IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WA.No. 817 of 2015

AGAINST THE JUDGMENT IN W.P.(C).NO.26523/2014, DATED 20-03-2015

APPELLANT(S)/PETITIONER :

ZIBITT SOFTWARE TECHNOLOGIES PRIVATE LIMITED,
XI/672, ASWATHI, THURAVOOR P.O., CHERTHALA,
ALAPPUZHA, KERALA- 688 532 REPRESENTED BY ITS MANAGING
DIRECTOR ANIYAN.S.K.

BY ADV. SRI.M.R.ANISON

RESPONDENT(S)/RESPONDENTS :
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1. STATE OF KERALA,
   REP. BY ITS SECRETARY TO GOVERNMENT, DAIRY DEVELOPMENT
   DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

2. THE DIRECTOR OF DAIRY DEVELOPMENT,
   DIRECTORATE OF DAIRY DEVELOPMENT DEPARTMENT,
   THIRUVANANTHAPURAM- 695 001.

3. THE DEPUTY DIRECTOR,
   DAIRY DEVELOPMENT DEPARTMENT, PATTOM,
   THIRUVANANTHAPURAM- 695 004.

4. THE TRIVANDRUM DISTRICT CONSORTIUM
   FOR SELECTION OF AUTOMATIC MILK COLLECTION UNITS,
   REPRESENTED BY ITS CONVENER THE DEPUTY DIRECTOR,
   DAIRY DEVELOPMENT DEPARTMENT, PATTOM,
   THIRUVANANTHAPURAM- 695 004.

5. THE SECRETARY TO GOVERNMENT,
   STORES PURCHASES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM- 695 001.

6. CHERIAKONNI KUSC LTD.NO.T 25 (D) APCOS,
   CHERIAKONNI P.O., THIRUVANANTHAPURAM- 695 013.

..2/-

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7. VETTUPARA KUCS LTD.NO.T 353(D) APCOS,
   CHEERANIKKARA P.O., THIRUVANANTHAPURAM- 695 615.

8. VENKODE KUSC LTD.NO.T. 111 (D) APCOS,
   VENKODE P.O., THIRUVANANTHAPURAM- 695 028.

R8 BY SRI.GEORGE POONTHOTTAM
R1 TO R5 BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-04-2015, THE COURT ON 10-04-2015 DELIVERED THE FOLLOWING:

Msd.

WA.No. 817 of 2015

APPENDIX

<u>PETITIONER(S)' ANNEXURES :</u>

ANNEXURE A1: **TRUE COPY OF THE ABOVE ORDER DATED 08.10.2013 ISSUED BY THE DEPUTY DIRECTOR OF DIARY DEVELOPMENT, KOLLAM WITH ENGLISH TRANSLATION.**

ANNEXURE A2: **TRUE COPY OF NOTIFICATIONS PUBLISHED BY TWO SOCIETIES IN THE MATHRUBHUMI DAILY DATED 16.12.2013 AND 18.12.2013 WITH ENGLISH TRANSLATION.**

<u>RESPONDENT(S)' ANNEXURES :</u>

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.
* * * * * * * * * * * * *
W.A.No.817 of 2015

Dated this the 10th day of April 2015

<u>J U D G M E N T</u>

<u>Shaffique,J</u>

The writ petitioner is the appellant who challenges the judgment dated 20/03/2015 by which the writ petition filed by the petitioner was dismissed.

