMPANY PRIVATE LIMITED VS. LAFARGE INDIA PRIVATE LIMITED)**.

19. Learned counsel for the petitioner would also vehemently contend that the proceedings under sub Rule (2) of Rule 17 is not by the competent authority. He would contend that the 3<sup>rd</sup> respondent is not the immediate superior to the tender inviting authority. To draw sustenance for the contention, he would invite the Court's attention to Annexure - B, the tender notification and would point out that the tender notification has been issued on behalf of the Managing Director. In view of the same, the immediate authority is the Board of Director, the 2<sup>nd</sup> respondent and hence, on that ground also, the proceedings under Rule 17(2)

stands vitiated, as it is not in compliance with the mandate of Sub Rule (2) of Rule 17. This Court has perused the notification Annexure-B. The notification is issued by the 4<sup>th</sup> respondent and it is not disputed that the 3<sup>rd</sup> respondent is the immediate superior to the 4<sup>th</sup> respondent. In that view of the matter, the said contention requires to be rejected and is accordingly rejected. In this context, this Court would also prefer to draw an analogy. Under the Business Transactions Rules, all actions and the orders of the State Government are issued in the name of the Hon'ble Governor. If the contention on behalf of the petitioner is accepted, then it would result in an anomalous situation. Hence, the said contention requires to be rejected and is accordingly rejected.

20. Now, the only aspect of the said decision that requires to be answered is as to whether the competent authority has recorded its reasons in support of its conclusion.

21. The request for reduction of time has been made by the tender inviting authority vide Annexure-R2. Under the said representation, the tender inviting authority has set out four reasons for the purpose of requesting that the tender process be exempted from the application of sub rule (1) (b) of Rule 17. Firstly, it is stated that the government has accorded administrative approval for execution of the project known as Salapur Lift Irrigation Scheme on a turnkey basis. That under reference No.2, a similar request was made for reducing the time period and pursuant to that under reference No.3 and as the same was approved, a notification inviting tenders came to be issued under reference No.4. But, on account of announcement of assembly elections and coming into force of the Code of Conduct, the notification dated 09.03.2018 inviting bids was forced to be cancelled and lastly, it is submitted that the head works are required to be urgently executed and hence, the request for reduction of time.



22. What one could gather from the above is that the second respondent had issued a similar notification inviting bids but subsequently the notification had to be cancelled on account of the election being announced and the Code of Conduct being enforced. Thus, this is not the first time that these works have been notified to the public at large for execution.

23. On a perusal of the proceedings of the competent authority produced as Annexure-R3, it is indicated that the competent authority has perused the aforementioned request of the tender inviting authority and the material accompanying it. It is apparent that the competent authority is alive to the fact of the administrative approval accorded by the government for execution of the project as early as in March, 2018 and also to the fact of the tender notification inviting bids issued on 13.03.2018 and the publication of the tender notification in the regional daily newspaper and the District and State tender bulletin and the publication in the Trade Journal on 21.03.2018. It is also alive to the

fact that even on the earlier occasion, a similar request under Rule 17 (2) was made and granted under the proceedings dated 09.03.2018. It has also recorded that there is an urgent requirement to commence the execution of the project in an area which is drought prone. It is also recorded that there is a demand by the elected representatives of the region for urgent implementation of the project. It is also indicative of the fact that the competent authority has also looked into the report submitted by the Executive Engineer for speedy completion of the process. Thereafter, it has lastly concluded that it has taken note of the above factors and thereafter the competent authority has authorized the proposal as set out by the tender inviting authority. It has further directed the tender inviting authority to comply with the conditions stipulated under the proceedings dated 22.05.2018. It cannot be contended that the reasons recorded ought to be judgmental in nature and if any interpretation to the contrary is adopted it would render nugatory the phrase

“specifically authorised” used in the sub-rule (2) of Rule 17. In the opinion of this Court, a mere expression of the Competent Authority, recording satisfaction with the reasons set out by the tender inviting authority would amount compliance with the mandate of sub-rule (2).

24. From the above narration, it is apparent that the competent authority has applied its mind to the request of the tender inviting authority under Rule 17(2) and thereafter for the reasons set out and recorded it has authorized the proposal/request of the tender inviting authority made under sub rule (2) of Rule 17 and thereby, has exempted the process from complying with the rigor of sub rule (1) of Rule 17. It also requires to be added that question of sufficiency of reasons is not a ground which is agitated by the petitioner. Be that as it may, as noted earlier, the function discharged by the competent authority being neither an adjudicatory function nor a quasi-judicial function, it can be gainfully stated that sufficiency of reasons cannot be a ground to impugn such authorization. Thus, it can be safely

concluded that the authorization is more on account of a subjective satisfaction arrived at by the competent authority after assessing the objective material placed before it and which satisfaction has been reduced to writing and recorded as reasons.

