

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**  
**AND**  
**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**WRIT PETITION (PIL) No.338 of 2017**

**ORDER:** (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

Through this Public Interest Litigation, the petitioner, a doctor by profession, and one who had been a Member of the Legislative Assembly of the State of Andhra Pradesh for different terms, has questioned the pricing of 145 MW motors and pumps, which were procured by the Government of Telangana for the purpose of Palamuru Ranga Reddy Lift Irrigation Project, 'PRRLIP', for short.

2. Heard the petitioner/party-in-person and the learned Additional Advocate General for the State of Telangana for respondents 1 to 7, learned counsel for 8<sup>th</sup> respondent, learned Assistant Solicitor General for 9<sup>th</sup> respondent, learned standing counsels for 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> respondents and learned counsels appearing for 13<sup>th</sup> and 14<sup>th</sup> respondents, in the light of the pleadings and materials on record.

3. We called for and perused the files including the notice inviting tenders and tender document in entirety including all specifications. Such materials were produced before us by the learned counsels appearing on behalf of the State of Telangana. We have considered the entire pleadings of the petitioner and that of the respondents, including the averments in the counter

affidavits and reply affidavits, and have examined the files of the official respondents bearing in mind, such pleadings.

4. It is the petitioner's plea that the procurement process had led to exorbitant pricing and it has resulted in enriching the agency, through which motors and pumps were procured. According to him, while the cost of each such pump and motor was estimated by the Engineering Staff College of India, 'ESCI' for short, as Rs.118 crores, the Government of Telangana has paid Rs.179 crores resulting in avoidable loss to the public exchequer. The price paid for procurement of those 145 MW motors and pumps to the manufacturer of the component, namely, Bharat Heavy Electricals Limited (BHEL) is a meagre amount and the agency through which the Government of Telangana has procured those pumps from BHEL, has made enormous profits. The petitioner has hence sought judicial intervention with the revision of value of Electro Mechanical (E&M) Equipments for PRRLIP for packages 1, 5, 8 and 16 from Rs.5,960.79 crores as estimated by ESCI, to Rs.8,386.86 crores by the Advisor and the Departmental Committee. The petitioner pleads that nothing followed from the Government on his representations, dated 11.01.2017, 29.07.2017 and 29.09.2017. He impeaches all consequential actions of the respondents relating to PRRLIP for packages 1, 5, 8 and 16. Apart from seeking such further orders as may be found appropriate in the interest of justice, he also seeks a direction to the tenth

respondent – Central Bureau of Investigation to conduct an investigation into the issue and submit report to this Court.

5. Respondents 1 to 7 represent the State machinery which includes the State of Telangana represented by the Chief Secretary, different Secretaries and Advisory as well as Engineer-in-Chief and Chief Engineer and other officers. The 8<sup>th</sup> respondent is the Engineering Staff College of India (ESCI). The 12<sup>th</sup> respondent is the BHEL and 11<sup>th</sup> respondent is its Chief Vigilance Officer. The 13<sup>th</sup> and 14<sup>th</sup> respondents are M/s.Megha Engineering Infra Limited, 'Megha Engineering' for short, and M/s.Navayuga Engineering Company Limited, 'Navayuga Engineering', for short, respectively. The 9<sup>th</sup> respondent is the Chief Vigilance Commissioner and 10<sup>th</sup> respondent is the Central Bureau of Investigation.

6. A counter affidavit is placed on record on behalf of respondents 1 to 7, i.e., the State and its officials. The 8<sup>th</sup> respondent, ESCI, has placed its counter affidavit. The 12<sup>th</sup> respondent, BHEL, and its Chief Vigilance Officer, 11<sup>th</sup> respondent, filed counter affidavits. The 13<sup>th</sup> and 14<sup>th</sup> respondents, Megha Engineering and Navayuga Engineering respectively, have filed their separate counter affidavits.

