

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.15444, 15636,
18954,
20172 & 22070 of 2015

Dated this the 5th day of October, 2015

JUDGMENT

The issue involved in these writ petitions relate to the mode of implementation of developmental and public works under the different local authorities in the State. While some of the petitioners allege that the same has to be implemented through e-tendering process, some of the petitioners would insist for the implementation of these works through beneficiary committees of the local authorities.

2. The petitioner in WPC Nos.15444/2015 and 20172/2015 is the District Committee (Pathanamthitta) of Kerala Government Contractors Federation. They allege that the Local Self Government Department is trying to cancel e-tendering which is implemented in certain Panchayats overlooking the directions in the judgment of this Court.

3. The petitioner alleges that it is a registered association having 200 members consisting of A-class, B-class and C-class contractors. They allege that as per order dated 28.9.2013, the Government took a decision to implement e-tender system in Local Self Government Department for all tenders worth Rs.5 lakhs and above. This decision was challenged before this Court in WPC No.28179/2013 and connected cases and this Court vide judgment dated 20th January 2015 repelled the contentions against the implementation of e-tendering. The petitioner further points out that the Government again, as per order dated 7.5.2014, reiterated that e-tender should be adopted for all works costing Rs.5 lakhs and above from the financial year 2014-2015 specifically stating that non-procurement of digital signature cannot be an excuse for waving e-tender. The petitioner points out that when there was an attempt to deviate from the aforesaid decision of the Government, a writ petition was filed by the petitioner before this Court for a direction to follow the aforesaid order. However, when the same

came up for hearing, it was undertaken on behalf of the Government that from the financial year 2015-2016, the aforesaid order would be followed and on the basis of the said submission, WPC No.16477/2014 was disposed of by judgment dated 10th July 2014 directing the third respondent therein to follow the guidelines in the aforesaid G.O. from the next tender onwards. The petitioner alleges that thereafter the Government issued order dated 30.4.2015 stating that all the public works above Rs.5 lakhs have to be implemented through e-tendering. The petitioner points out that the malpractice committed while the works were entrusted to the beneficiary committees was highlighted in several reports. The grievance of the petitioners is that under the pretext that Kannur District Panchayat, Block Panchayats, Presidents Association and Pathanamthitta District Panchayat expressed difficulty in e-tender, the Convenor of the State Decentralisation Co-ordination committee constituted a sub committee to consider the issue. According to the petitioner, to its knowledge, the sub

committee reported that there cannot be deviation from e-tender as stipulated in the previous notification issued by the Government. Apprehending that the convenor of the State Decentralisation Co-ordination committee would deviate from e-tendering to favour interested persons, the petitioner submitted his representation dated 22nd May 2015 before the convenor. It is with this background, the petitioner has approached this Court with WPC No.15444/2015.

4. In the aforesaid writ petition, this Court passed an interim direction to hear the petitioner in the meeting scheduled to be held on 27.5.2015. In the second writ petition, i.e. WPC No.20172/2015, the petitioner alleges that even though the petitioner approached the Secretary, Local Self Government (EW) Department on 27.5.2015, no opportunity of hearing was afforded. Thereafter a notice dated 17.6.2015 was issued to the petitioner by ordinary post calling upon him to attend the hearing on 19.6.2015. In the absence of the petitioner and his family members, a notice was affixed on the gate of the residence of the

petitioner presumably on 19.6.2015. Narrating the above facts, the petitioner filed an interlocutory application in WPC No.15444/2015 as I.A.No.8551/2015. This Court as per order dated 24th June 2015 interdicted the convenor of the State Decentralisation Co-ordination Committee from taking any decision in violation of the order dated 30.4.2015. The petitioner points out that however, on 24.6.2015, the convenor took a decision in violation of the aforesaid order to award works up to Rs.15 lakhs without e-tendering. The petitioner points out that only from the website it was brought to the notice of the petitioner. According to the petitioner, it is an eye wash to show that the direction of this Court has been complied with and the respondents wanted to stick on to their earlier decision to avoid e-tendering. The petitioner further alleges that already 10 districts have implemented e-tendering in all Panchayats. The difficulty is expressed by Block Panchayats and District Panchayats in four districts only. Therefore, it was pointed out that the action of the respondent in the matter is *mala fide*. It is with this

background the petitioner has filed the second writ petition.

