



NC: 2023:KHC-D:13610
WP No. 104062 of 2022
C/W WP No. 103437 of 2022, WP No.
103745 of 2022, WP No. 103755 of 2022, WP
No. 104013 of 2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 22ND DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN
WRIT PETITION NO. 104062 OF 2022 (GM-TEN)

C/W

WRIT PETITION NO. 103437 OF 2022

WRIT PETITION NO. 103745 OF 2022

WRIT PETITION NO. 103755 OF 2022

WRIT PETITION NO. 104013 OF 2022



IN W.P.NO.104062/2022
BETWEEN:

THE HANGAL TALUKA CIVIL
CONTRACTORS' ASSOCIATION (R),
KUMARESHWAR NAGAR,
NEAR COURT CIRCLE, HANGAL.
R/BY ITS PRESIDENT,
KUMAR S/O. SHIVAPUTRAPPA HATTIKAL,
AGE: 57 YEARS, OCC: CLASS-I CONTRACTOR,
R/O. GURU KUMARESHWAR NAGARA, HANGAL,
DIST: HAVERI-581104.

...PETITIONER

(BY SRI. R.H.ANGADI &
SRI. S.G. SOUDATTI, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA,
R/BY ITS SECRETARY,
PUBLIC WORKS DEPARTMENT,
VIKAS SOUDHA, BENGALURU-560 001.
2. THE STATE OF KARNATAKA,
R/BY ITS SECRETARY,
DEPARTMENT OF URBAN DEVELOPMENT CELL,
VIKAS SOUDHA, BENGALURU-560 001.

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3. THE STATE OF KARNATAKA,
R/BY ITS DIRECTOR,
DIRECTORATE OF MUNICIPAL
ADMINISTRATION VV TOWER,
DR. AMBEDKAR ROAD,
BENGALURU - 560 004.
4. THE DISTRICT URBAN DEVELOPMENT CELL,
D.C. OFFICE, HAVERI-581 110.
5. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT DIVISION,
HAVERI, DIST: HAVERI-581 110.
6. THE EXECUTIVE ENGINEER,
DISTRICT URBAN DEVELOPMENT CELL,
HAVERI, DIST: HAVERI -581 110.
7. THE PROJECT DIRECTOR,
OFFICE OF THE DEPUTY COMMISSIONER,
HAVERI, DIST: HAVERI-581 110.

...RESPONDENTS

(BY SRI. GANGADHAR J.M., AAG FOR
SRI. PRAVEEN UPPAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF CERTIORARI QUASHING/SETTING ASIDE THE TENDER NOTIFICATION ISSUED BY THE RESPONDENT NO.4 DATED 20/08/2022, BEARING NO. JINAKO/PUSA/4/CR-5/2021-2022, NAGAROTHANA PHASE 4 WORK IN TMC HANGAL LIMITS VIDE ANNEXURE-A; KINDLY ISSUE WRIT IN THE NATURE OF THE MANDAMUS DIRECTING THE RESPONDENT-AUTHORITY TO FOLLOW THE CIRCULAR DATED 11/05/2022 ISSUED BY THE GOVERNMENT OF KARNATAKA VIDE ANNEXURE-C.



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BETWEEN:

THE KARWAR TALUKA
REGISTERED CONTRACTORS' ASSOCIATION (R)
KARWAR KULAKARNI BULIDING OPP: PIKLE HOSPITAL,
PIKLE ROAD KARWAR DIST: UTTARA KANNADA,
R/BY PRESIDENT,
MADHAV BABU NAYAK,
AGE: 57 YEARS, OCC: CLASS-I CONTRACTOR,
R/O. CANARA BANKCOLONY, 6TH CROSS ROAD,
PADMANABANAGARA, NANDANGADDA,
DIST: UTTAR KANNADA.