7. The 8<sup>th</sup> respondent ESCI is an autonomous organization established as a National Institute by the Institution of Engineers (India). The counter affidavit filed by it shows that it carried the required tests and calculations to arrive at the

estimates of the project proposals, which were entrusted to it for such survey and technical analysis by the Government of Telangana. It has delineated in its counter affidavit, the process through which it worked out the unit rate and has stated that the results and estimates that are provided by the ESCI are based purely on calculations and surveys undertaken by applying a particular method out of the various available alternatives and the results thereby obtained are estimates and not the final results. It stated that the estimates were prepared by it taking into consideration various Electro-Mechanical Parts based on KLI Stage – I Project for the purpose of the PRRLIP and updating such values appropriately. It further stated that the estimates are subject to further review and re-examination and that considering the nature of the Project, the ESCI calculated the estimate on the basis of a similar project and then escalated such amount by 5% per year for 11 years keeping in view the cost variation factor and escalation formulae issued by the Indian Electrical and Electronics Manufacturers' Association. It appears that respondents 1 to 7 did not agree with that method of calculation and pointed out some shortcomings and errors in such calculation. According to the ESCI, the PRRLIP being an Irrigation and Drinking Water Project, requires utmost expertise for its proper execution, and the ESCI was involved only in the task of determination of the preliminary estimate for the Project and it was ultimately for the respondents 1 to 7 to review the results provided by the ESCI in the light of the needs of the



beneficiaries and the objectives of the Project. According to the ESCI, the Government and the State could revise and re-evaluate the estimated cost of such a public welfare project.

8. The 12<sup>th</sup> respondent is the BHEL and the 11<sup>th</sup> respondent is its Chief Vigilance Officer. Respondents 13 and 14 are Megha Engineering and Navayuga Engineering respectively, as noticed above. Going by the counter affidavit of the BHEL and its Chief Vigilance Officer and corroborating counter affidavits by the respondents 13 and 14, it can be seen that the Irrigation and Command Area Development Department, 'I&CAD', for short, Government of Telangana, floated NIT, dated 16.01.2016, for execution of the PRRLIP, that Scheme located in the State of Telangana comprises of five stages, of which, four stages were taken up by I&CAD for tendering. It is submitted by the BHEL that Packages 1, 5, 8 and 16 envisaged Pump houses with Electro-Mechanical (E&M) equipment and the scope of the tender for each such package comprises of civil works of pump house, construction of tunnels, Hydro-Mechanical works, E&M works etc., and Operation & Maintenance (O&M) of the plant for a period of five years after successful completion of all works of the Project. It is the plea of the BHEL that it did not meet the qualification requirement for civil works and tunnels and that it did not possess experience of such civil works and O&M of the plant and therefore, needed to form a Joint Venture (JV) for joint submission of bid as per the terms and conditions of bid document. BHEL further pleaded that accordingly Megha

Engineering-BHEL entered into a JV to bid for the tenders. Megha Engineering is responsible for design, manufacture, supply (transportation and transit risk insurance), supervision of erection and commissioning of pumps and motors. Megha Engineering had 80% share and BHEL had 20% share. Except the scope of BHEL, entire project was with Megha Engineering. The role and responsibilities of the BHEL was design, manufacture, supply and supervision for erection and commissioning of pump and motor along with associated auxiliaries.

9. Megha Engineering, the 13<sup>th</sup> respondent has filed a counter affidavit. The 14<sup>th</sup> respondent Navayuga Engineering has also filed a counter affidavit. The averments in the counter affidavit of BHEL, as noted in the preceding paragraph, stand corroborated by the contents of the counter affidavit filed on behalf of the 13<sup>th</sup> respondent as well as the counter affidavit filed on behalf of the 14<sup>th</sup> respondent.

10. The sum and substance of the plea of the respondents 12, 13 and 14 taken together would show that the responsibility of the 12<sup>th</sup> respondent BHEL was only to extent supply of main items of pumps and motors to the designated site in an unassembled/piecemeal form and also to supervise erection and commissioning activities in supply of pumps and motors. It was the liability and responsibility of Megha Engineering to bear the taxes and duties on the E&M equipments reimbursable by