5. WPC No.15636/2015 is filed by a resident of Adimaly who is also a member of the Adimaly Block Panchayath. He alleges that the three tier Panchayat Raj system has been introduced by the 73rd Amendment of the Constitution of India. By virtue of the power extended by Section 254 of the Panchayat Raj Act, the Government issued SRO No.786/97 whereby it was provided that the method of public work would be decided considering the possibility of executing the work through the beneficiary committee and priority would be given to such method and if priority cannot be given, the reason must be specified in the decision of the Panchayat. Following the above, the works having the estimate cost up to Rs.15 lakhs is being conducted through the beneficiary committee and the works having the cost of above Rs.15 lakhs would be conducted by inviting tenders. It was pointed out that contrary to the above procedure being followed, the respondents have issued circular dated

21.4.2015 and 30.4.2015 ordering that the work up to Rs.5 lakhs would be conducted through the beneficiary committee. As per the Government circular dated 30.4.2015, the works having the cost of Rs.5 lakhs and above would be conducted by inviting tenders. This, according to the petitioner, is contrary to the rules. It is further pointed out that those circulars were issued as per the directions contained in WPC No.28179/2013 and connected cases which were filed by the contractors' union and the subject matter was relating to the applicability of e-tender system introduced in inviting tenders.

6. The definite case of the petitioner is that the aforesaid two circulars are contrary to the provisions of the Kerala Panchayat Raj (Execution of Public Works) Rules 1997. Therefore, he has prayed for quashing the aforesaid orders.

7. WPC No.22070/2015 is filed by four persons. Petitioners 1 and 2 are permanent residents of Pathanamthitta district. They are also President and

member of the Pathanamthitta District. Petitioners 3 and 4 are residents of Thiruvananthapuram and Malappuram District and the Presidents of Nemom Block Panchayat and Azheekode Block Panchayat respectively. They are also the President and Secretary of the Kerala Block Panchayat Association. They point out that under Section 2(15) of the Kerala Panchayat Raj Act, 1994, Panchayat means Village Panchayat, Block Panchayat or District Panchayat. According to them, under Article 243G of the Constitution of India, more powers and responsibilities are conferred on the Panchayats in the matter of preparation of plans for economic development and social justice as well as implementation of schemes for the same. To achieve the constitutional mandate, the Kerala Panchayat Raj Act, 1994 was brought into force with effect from 23.4.1994. The petitioners point out that the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 permits execution of public works by the Panchayats either on contract basis or directly or through the beneficiary committees. According to the petitioners, if

the Panchayat decides to execute the works through the contractors, then Rules 7 to 10 would apply whereby the tenders are to be invited. At the same time, if the Panchayat decides to execute the works through beneficiary committees under Rule 13, only the procedure envisaged under Rules 5 and 6 need be followed and no tenders are to be invited. Their grievance is that by Government orders dated 28.9.2013 and 7.5.2014, circular dated 21.4.2015 and consequential decisions, the Panchayat is compelled to execute the works above Rs.5 lakhs through e-tenders which is clearly against the G.O. dated 27.6.2012.

8. WPC No.18954/2015 is filed by the President of the Kaviyoor Grama Panchayat. He alleges that the Secretary, Local Self Government (EW) Department has decided to implement e-tendering for all tenders worth Rs.5 lakhs and above as per G.O. dated 28.9.2013 which was challenged in WPC No.31787/2014 and connected cases. The challenge was repelled by this Court as per judgment dated 20th January 2015 and thereafter the

Secretary of the Local Self Government Department issued G.O. dated 7.5.2014 with regard to the implementation of e-tendering. According to him, the respondents are bound to implement e-tendering in Local Self Government Department for all tenders worth Rs.5 lakhs and above. It is further pointed out that though the Government has issued notification dated 30.4.2015 wherein it was clearly stated that only those works which are below Rs.5 lakhs would be done either through the beneficiary committee, the petitioner was given to understand that on the basis of the pressure exerted by certain associations, the respondents are intending to withdraw the notification dated 30.4.2015. Therefore, he made a representation before the respondents not to withdraw the said notification. The writ petition was filed when the next meeting of the State Decentralisation Co-ordination Committee was scheduled to be held, praying that he be afforded an opportunity of being heard by the said Committee before taking a decision in the matter.

