

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF MARCH 2013

BEFORE

THE HON'BLE MR. JUSTICE S. ABDUL NAZEER

WRIT PETITION Nos.6454-6459/2013 (GM-TEN)

BETWEEN :

1. K. Narayana Bhat
S/o. Narayana Bhat Kanganar
Aged about 63 years
Proprietor: Munna Electricals
Main Road
Puttur, D.K. 574 201
2. M. Sooryanatha Alva
S/o. late Sankayya Alva
Aged about 49 years
Prop: Padma Traders
Darbe, Puttur
D.K. 574 201
3. S. Sunder Shetty
S/o. Chennappa Shetty
Aged about 45 years
Prop: Pajesh Electricals
Rajdhani Towers
Uppinangady
Puttur Taluk, D.K. 574 241
4. Gururaja Kolathaya
S/o. Balakrishna Kolathaya
Aged about 28 years
Partner: Sudha Electrical Contractors

Kallare, Puttur
D.K. 574 201

5. H. Sundara Gowda
S/o. Belliyappa Gowda
Aged about 46 years
Prop: Jyothi Electricals
Venkataramana Prasad Eldg.
Uppinangady
Puttur Taluk
D.K. 574 241
6. Vishwanatha Gowda B
S/o. Sheshappa Gowda
Aged about 44 years
Prop: Vishwaprakash Electricals
Main Road
Puttur, D.K. 574 201

... PETITIONERS

(By Sri. M.J. Aiva & S.J. Aiva , Advs.)

AND :

1. Mangalore Electric Supply
Company Ltd. (MESCOM)
Rep. by its Managing Director
Corporate Office
Paradigm Plaza
AB Shetty Circle
Mangalore 575 001
2. The Superintending Engineer (Tech)
Mangalore Electric Supply Co. Ltd.
Rep. by its Managing Director
Corporate Office
Paradigm Plaza
AB Shetty Circle
Mangalore 575 001

... RESPONDENTS

(By Sri. N.K. Gupta, Adv.)

These writ petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash the impugned amendment at Annexure-C dated 25.1.2013 and etc.

These writ petitions coming on for *Preliminary Hearing 'B' Group* this day, the Court made the following:

ORDER

In these cases, the petitioners have called in question the validity of the corrigendum at Annexure-C dated 25.1.2013 amending tender notification at Annexure-A dated 5.1.2013. In the corrigendum, the respondents have modified financial requirements for making an application.

2. I have heard the learned counsel for the parties.

3. M/s. Kanara Technical Power Company and others Vs. Mangalore Electricity Supply Company (MESCOM) Ltd. had filed Writ Petition Nos.6638-47/2013 challenging the impugned corrigendum notification. This

Court, after considering the various contentions of the parties, has dismissed the writ petitions on 7.2.2013, observing as under:

“ As could be seen from the procurement portal issued by the Government of Karnataka Annexure-A, the corrigendum is issued for better participation of the tenderers and for better monitoring of works and also for early completion of project. It is for the Tender Inviting Authority to prescribe conditions. Merely because on the last occasion a small amount of EMD was prescribed, the petitioners cannot contend that the same conditions should continue this year also. The conditions depend upon the quantum of work assigned. It is needless to observe that EMD is raised by the respondents-Tender Inviting Authority only to see that the genuine contractors participate in the tender process. The conditions will be imposed by the Tender Inviting Authority based on their experience of yester years. The tender conditions would not normally be interfered with by this Court unless the same are illegal or arbitrary. Since this Court does not find any illegality in the conditions imposed, no interference is called for, more particularly when

new conditions are imposed for better participation and for better monitoring of works and for early completion of project. ”

4. Learned Counsel for the petitioners submits that having regard to Rule 27 of the Karnataka Transparency in Public Procurements Rules, 2000 (for short 'the Rules'), it is not permissible for the tender inviting authority to issue such a corrigendum modifying the conditions of tender notification.

5. Learned counsel for the respondents has filed statement of objections opposing the writ petitions. It is contended that on the basis of Rule 14, modifications have been made by the tender inviting authority to the tender documents.

6. Rule 27 finds a place in chapter 6 of the Rules which provides the pre-qualification procedure. The said Rule has no role to play for modifying or amending the

tender documents. Rule 14 provides for clarification to the tender documents. It states that at any time after the issue of the tender documents and before the opening of the tender, the tender Inviting authority may make any changes, modifications or amendments to the tender documents and shall send intimation of such change to all those who have purchased the original tender documents. It is permissible under this Rule to make any changes, modifications or amendments to the tender documents after the issue of the tender documents and before the opening of the tender. There is no merit in these writ petitions. They are accordingly dismissed. No costs.

**Sd/-
JUDGE.**

Cs/-