...PETITIONER

(BY SRI. S.B. DODDAGOUDAR &
SRI. S.G. NANDOOR, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
PUBLI WORKS DEPARTMENT,
VIKAS SOUDHA, BENGALURU-560001.
2. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF MINOR IRRIGATION,
VIKAS SOUDHA, BENGALURU-560001.
3. THE STATE OF KARNATAKA,
REPRESENTED BY ITS DIRECTOR,
DIRECTORATE OF MUNICIPAL
ADMINISTRATION VV TOWER,
DR. AMBEDKAR ROAD,
BENGALURU 560004.
4. THE DISTRICT URBAN DEVELOPMENT CELL,
D.C. OFFICE, UTTAR KANNADA,
REPRESENTED BY EXECUTIVE ENGINEER.
DISTRICT: KARWAR-581301,



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5. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT DIVISION,
UTTAR KANNADA,
DIST: KARWAR-581301.
6. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DEPARTMENT,
UTTAR KANNADA, DIST: KARWAR-581301.
7. THE PROJECT DIRECTOR,
OFFICE OF THE DEPUTY COMMISSIONER,
UTTAR KANNADA,
DIST: KARWAR-581301.
8. THE EXECUTIVE ENGINEER,
DISTRICT URBAN DEVELOPMENT CELL,
UTTAR KANNADA, DIST: KARWAR-581301.

...RESPONDENTS

(BY SRI. GANGADHAR J.M., AAG FOR
SRI. PRAVEEN UPPAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF CERTIORARI QUASHING/SETTING ASIDE THE TENDER NOTIFICATION ISSUED BY THE RESPONDENT NO.4 DATED 20/08/2022, BEARING NO. UK/DUDC/AMRUTH NAGAROTHANA PHASE-4/CR-7:2022-2023 VIDE ANNEXURE-A; TO ISSUE WRIT IN THE NATURE OF THE MANDAMUS DIRECTING THE RESPONDENT AUTHORITY TO FOLLOW THE CIRCULAR DATED 11/05/2022 ISSUED BY THE GOVERNMENT OF KARNATAKA VIDE ANNEXURE-C.

IN W.P.NO.103745/2022
BETWEEN:

THE SIRSI TALUKA CIVIL CONTRACTORS'
ASSOCIATION (R),
TOTGAR'S KALYAN MANTAP, COURT ROAD,
SIRSI, UTTARA KANNADA DISTRICT,



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REPRESENTED BY ITS PRESIDENT,
RAMESH GOPAL NAIK,
A/A 50 YEARS, 581401.

...PETITIONER

(BY SRI. A.P. HEGDE JANMANE &
SRI. VIJAY MALALI, ADVOCATES)

AND:

1. STATE OF KARNATAKA,
R/BY ITS PRINCIPAL SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
M.S. BUILDING, BENGALURU-560001.
2. DIRECTOR OF MUNICIPAL ADMINISTRATION,
V.V. TOWER, DR. AMBEDKAR ROAD,
BANGALORE-560004.
3. DEPUTY COMMISSIONER,
UTTAR KANNADA DISTRICT,
KARWAR-581301.
4. EXECUTIVE ENGINEER,
DISTRICT URBAN DEVELOPMENT CELL,
OFFICE OF THE DEPUTY COMMISSIONER,
UTTARA KANNADA DISTRICT,
KARWAR-581301.
5. PROJECT DIRECTOR,
DISTRICT URBAN DEVELOPMENT CELL,
OFFICE OF THE DEPUTY COMMISSIONER,
UTTARA KANNADA DISTRICT, KARWAR-581301.

...RESPONDENTS

(BY SRI. GANGADHAR J.M., AAG FOR
SRI. PRAVEEN UPPAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF
CERTIORARI QUASHING THE IMPUGNED TENDER NOTIFICATION
ISSUED BY RESPONDENT NO.4 BEARING NO.UK/DUDC/AMRUT



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NAGAROTHANA PHASE-4/CR/-07:2022-23 DATED 6-7-2022(ANNEXURE-D); ISSUE WRIT IN THE NATURE OF MANDAMUS DIRECTING RESPONDENTS TO STRICTLY ADHERE TO THE GOVERNMENT CIRCULAR DATED 11/05/2022 VIDE ANNEXURE-B.