2. The writ petition is filed for quashing Ext.P9 letter issued by the Deputy Director, Dairy Development Department, the 3rd respondent herein by which all Dairy Development Officers were informed to cancel the tender proceedings to purchase Automatic Milk Collection Units (AMCU) and the milk society is directed to purchase AMCU as per store purchase rules. Ext.P9 contains format of the quotation notice as well. The petitioner is a company which is involved in software development for automation of primary milk societies throughout Kerala. They are also engaged in the business of setting up AMCUs in primary milk

societies since 2000. It is stated that they have been importing milk analyzer from foreign countries and supplying to Co-operative societies in the State. It is contended that, in the year 2013, the Director of Dairy Development/the 2nd respondent constituted a District Consortium and invited eight independent tenders through eight societies for supply of components of AMCUs to 100 primary milk societies. Ext.P7 is such a tender notice and Ext.P8 are the tender documents which contains the general conditions of tender. It is stated that though the petitioner was the lowest among the other competitors, no steps were taken to award the contract which was challenged by the petitioner by filing W.P.C.No.23853/2013 which is still pending, but an interim order has been passed stating that supply of components of AMCUs to 100 primary milk co-operative societies in Thiruvananthapuram District will be subject to the result of the writ petition. Petitioner states that, later they had come to know about the decision at Ext.P9 to cancel all proceedings taken pursuant to Ext.P1 notification. According to them, by Ext.P9, the 4th respondent has taken a decision to give permission to each of the Co-operative Societies to invite quotations by splitting the quotation by two, in such a way to reduce the quoted price of each item to be below Rs.1 lakh. This action, according to the petitioner, is arbitrary and illegal which violates the mandatory provisions of Ext.P6 Store Purchase manual. Petitioner refers to various clauses in the Stores Purchase Manual to indicate that all Government Departments/ Boards/ Public Sector Undertakings shall follow e-Government procurement for all tenders above Rs.25 lakhs. It is contended that if the quotation is invited for all the equipments together for the required AMCUs, the value will be much above Rs.25 lakhs and it is to avoid such a contingency that by Ext.P9 authority had been given to milk societies to purchase AMCUs. Further it is contended that, the Stores Purchase Manual contains specific clause which prevents division of the materials into smaller quantities for piecemeal purchases for the purpose of avoiding the necessity of obtaining sanction of the higher authority. Reference is also made to certain clauses which indicate that tender has to be insisted if the estimated value of stores to be purchased is more than Rs.1 lakh and in instances where the value is between Rs.15,000/- and Rs.1 lakh, the purchase can be made by quotation notice. Contention urged by the petitioner is that though the value of AMCU would be more than Rs.1 lakh, to avoid the conditions stipulated in the Stores Purchase Manual by which tender procedure has to be adopted, the authorities have proceeded to invite tenders by quotation notice, which according to the petitioner, is illegal.

3. Counter affidavit has been filed by the 3rd respondent inter alia stating that the petitioner is a company which was originally carrying on business under the name of M/s.Genfocus and they were involved in various unfair trade

practices. Further, it is contended that the petitioner participated in the quotations invited by 30 Dairy Co-operative Societies. Therefore, petitioner cannot contend that Ext.P9 is invalid. Further, it is stated that the District Level Consortium is not satisfied with the credentials of the petitioner. Further contention is raised stating that the Primary Dairy Co-operative Societies would purchase the complete AMCU's or any missing component like Milk Analyser, Electronic Weighing Scale, computer printer, UPS etc. and hence the mode of operation was split into two as the societies should purchase the items as per the requirement. The scheme is produced as Ext.R3(b).

4. Counter affidavit is filed by the 8th respondent inter alia stating that there is no machine available in the market known as AMCU. It consists mainly of Electronic Milk Analyser with Ultrasonic Vibrator/Eco-Milk/Lacto Scan etc. of which the latter is used to remove the air bubbles and the former for determining the quality of milk. This unit, by

itself, is sufficient to verify the purity of milk. The other machines such as personal computer, monitor facility for farmers' view is only for the enhanced functioning of the Electronic Milk Analyser with Ultrasonic Vibrator making it more user friendly. Therefore, it is contended that there is absolutely nothing wrong in adopting the quotation method as the value of the equipment is less than Rs.1 lakh. Further, it is contended that the petitioner has no case that the demand for store was split into two to avoid any sanction to be obtained from a competent authority. The respondent also submitted that petitioner has also participated in the tender.