25. The learned counsel for the respondents would contend that the writ petition is liable to be rejected on the ground of suppression of relevant facts alone. He would contend that the petitioner has no right muchless any vested right to even participate in the tender process and thereby would question the locus standi of the petitioner to maintain the instant writ petition.

26. It is contended that the project is conceptualized with the aim of providing irrigation facility to a command area of 13000 hectares in Mudhol and Badami taluk of Bagalkot districts and Ramdurg taluk of Bejagavi district by lifting water from the Ghataprabha river and the above process has to be completed in the current financial year for otherwise the

budget earmarked for the execution of the said project would lapse and the funds would become unavailable unless the process is finalized. Learned counsel would in fact contend that if the process is not completed and the implementation of the Scheme commenced, it would affect the lives of thousands of farmers in the aforesaid three taluks. That the project is conceived in the larger interest of the public and the larger public interest must prevail over the private interest of the petitioner, that too, one who is not even qualified to participate in the process. He would further contend that the speedy execution is necessitated on account of failure of huge number of bore wells in the region and on account of the persistent demands by the elected representatives. It is further contended that the tender notification has been again republished in the State tender bulletin on 07.11.2018, a copy of which is produced as R-6. He would further submit that the tender notification is also published in the Indian Trade Journal on 07.11.2018 and that tender notification has been given wide

publicity by publishing the same in leading English and Kannada newspapers. It is submitted that in a span of 9 months, the same project has been tendered twice and published twice in the Trade Journal and leading newspapers and the State and District Bulletin Gazette. That it is not the case that the notification inviting bids is made for the first time and the petitioner had not made any attempts despite the lapse of several months.

27. It is submitted that an interim order came to be granted by this Court after the tender notification was opened on 24.11.2018 and verification of the EMD has been completed on 27.11.2018 and the exercise of the verification has also been completed by the 4<sup>th</sup> respondent by addressing communication to the various authorities to verify the work done by such of those bidders whose technical bids were found to be in order.

28. He would further contend that the writ petition is actuated by malafides and that the petitioner is not even qualified to bid and that this Court ought not to

even venture into adjudicating the contentions at the instance of a person who does not even possess the qualification to participate in the process. He would also rely on the observation of the Apex Court rendered in the case of **COMMUNICATION NETWORKS (P) LTD., VS. U O I [(2008) 16 SCC 215]** wherein the Hon'ble Apex Court was pleased to hold at paragraph 40 as under:

*"When the power of judicial review is invoked in the matters relating to tenders or award of contracts, certain special features have to be considered. A contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. In such cases, principles of equity and natural justice stay at a distance. If the decision relating to award of contracts is bonafide and is in public interest, courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna."*

29. He would also take exception for the Court having ventured to examine the validity of the contentions raised by the petitioner and he would contend that the instant petition not being a public interest litigation,

this Court ought not to hear the petitioner as he is neither a participant nor is he qualified to participate.

30. Per contra, learned counsel for the petitioner would contend that as the notification allows joint bids, he intended to team up with the party who was proposed to be brought on record as petitioner No.2 and that the proposed petitioner No.2 is a Category-I contractor and was entitled to participate in the process.

31. It is no doubt true that an application was preferred by the petitioner to bring on record one Venugopal Darur, Proprietor of M/s. Avinash Constructions, as the second petitioner. There is no dispute that the said application was made on 18.12.2018 and this Court by order dated 07.2.2019 after taking note of the singular fact that, the very application is made long after the opening of the technical bids concluded that there is no bonafides in the said attempt and the application was rejected by a



detailed order dated 07.02.2019. The petition was listed for hearing on 13.02.2019 on which date the petitioner made a request for grant of adjournment on the premise that he intended to prefer an appeal against the orders rejecting IA No.2 Hence, hearing was adjourned to 19.2.2019 and on the said date, matter was heard and adjourned to 20.2.2019 on which date hearing was concluded and judgment was reserved.

32. The learned Senior Counsel has placed reliance on the ruling rendered in the case of **INDIAN HUME PIPE CO., LTD., VS. BANGALORE WATER SUPPLY AND SEWERAGE BOARD** reported in **(ILR 1990 KAR 1153)** to contend that the application for impleadment of the party as a second petitioner is merely an attempt by the petitioner to improve his case as a prospective bidder after the last date for evaluation of the qualifying criteria and he would submit that such an approach is impermissible and cannot be the ground for accepting the case of even a failed tenderer and in the instant case, the petitioner is not even a participant. There is

substance in the contention advanced by the learned senior counsel. There is no dispute with regard to the fact that the petition is initially filed by a person who is not qualified to participate in the tender process. Learned senior counsel would submit that the highly belated attempt is nothing but an after thought by the petitioner to stall the project envisaged in public interest. He would draw the attention of the Court to the petition pleadings in support of the above contention. He would contend that there is not even a whisper about the entity who was sought to be brought on record and showcased as a partner to submit a joint bid.