IN W.P.NO.103755/2022
BETWEEN:

1. THE MUNICIPAL CONTRACTORS' ASSOCIATION (R) RANEBENNUR, TQ: RANEBENNUR, DIST: HAVERI, R/BY PRESIDENT, VEERANNA S/O. FAKKIRAPPA MARIBASANNAVAR, AGE: 59 YEARS, OCC: CLASS-I CONTRACTOR, R/O: 1ST CROSS, RAJA RAJESHWARI NAGAR, RANEBENNUR, TQ: RANEBENNUR, DIST: HAVERI-581110.
2. BASAVARAJ S/O. RAJASHEKAR PATTANASHETTI, AGE: 52 YEARS, OCC: CLASS-I CONTRACTOR, R/O: PATTANASHETTI ONI RANEBENNUR TOWN, TQ: RANEBENNUR, DIST: HAVERI-581110.
3. REVANASIDDAPPA S/O. NAGAPPA KAMBALI, AGE: 45 YEARS, OCC: CLASS-I CONTRACTOR, R/O: KAMBALI GALLI, RANEBENNUR, TQ: RANEBENNUR, DIST: HAVERI-581110.

...PETITIONER

(BY SRI. A.C. CHAKALABBI &
SRI. S.B. DODDAGOUDAR, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA, R/BY ITS SECRETARY, PUBLIC WORKS DEPARTMENT, VIKAS SOUDHA, BENGALURU-560001.
2. THE STATE OF KARNATAKA, R/BY ITS SECRETARY, DEPARTMENT OF MINOR IRRIGATION, VIKAS SOUDHA, BENGALURU-560001.



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3. THE STATE OF KARNATAKA,
R/BY ITS DIRECTOR,
DIRECTORATE OF MUNICIPAL
ADMINISTRATION VV TOWER,
DR. AMBEDKAR ROAD,
BENGALURU 560004.
4. THE DISTRICT URBAN DEVELOPMENT CELL,
D.C. OFFICE, HAVERI,
R/BY EXECUTIVE ENGINEER DUDC,
DISTRICT: HAVERI-581110.
5. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT DIVISION,
HAVERI, DIST: HAVERI-581110.
6. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DEPARTMENT,
UTTAR KANNADA DISTRICT, KARWAR -581110.
7. THE PROJECT DIRECTOR,
OFFICE OF THE DEPUTY COMMISSIONER,
HAVERI DISTRICT, HAVERI-581110.
8. THE EXECUTIVE ENGINEER,
DISTRICT URBAN DEVELOPMENT CELL,
HAVERI DISTRICT, HAVERI-581110.

...RESPONDENTS

(BY SRI. GANGADHAR J.M., AAG FOR
SRI. PRAVEEN UPPAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF
CERTIORARI QUASHING/SETTING ASIDE THE TENDER
NOTIFICATION ISSUED BY THE RESPONDENT NO.4 DATED
29/07/2022 SAME IS PUBLISHED IN PRAJAVANI DAILY NEWS PAPER
AND TENDER NOTIFICATION NO. JINAKO/PUSA/4/CR-5/2021-2022,
DATED: 29/07/2022 (WORK INDENT NO: DMA/2022-23/OW/WORK-



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INDENT132962) VIDE ANNEXURE-A & A1; TO ISSUE WRIT IN THE NATURE OF THE MANDAMUS DIRECTING THE RESPONDENT AUTHORITY TO FOLLOW THE CIRCULAR DATED 11/05/2022 ISSUED BY THE GOVERNMENT OF KARNATAKA VIDE ANNEXURE-C.

IN W.P.NO.104013/2022
BETWEEN:

THE HAVERI TALUKA CIVIL
CONTRACTORS' ASSOCIATION (R),
PARAMESHWAR COMPLEX P.B. ROAD,
DIST: HAVERI-581110.
R/BY ITS PRESIDENT,
MALLIKARJUN S/O. CHANNABASAPPA HAVERI,
AGE: 47 YEARS, OCC: CLASS-I CONTRACTOR,
R/O. PARAMESHWAR COMPLEX P.B. ROAD,
DIST: HAVERI-581110.

...PETITIONER

(BY SRI. A.C. CHAKALABBI, SRI. S.B. DODDAGOUDAR,
& SRI. S.G. NANDOOR, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA,
R/BY ITS SECRETARY,
PUBLI WORKS DEPARTMENT,
VIKAS SOUDHA, BENGALURU-560001.
2. THE STATE OF KARNATAKA,
R/BY ITS SECRETARY,
DEPARTMENT OF MINOR IRRIGATION,
VIKAS SOUDHA, BENGALURU-560001.
3. THE STATE OF KARNATAKA,
R/BY ITS DIRECTOR,
DIRECTORATE OF MUNICIPAL
ADMINISTRATION VV TOWER,
DR. AMBEDKAR ROAD,
BENGALURU-560 004.



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4. THE DISTRICT URBAN DEVELOPMENT CELL,
D.C. OFFICE, HAVERI,
R/BY EXECUTIVE ENGINEER,
HAVERI-581 110.
5. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT DIVISION,
HAVERI, DIST: HAVERI-581110.
6. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DEPARTMENT,
HAVERI, DIST: HAVERI -581110.
7. THE PROJECT DIRECTOR,
OFFICE OF THE DEPUTY COMMISSIONER,
HAVERI DISTRICT, DIST: HAVERI-581 110.

...RESPONDENTS

(BY SRI. GANGADHAR J.M., AAG FOR
SRI. PRAVEEN UPPAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI QUASHING/SETTING ASIDE THE TENDER NOTIFICATION ISSUED BY THE RESPONDENT NO.4 DATED 02/09/2022, UNDER TENDER BEARING NO. DMA/2022-23/OW/WORK-INDENT-134306 VIDE ANNEXURE-A; TO ISSUE WRIT IN THE NATURE OF THE MANDAMUS DIRECTING THE RESPONDENT AUTHORITIES TO FOLLOW THE CIRCULAR DATED 11/05/2022 BEARING NO.AAE 263 VECCHA-12/2022 ISSUED BY THE GOVERNMENT OF KARNATAKA VIDE ANNEXURE-C.

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



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ORDER

The dispute on hand discloses that during July-August, 2022 various tender notifications were issued by the State under Amrutha Nagarothana Scheme, wherein various works were clubbed together and the value of each tender has been more than Rs.1 crore. The petitioners are said to be small time civil contractors who are not in a position to compete for tender works for more than Rs.1 crore, contending that the said issuance of tender work valued more than Rs.1 crore is in violation of the Government circular dated 11.05.2022. On the said ground, the present writ petitions are filed.

2. The case of the petitioners is that the civil works should be packaged in such a manner that each of the tender work does not exceed a sum of Rs.1 crore.

3. The Government has issued a circular dated 11.05.2022 (vide Annexure - 'C' to the writ petitions) wherein a decision has been taken that tender works at



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taluk level should be packaged in such a manner that the work should not exceed a sum of Rs.1 crore. On the said ground, Writ Petition No.11604/2022 was filed challenging the tender works valued more than Rs.1 crore. In the said proceedings, the State Government took up a contention that the tenders disputed were issued much prior to the issuance of circular dated 11.05.2022 and hence, the said circular is not applicable. Accepting the said contention, Writ Petition No.11604/2022 was disposed of without granting any relief to the petitioners therein. However, in the said proceedings, learned Additional Advocate General appearing for the Government undertook that in future while inviting the tenders, the circular dated 11.05.2022 would be strictly adhered to and the same has been recorded in the order passed in Writ Petition No.11604/2022.