5. The learned Single Judge, on a consideration of the entire factual circumstances, dismissed the writ petition. It was found that the AMCU is not a commodity available in the market and it consists of several independent machines. Therefore, the contention regarding splitting up the demand for stores in the smaller quantities is baseless. Further it is

observed that the splitting up is not permissible only if the intention is to avoid obtaining the sanction of higher authority which is not available in the case.

6. Heard Smt.Seemanthini, learned senior counsel appearing for the appellant, Sri.P.I.Devis, learned Senior Government Pleader and Sri.George Poonthottam, learned counsel appearing on behalf of the respondents.

7. Impugning the judgment of the learned Single Judge, the learned senior counsel appearing for the appellant, points out that while inviting quotations through milk societies, the whole intention is to avoid a transparent procedure by inviting tenders through public tender/news paper advertisement. The quotation notices are only published in the respective milk societies and there is no valid publication to enable the parties to submit their quotations.

8. Primarily, it is relevant to note that a tenderer is not entitled to challenge the tender conditions unless it is

arbitrary or illegal in any manner. Petitioner points out that Ext.P9 is illegal since it does not comply with the conditions of Stores Purchase Manual. Of course, there is a specific clause which indicates that there shall not be any splitting up of the demand and three methods are provided for inviting quotations, i.e if the value of the product is between Rs.15,000/- and Rs.1 lakhs, above Rs.1 lakh and above Rs.25 lakhs. But the fact remains that it is for the awarder of the work to decide how the commodity has to be purchased. It is not in dispute that AMCU, as it is, is not an equipment which is available in the market. It contains several components and quotations are invited for separate components. Ext.P9 indicates that sealed quotations are invited from interested parties for supply of two items and another quotation notice is issued for personal computer, monitor, printer etc. which contains five items. Even, on a perusal of the draft quotation notice, it only details that the tenderer can give quotation for the specified items. From the quotation notice itself it is clear that both items are manufactured by different organisations. Further, from Ext.P7 tender which is relied upon by the petitioner, it is indicated as under:

> *"sealed tenders are invited for supply of any or all of the components of automatic milk collection stations (10 numbers)".*

In the tender which is produced as Ext.P8, the words used are as under:

> *"Containing general conditions of contract and schedule for the supply of any or all of the following components of Automatic Milk Collection Units (AMCU) the detailed specifications of which are appended."*

The description gives the name of the components which are clearly numbered as 1 to 7. Item No.1 is computer, Item No.2 is the monitor, Item No.3 is the printer. Item No.4 is the UPS, Item No.5 is the Electronic Milk Analyser with Ultrasonic Vibrator, Item No.6 is the Digital Weighing Scale and Item No.7 is the Accounting Software etc. Therefore, even in respect of the quotation invited in the previous year, any tenderer was entitled to quote for any or all of the 7 components mentioned which forms part of AMCU.

9. Under such circumstances, the allegation that the respondents have deliberately split up the components is absolutely baseless. The AMCU contains different components and it is always open for the awarder of the tender to invite tenders either by notice inviting tender or by quotation notice without deviating from the procedure prescribed under the Stores Purchase Manual. We do not find any such departure from the Store Purchase Manual in the case on hand. Further, it is evident that the petitioner has participated in the tender in 30 milk societies. Such a person is not entitled to challenge the tender conditions.

10. Though the appellant relied upon Annexures A1 and A2 in relation to tenders invited by the Primary Milk Societies, Kollam, the same will not change the situation as far as invitation of quotation by the respondents herein are

concerned. As already indicated, it is for the person inviting tender to decide under what circumstances and in what manner tenders are to be invited. In so far as there is no violation of Stores Purchase Manual, the appellant cannot insist that the tenders should be invited in a particular form which suits the requirement of the appellant.

For these reasons, we do not find any error in the judgment of the learned Single Judge and accordingly the writ appeal is dismissed.

(ASHOK BHUSHAN, CHIEF JUSTICE)

(A.M.SHAFFIQUE, JUDGE)

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