33. A perusal of the writ pleadings bears out the submission made by the learned Senior Counsel. There is not even a whisper with regard to the improvement now sought to be made to the case of the petitioner. The petitioner does not even make a statement that he has identified a partner and which entity is capable and is qualified to submit a bid and rightfully participate in

the tender process. The said fact assumes significance in the light of the allegations regarding lack of bonafides on the part of the petitioner and also goes a long way to substantiate the contention that the petitioner is even ineligible to participate in the tender muchless maintain the writ petition. This Court is also of the opinion that some sanctity or bonafides could have been attached to the instant writ petition, if the petitioner had possessed the bare minimum qualification of being a Category-1 contractor. But, a belated attempt is made by way of the application to cure the material defect of eligibility to maintain the writ petition as on the date of filing of the writ petition. Assuming that the proposed second petitioner was really keen to participate in the process, he should have been the person who should have approached the Court as he atleast possessed the threshold qualification of being a Category-1 contractor and if the writ petition had been at his instance and had it been pleaded on the date the writ petition was instituted that the parties intend to bid as a joint

venture unit, the case canvassed by the petitioner would have been believable. The instant litigation at the instance of a person who does not even possess the bare minimum qualification or the threshold qualification has to be termed as one which lacks bonafides.

34. Apart from the above, as noted supra by this Court the qualification of Category-1 contractor alone is not the sole pre-qualification criteria in fact the pre-qualifying criteria stipulates the execution of a contract, whose value is at least equivalent to 50% of the value of the tender amount. One other pre-qualifying criteria that is stipulated is with regard to the annual turnover stipulated in Clause 4.3 and the experience of executing particular type of work stipulated in Clause 4.2. There is not even a single plea in either the writ petition or in the impelading application demonstrating that the petitioner or the proposed petitioner possesses such pre-qualifying criteria. The petitioner has also not made out a case that even jointly the petitioner and the proposed petitioner possess such pre-qualifying criteria.

35. In the totality of the reasoning set out above, the only inescapable conclusion that this Court can draw is that the instant petition is a travesty of justice of the justice delivery system, at the instance of a person who has no locus standi to maintain the petition as an aggrieved person as admittedly and as conceded by the counsel for the petitioner that the instant petition is not a public interest litigation but one advancing the cause of an aggrieved individual. As noted above, no material has been placed by the petitioner to demonstrate that either individually or even jointly the petitioner and his proposed partner possess the pre-qualifying criteria as set out in the tender notification.

36. In that view of the matter, by no stretch of imagination can the petitioner be classified as an aggrieved person who is entitled to maintain the instant writ petition. The observations of the Hon'ble Apex Court in the case of **PRESTIGE LIGHTS LTD., VS. STATE BANK OF INDIA** reported in **[(2007) 8 SCC 449]** squarely applies to the facts and circumstances of the

instant petition. The Hon'ble Apex Court at paragraph 35 of the said judgment has held as under:

*"It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would be impossible."*

37. It is not the case of the petitioner nor can it be, that the tender came as bolt from the blue or that the tender invitation is shrouded in secrecy. The proceedings under Rule 17(2) and the approval produced as Annexures - R3 and R2 respectively, clearly demonstrate that the tender was published on all earlier

occasion in March, 2018 itself, and the execution of the project or rather the intention of the respondent to execute the project has been made known almost 8 to 9 months prior to the impugned tender notification. The same has been made known to the public at large by way of the earlier publication in March 2018. The publications have been carried out in the Indian Trade General in leading newspaper and District gazette bulletin. If that be so, then the plea of the petitioner that he is handicapped by the shortened or reduced time is absolutely baseless. If he was genuine contender, he would have certainly made preparations immediately after the cancellation of the earlier tender. Though he had 8 to 9 months time, he was unable to stitch a partnership and make a joint bid. This only goes to demonstrate the lack of *bona fides* on the part of the petitioner and the reduced time is sought to be made out as the debilitating factor which has hindered or handicapped him from participating in the tender process. The intention of the respondents to have the

work executed on an urgent basis is made known to the world at large and this can be inferred by the reasons recorded wherein it is stated that even on the previous occasion i.e., on 09.03.2018, the tender inviting authority had sought for and the competent authority had reduced the time period on the previous occasion also. These are also the facts which amply demonstrate the indolent and lackadaisical attitude of the petitioner.

38. In the light of the above said facts, this Court is constrained to infer that the instant petition is motivated litigation and the petitioner can by no stretch of imagination be considered a genuine contender and the instant petition is vitiated by *mala fides*.

39. In view of the above discussion, this Court is of the consider opinion that the petition absolutely lacks bonafides and is to be termed as a unscrupulous attempt by the petitioner to delay a project conceptualized in larger public interest and hence, the petition stands dismissed.



40. The petition stands dismissed with costs. Costs is quantified at Rs.25,000/- payable by the petitioner within four weeks from today. The costs shall be deposited into the account of the Advocates' Association Library Fund, High Court of Karnataka, Dharwad Bench, Dharwad.

**(Sd/-)**  
**JUDGE**

jmr/-

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