9. Arguments have been heard.

10. Though this Court by interim order dated 6.7.2015 in WPC No.20172/2015 directed to keep the operation of 2.2 in Ext.P15 in that case, in abeyance for two weeks, later, it was clarified that the said order would not stand in the way of the co-ordination committee in taking a final decision in the matter. Later, as per the interim order dated 22nd July 2015, it was made clear that the interim orders already passed shall not stand in the way of the Chief Engineer and the District Planning Committee in approving the proposals already submitted by the Panchayats through proper channel. However, it was made clear that though it was open to the aforesaid committee to approve the proposal, no further action pursuant to the same should be taken without any further orders from this Court. The permission for approval was granted only to avoid the exigency of getting the proposals lapsed on account of delay and it was made clear that the same would not confer any special right on any of the parties.

11. After hearing was completed and the case was reserved for judgment, the Corporation of Cochin has filed I.A.No.12245/2015 in WPC No.22070/2015 for getting impleaded in that writ petition stating that their presence is necessary to repel the contentions raised by the writ petitioners in that case on awarding Government contract. However, this Court is of the view that it is not necessary to implead the Corporation as an additional respondent for the adjudication of the issue.

12. As per orders dated 28.9.2013 and 7.5.2014 the Secretary of Local Self Government (EW) Department has decided to adopt Central Public Works Department (CPWD) Data, Delhi Schedule of Rates (DSR), National Buildings Code Guidelines and Ministry of Road Transport and Highways (MoRTH) specifications in the Local Self Government Department and the same was implemented for the annual schemes from 2014-2015. Various guidelines have been issued for the implementation of the projects in the Local Self Government Department as per Government orders dated 28.9.2013 and 7.5.2014.

Clause-14 of G.O. dated 7.5.2014 (marked as Ext.P3 in WPC No.20172/2015) states that e-tendering should be adopted for all works costing Rs.5 lakhs and above from the financial year 2014-2015 onwards.

13. Mr.Raju Joseph, the learned senior counsel for the petitioners in WPC No.20172/2015 and WPC No.15444/2015 would submit that any work allotted even to the beneficiary committees without e-tendering is illegal and therefore liable to be interfered with by this Court. It is crucial to note that this Court had occasion to pass two judgments in previous cases. One is the judgment dated 20th January 2015 in WPC No.28179/2013 and connected cases (produced as Ext.P2 in WPC No.20172/2015). The other judgment is the judgment of this Court dated 10th July 2014 in WPC No.16477/2015 (Ext.P4 in WPC No.20172/2015). As per those judgments, the Secretary of the Local Self Government Department issued order dated 30.4.2015 (Ext.P5 in WPC No.20172/2015) stating that all works which are having estimate value of Rs.5 lakhs and above shall be done by

e-tendering and the beneficiary committees are permitted to take up works below Rs.5 lakhs.

14. Here, it is crucial to note that though a cap is fixed on the estimate of the works entrusted with the beneficiary committees, the beneficiary committees are not totally precluded from taking developmental works. Order dated 30.4.2015 was implemented in the State. However, certain complaints have been submitted before the convenor of the State De-centralisation Co-ordination committee pursuant to which he has constituted a sub committee to study the matter and submit a report. It is evident from the minutes of the co-ordination committee meeting dated 24.6.2015 which was headed by the Minister concerned (it is produced as Ext.P15 in WPC No.20172/2015) that the sub committee has submitted a report to follow e-tendering as stipulated in the previous Government order. However, a decision was taken to award works up to Rs.15 lakhs without e-tendering.