Megha Engineering to BHEL. It was also Megha Engineering's responsibility to bear the cost of supply of remaining equipment and expenditure for loading and unloading at site store and for storage, assembling as well as loading and unloading to actual site. The project finance, interest on project finance, financial/bank charges, risk of damages and other materials were also the responsibility of Megha Engineering and such responsibility included different aspects relating to erection and commissioning of pumps and motors, as well as operation and maintenance for five years after commissioning of each pumping station. The different aspects of the transaction between Megha Engineering and the BHEL as set out in the BHEL's counter affidavit stand corroborated by the pleadings of Megha Engineering as well as that of the terms of the document relating to the transactions as between Megha Engineering, BHEL and Navayuga Engineering. All these factors taken together, in the backdrop of the plea in the counter affidavit by the Chief Engineer of the PRRLIP on behalf of the respondents 1 to 7, would show that the issues raised in the writ petition solely on the basis of the pricing and value fixed for the work cannot be taken as the criteria to hold that there was any activity which could be treated as fraudulent revision of the value of the E&M equipment for the Project. The explanation given by the respondents through the counter affidavit filed on behalf of the respondents 1 to 7 corroborated by the averments in the counter affidavit by the BHEL, Megha Engineering and

Navayuga Engineering clearly show that there is no situation where this Court would be justified in issuing any order in this Public Interest Litigation declaring that the action of the State of Telangana and its officials, who are arrayed as the respondents 1 to 7, amounts to fraudulently revising the value of E&M equipments in the PRRLIP for packages 1, 5, 8 and 16 or to hold that the loss has been caused to public exchequer. There is no element of fraud or loss to public exchequer demonstrated by the petitioner in defeasance of the defence of the respondents 1 to 7 as well as the corroborated materials provided by the BHEL, Megha Engineering and Navayuga Engineering. We are unable to uphold the plea of the petitioner that price break-up of package 5 of PRRLIP demonstrates that there were malpractices by the official respondents in collusion with Megha Engineering and Navayuga Engineering. The crux of the issue revolves around the fact that the price component as far as the BHEL is concerned, only related to supply of main items of pumps and motors in an unassembled/piecemeal form and also to supervise erection and commissioning activities of such pumps and motors. Those instruments or equipments would work only with other components and systems being put in place applying due technology. The price component, which the State has ultimately agreed to, is that which takes in all requirements for procurement of the pumps and motors and all other matters which is part of the comprehensive contract, which has been awarded to the JV. Therefore, we are unable to

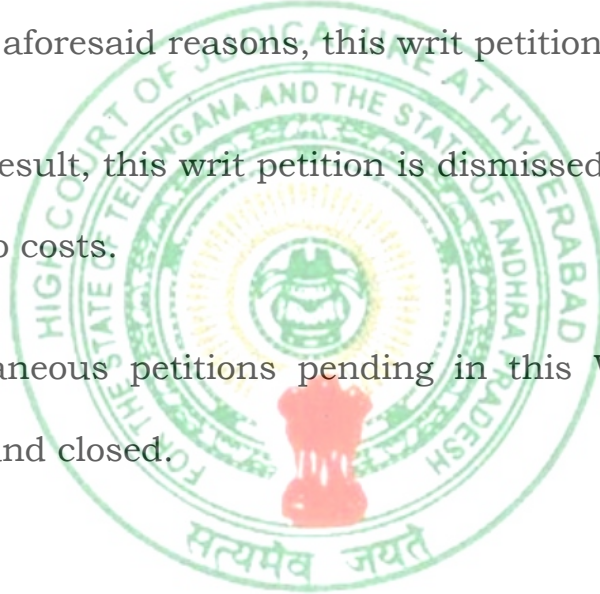


accept the plea of the petitioner that the split-up details would show that there is fraud in the matter of finalizing the contract. There is also no element of unreasonableness or arbitrariness to hold that the action of the official respondents 1 to 7 relating to the PRRLIP for packages 1, 5, 8 and 16 are liable to be interfered with. There is also no foundation for the plea that the 10<sup>th</sup> respondent CBI be directed to conduct an investigation into the matter. Having considered the entire official records and files presented to us, we see no reason to hold otherwise.

11. For the aforesaid reasons, this writ petition fails.

12. In the result, this writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.



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**THOTTATHIL B. RADHAKRISHNAN, CJ**

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**V.RAMASUBRAMANIAN, J**

03.12.2018  
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