4. In spite of the undertaking given in Writ Petition No.11604/2022, the State Government has floated tenders valued more than Rs.1 crore. Aggrieved by the



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same, the present writ petitions are filed. Based on the decision rendered in Writ Petition No.11604/2022 and also undertaking given by the State Government in the said proceedings, the present writ petitions were allowed by this Court vide its order dated 01.12.2022. The same was challenged by way of Writ Appeal Nos.100007/2023 and other connected matters, wherein for the first time, the Government has contended that there is a separate Government Order dated 14.01.2022 which is specifically applicable to works under Amrutha Nagarothana Scheme and it stipulates that the tender work should be packaged in such a manner that the value of work should be over and above the sum of Rs.1 crore. It was also contended that circular dated 11.05.2022 is a general circular applicable to all the works and not specifically to the works executed under the Amrutha Nagarothana Scheme and it was further contended that the Government order overrides any circular in case there is any conflict. Accepting the said contentions, this Court in Writ Appeal



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Nos.100007/2023 and other connected matters set aside the orders passed in the instant writ petitions and remitted the matter back as the earlier order dated 01.12.2022 in the writ petitions were passed without considering the Government order dated 14.01.2022.

5. Admittedly, in the instant case, bids are invited for implementation of various projects under the Amrutha Nagarothana Scheme and different works are packaged together and the value of the tender works are more than Rs.1 crore. The circular dated 11.05.2022 issued by the Finance Department, State of Karnataka states that the tender works should be packaged in such a manner that value does not exceed Rs.1 crore so that it will benefit small time civil contractors. It is also submitted in the course of the arguments by the learned Additional Advocate General that the said circular was issued after discussions between the Chief Minister and office bearers of the Karnataka State Contractors' Association to help small time contractors. The Government order dated



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14.01.2022 mandates that tender works are to be invited for a minimum sum of Rs.1 crore in respect of projects implemented under the Amrutha Nagarothana Scheme. Thus, there is conflict between the Government order dated 14.01.2022 and the circular dated 11.05.2022. Thus, the question that arises for consideration in the instant case is firstly whether courts can interfere in the contractual works being assigned by the Government and secondly, when there is conflict between the Government order and circular, which prevails.

6. It is a well established principle of law that scope of judicial review under Article 226 of the Constitution of India in the matter of Government contracts/tenders is limited. It has to be kept in mind that fixation of the value of the tender is entirely within a purview of the executive and the courts hardly have any role to play in this process except for striking down such actions of the executive if the same are proved to be arbitrary or unreasonable and in violation of any law. The



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State Government taking into consideration the works required is always at liberty to prescribe qualification of tenderers to ensure that contractors have the capacity and resources to successfully execute the work. No person can claim a fundamental right to carry on business with the Government.

7. The Government order dated 14.01.2022 is issued by the State in exercise of its executive powers as contemplated under Article 162 of the Constitution of India and it is issued in the name of the Governor of the State. Whereas, the circular dated 11.05.2022 is issued by the Finance Department of the State Government and this circular cannot take away the effect of the Government order issued under Article 162 of the Constitution of India and in case of any conflict, the Government order prevails over the circular.

8. Admittedly, the decision in Writ Petition No.11604/2022 has not considered the Government order



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dated 14.01.2022 and the undertaking given by the learned Additional Advocate General in the said proceedings is also contrary to the said Government order. Under the circumstances, the said undertaking cannot operate as an estoppel against the said Government order.

9. However, the conduct of the State in the entire proceedings cannot be appreciated and requires censure. At one instance, they have issued a Government order dated 14.01.2022 wherein they have fixed the minimum value of tenders should be at a sum of Rs.1 crore and subsequently after the Chief Minister discussing with the President of the office bearers of the Karnataka State Contractors' Association, the Finance Department has issued a circular dated 11.05.2022 wherein it is decided that all the contractual works shall be below a sum of Rs.1 crore on the ground that it will benefit small time contractors. Thereafter, no proper clarification is given and required Government order is not issued, resulting in



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several writ petitions being filed before the court, which had the effect of stalling the works.

10. Taking policy decisions by issuance of Government orders and implementing the same is within the purview of the executive and they are required to make a policy in a manner that there is no confusion and for the benefit of the society. The State Government is hereby advised to make policies which do not conflict with one another and benefit the people at large.

11. However, for the reasons stated in paragraph Nos.6 to 8 (*supra*), as the tenders floated are in conformity with the Government order dated 11.05.2022, the writ petitions are hereby, ***dismissed***.

Sd/-
JUDGE

RH
List No.: 1 Sl No.: 17