15. As rightly pointed out by Mr.Raju Joseph, the learned senior counsel appearing for the Kerala

Government Contractors' Federation, a public authority has a duty to act fairly and consistently. If it acts in a contradictory and misleading manner, the same would amount to an abuse of discretion which the Court can condemn.

16. Mr.K.Jaju Babu, the learned senior counsel appearing for the petitioners in WPC No.22070/2015 and WPC No.15636/2015 would argue that the policy decision to entrust the works under the People's Planning Programme to the beneficiary committee was taken by the Government in the year 1995 and such a decision was in consonance with the duties and responsibilities conferred on the Panchayat Committees for implementation of developmental schemes with people's participation in accordance with the 73rd amendment of the Constitution.

17. According to Mr.Jaju Babu, the e-tender introduced can apply only in the case of execution of works through tender envisaged under Rules 7 to 10 and not in respect of execution of works directly by the

Panchayat or through beneficiary committees under Rules 12 and 13. Therefore, it was pointed out that the circulars issued by the Government can apply only in respect of execution of works through tender under Rules 7 to 10. It was pointed out that the contractors are making inroads to the execution of works through the beneficiary committees only to make undue enrichment. According to Mr.Jaju Babu, while executing works through the beneficiary committees, the procedure for tender under Rules 7 to 11 are excluded and estimate and plans are approved by the District Level Committee under Rules 5 and 6. However, it is crucial to note that the right of the beneficiary committees have not taken away. What is introduced is only a cap on the estimate of the works which could be executed through the beneficiary committees. It is crucial to note that a good number of local authorities have been awarded works through the process of e-tendering. Most of the local authorities have already adopted the method of e-tendering which has been found convenient to all and it is also viable from

administrative point of view.

18. In the light of the judgment passed by this Court, the Secretary of the Local Self Government on 30.4.2015 has clearly stated that below Rs.5 lakhs would be done either through beneficiary committee or by inviting tenders. However, the same was subsequently modified enhancing the limit up to Rs.15 lakhs presumably on the basis of the representation filed by the Kannur District Panchayat, the President of the Kerala Block Panchayat Association and Pathanamthitta District Panchayat etc. The implementation of e-tendering of works above Rs.5 lakhs was approved by this Court in WPC No.28179/2013 and connected cases and it was in the light of the said judgment that the Secretary has issued order dated 30.4.2015. This Court cannot find any genuine reason for diluting the procedure for limiting the works that can be handled by the beneficiary committee. If it is done, this Court would be unsettling the present position and would be giving chance to have large scale malpractices.

19. Mr.Raju Joseph points out that in most of the

cases the beneficiary committees were permitted to carry out the development works in the Panchayat and the same were sublet and thereafter undertaken by the contractors. Some interested persons are making undue benefits through this process which were published in a news item published in one of the leading Malayalam dailies which was produced and marked as Ext.P6 in WPC No.20172/2015. As the evidentiary value of the same is disputed, I am not inclined to make any comments on the same. The present attempt is to cancel the order dated 30.4.2015 which has been issued in the light of the judgment of this Court in WPC No.28179/2015 and connected cases. Any attempt to withdraw the said Government order is against the judgment of this Court.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioners in WPC Nos.15636/2015 and 22070/2015 are not entitled to succeed.

In the result, WPC No.15636/2015 and WPC No.22070/2015 are dismissed.

WPC Nos.15444/2015, 18954/2015 and 20172/2015 are disposed of quashing clause No.2.2 of Ext.P15 in WPC No.20172/2015 and directing the respondents to follow G.O.(Rt) No.1288/2015/LSGD dated 30.4.2015 (Ext.P5 in WPC No.15444/2015) with regard to the execution of public works under the Local Self Government Department.

The respondents are hereby directed not to award any works above ₹5 lakhs with regard to the execution of public works under the Local Self Government Department except through e-tendering.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE