

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 1<sup>st</sup> DAY OF MARCH 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION Nos.8632 c/w 8633, 8646-  
49/2018(GM-TEN)

W.P.No.8632/2018

**BETWEEN:**

RAJATHADRI TRADERS  
SJM COMPLEX, NRUPATHUNGA ROAD  
CHANNAGIRI, DAVANGERE DISTRICT-577213  
BY ITS PROPRIETOR B.S.RAVINDRA ...PETITIONER

(BY SRI.B.RAVINDRA PRASAD, ADV. FOR  
SRI HEMANT R CHANDAN GOUDAR)

**AND:**

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS SECRETARY  
MINISTRY OF SOCIAL JUSTICE  
& EMPOWERMENT  
(MINISTRY OF SOCIAL WELFARE)  
M.S.BUILDING, BANGALORE - 01.

2. DEPUTY DIRECTOR  
SOCIAL WELFARE DEPARTMENT  
DISTRICT ADMINISTRATION BHAVAN  
I FLOOR, B BLOCK  
ROOM NO.37, KARUR INDUSTRIAL AREA  
P B ROAD, DAVANGERE - 577 002. ...RESPONDENTS

(BY SRI.VIJAYKUMAR A PATIL, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED TENDER NOTIFICATION DATED 31.1.2018 BEARING NO.UuNiaKalda/Ahara TENDER/CR-03/2017-18 ISSUED BY THE RESPONDENT NO.2 VIDE ANNEXURE -B.

W.P.No.8633/2018

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W.P.Nos.8646-8649/2018

**BETWEEN:**

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NOTIFICATION DATED 31.1.2018 ISSUED BY THE SECOND  
RESPONDENT VIDE ANNEXURE – B, B1 to B3.

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

**ORDER**

**Mr.B.Ravindra Prasad**,Adv. for Petitioners  
**Mr.Vijaykumar A Patil**, AGA. for Respondents

The Petitioner - M/s Rajathadri Traders through  
its proprietor B S.Ravindra of Davangere District who is  
carrying on the business of supply of food grains and  
other products to various Government departments  
including Zilla Panchayaths and Taluk Panchayaths,  
has filed these three Writ Petitions in this Court on  
**21.02.2018** interalia challenging the issuance of Tender  
Notification by the respondent/State and its Social  
Welfare Department vide Annexure “B” dated  
**31.01.2018** for procurement of food grains for supply to  
the Government hostels maintained by the Social  
Welfare Department, where the children of different age  
groups live, to provide them food.

2. The purpose of procurement of food is obviously of an urgent nature.

3. The only ground of challenge raised in the present set of three Writ Petitions by the same writ petitioner is that the respondent/Department has not observed the provisions of Rule 17 of the Karnataka Transparency in Public Procurement Rules, 2000 (The Rules) and has curtailed the tender period to 30 days and that the respondent/department has not issued separate Tenders on district wise basis which was its earlier policy.

4. Learned counsel for the petitioner Mr.Ravindra Prasad, urged that the requirement of publication of the State Government in the District Tender Bulletin as per Rule 8 of the aforesaid Rules has not been followed. He has further relied upon the Division Bench Judgment of this Court in the case of **SHIMNIT UTSCH INDIA PVT.**

**LTD. vs STATE OF KARNATAKA (ILR 2012 Kar.4073)**

at paragraphs 32 and 42 thereof.

5. The relevant Rules 8 and 17 are quoted below  
for ready reference:

**Rule 8: Information to be published  
in the District Tender Bulletin:-**

Subject to the provisions of Rule 10, notices inviting tenders and decisions on tenders shall be published in the District Tender Bulletin of the District where the headquarters of the Tender Inviting Authority is located:

Provided that where a value of procurement is rupees one crore and above, it shall also be published in the State Bulletin.

**Rule 17: Minimum time for  
submission of tenders:-**

(1) The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin the last date for submission of tenders. This minimum period shall be as follows:-

- (a) for tenders upto rupees two crores in value, thirty days; and
  - (b) for tenders in excess of rupees two crores in value, (sixty days).
- (2) 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.

6. The Division Bench Judgment of this Court in the case of **SHIMNIT UTSCH INDIA PVT. LTD. vs STATE OF KARNATAKA (ILR 2012 Kar.4073)** at paragraphs 32 and 42 is quoted below for ready reference:

*Para 32: In the instant case, the Rule 10 of KTPR Rules mandates that the tender inviting authority shall have the notice inviting tenders published in the Indian Trade Journal, in all cases where the value of procurement exceeds rupees ten crores. In the instant case, the tender amount involved is more than ₹10 crores. The provisions of Section 8 of KTPR Rules insists publication of tender in the District Tender Bulletin. The provisions of Section 12 (1)(C) declares that it shall be the duty of **every tender authority to cause publication of notice inviting tenders in the prescribed manner.** The said provision makes it abundantly clear that apart from the legal requirement of publication of tender in the bulletin as per Section 8, the further formalities of issuing notice as required under Rule 10 shall also be complied with. It may be*

*that the tender notice has been circulated in the newspaper and might have been affixed in the offices as envisaged. But there is no publication of tender in the Indian Trade Journal.*

.....

*Para 42: The needed amendments to the KTPR Act should be of such a nature that at the tender procurement and acceptance level, there **should be greater transparency. With respect to the price of the product/service, it is necessary that the marginal cost** has to be evaluated by the tender inviting authority for finalization of the price to find out the profit margin of the tenderer. In the instant case, we are astounded that before accepting the tender, the authority has not gone into the question of the marginal cost of the product before accepting the rate quoted by the appellant-Company. The needed amendment to the KTPR Act should not give arbitrary powers to the Government to foil a valid contract by withholding Cabinet approval for extraneous reasons. At the same time, the actions of the tender procurement/accepting authority should be under close **scanner by the Government** by invoking Sec. 15, 17 and 18.*

7. Per contra, learned State counsel submitted that Rule 17(2) of the aforesaid Rule permits the reduction of time frame stipulated in Rule 17(1) of the aforesaid Rules by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing.



He further submitted that in view of the nature and urgency of the material sought to be procured under this tender notification viz., food grains for the hostels maintained by the Social Welfare Department, these short term tender notices have been issued by the Social Welfare Department of the State.

8. Having heard the learned counsel for the parties, this Court is of the opinion that the present Writ Petitions are nothing but sheer abuse of process of this Court and are absolutely misconceived. The petitioner- a trader of food grains himself, having admittedly come to know of the tender notices published on **31.01.2018** itself, instead of submitting his tender if he so chose to do it, preferred to challenge by filing the present writ petitions on **21.02.2018**, after a gap of about 20 days, as if petitioner is to supervise the administrative working of the Social Welfare Department.

9. Time frames given in Rule 17(1) is obviously to give adequate time to the intending bidders for participating in the process of tender but, Rule 17(2) itself provides for cutting short of the time frame of 30 days or 60 days depending upon the value of the tender being upto or over Rs.2.00 crores, only by recording reasons. The said Rule is obviously directory in nature and their non-compliance cannot be fatal to the tender process initiated by the respondent/State. The reasons recorded by the superior authority over the Tender Inviting Authority are not normally justiciable and the sufficiency of such reasons is not the subject matter of judicial review or judicial scrutiny under Article 226 of the Constitution of India.

10. This Court finds no apparent and reasonable basis for the petitioner to challenge the said tender process for the alleged non-compliance of the provisions of Rule 17. The very purpose of the Karnataka

Transparency in Public Procurement Act and Rules framed thereunder is to introduce the element of transparency and fairness in the tender process undertaken by the Government Departments. Unless the facts showing malice-in-fact or malice-in-law is clearly established with relevant facts and evidence, the Court's interference in such Tender matters cannot be made.

11. The well settled legal position for Court's interference in contractual and such matters was recently delineated by Hon'ble Supreme Court in **STATE OF KERALA AND OTHERS vs M.K.JOSE ((2015) 9 SCC 433)** in which it was held as under:

*“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 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.*

12. The Judgment relied upon by the learned counsel for the petitioner in **Shimnit Utsch India Pvt. Ltd.'s** case quoted above does not help the case of the petitioner in any manner. While applauding the above purpose of the Transparency Act and Rules, the Division Bench of this Court has delineated the guidelines for maintaining such transparency and fairness enshrined in the said Act. The publication in Trade Journals may be a procedural requirement but the non-compliance thereof does not go to the root of the Tender process and cannot result in violation of the Tender process itself as contended before this Court. The fact that the Tender

Notices has been widely published in the news papers and has been displayed on the notice boards of the respective departments and it has also been published even on the authorized website of the Government <https://eproc.karnataka.gov.in>, is enough publicity given by the respondent/department to put on notice the intending bidders for their participation in such process.

13. The invoking of the extraordinary jurisdiction of this Court in this case is not only wholly unnecessary but is just sought to derail the very process of Tender, without any facts for establishing the arbitrariness, illegality or malafides which is likely to cause more public harm than good to the petitioners or others. Therefore, this Court would loath to interfere in such cases except on well established grounds establishing arbitrariness or malafides or tainted decisions of the State Government, being contrary to usual business

norms or public policy. None of such things is even averred in the Writ Petition, what to say of being established with evidence. That is why this Court is of the considered opinion that such frivolous writ petitions deserve to be dismissed with exemplary costs so that the litigants do not tinker or interfere with such process which are initiated by the State Government to meet urgent needs of the State, in a light manner.

14. These writ petitions are therefore dismissed with costs of Rs.10,000/- each payable by the petitioner to the respondent/Social Welfare Department.

**Sd/-  
JUDGE**