

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WA.NO.1082 OF 2014

**AGAINST THE JUDGMENT IN WP(C) 4135/2014 OF HIGH COURT OF KERALA
DATED 01-07-2014**
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APPELLANT(S)/7TH RESPONDENT:

**M/S MARY MATHA TOMAR CONSORTIUMS,
C/O MARYMATHA CONSTRUCTION CO., MARYMATHA SQUARE,
ARAKUZHA ROAD, MUVATTUPUZHA-686 661.**

**BY ADVS.SRI.T.ASHAJI (SR.)
SRI.P.SHANESMATHER**

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 6 IN THE WP(C):

- 1. M/S.PRECISION INFRATECH LTD.
HAVING THE REGISTERED OFFICE AT 7, C/D, SURYARATH,
PANCHWATI, ELLISBRIDGE, AHMADABAD,
GUJARAT-380 006, REP. BY DIRECTOR, NALIN P.VIBHAKAR
AGED 62 YEARS, S/O.LATE SRI PRANLAL VIBHAKAR.**
- 2. STATE OF KERALA
REPRESENTED BY SECRETARY,
(WATER RESOURCE DEPARTMENT), SECRETARIAT, TRIVANDRUM.**
- 3. THE SECRETARY,
WATER RESOURCE DEPARTMENT, SECRETARIAT, TRIVANDRUM.**
- 4. THE PREQUALIFICATION COMMITTEE OF CHIEF ENGINEER
FOR KUTTANAD PACKAGE-MODERNIZATION OF SWB
AT THANNERMUKKOM (MECHANICAL), TRIVANDRUM.**
- 5. THE CHIEF ENGINEER
(MECHANICAL), IRRIGATION, PUBLIC OFFICE BUILDING,
TRIVANDRUM-33.**

6. THE SUPERINTENDING ENGINEER,(MECHANICAL),
IRRIGATION, CIVIL STATION, KAKKANAD-682030.

7. M/S SRI. KRISHNA ENGINEERS-SIVASWATHY
CONSTRUCTION PVT.LTD.
L.R.F THANEERMUKKOM CONSORTIUM S.F.NO.496,
ANNAIAPPAR NAGAR STREET, NALLAMPALAYAM ROAD, GURUPATHY,
COIMBATORE-641 006.

R1 BY ADV. SRI.PRAVEEN K. JOY

R1 BY ADV. SRI.TA.JOY

R1 BY ADV. SRI.C.C.THOMAS (SR.)

R2-6 BY SR.GOVERNMENT PLEADER SRI. TOM K. THOMAS

R7 BY SRI.RAJESH SIVARAMANKUTTY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-03-2015,
ALONG WITH WPC. 21589/2014 AND CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

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THOTTATHIL B. RADHAKRISHNAN & K. HARILAL, JJ.

W.A.Nos.1082 & 1135 of 2014
and
W.P(C). Nos.21589 & 23223 of 2014

Dated this the 13th day of March, 2015.

JUDGMENT

Thottathil B. Radhakrishnan, J.

- 1.The captioned writ appeals are against the judgment rendered by the learned single Judge in W.P.(C). No.4135 of 2014. Writ Appeal No.1135 of 2014 is by the 6th respondent in that writ petition and Writ Appeal No.1082 of 2014 is by the 7th respondent therein. We refer to the parties going by their status in the writ petition.
- 2.We have heard the learned senior counsel appearing for the respective appellants in the two appeals. We have heard the learned Special Government Pleader. We have also heard the learned counsel appearing for the writ petitioner, who is the first respondent in these appeals.
- 3.The captioned writ petitions came to be instituted challenging

certain actions taken by the authorities following the judgment impugned in the writ appeals. The facts touching those matters will be disclosed as we proceed.

4. Writ petitioner in W.P(C).No.4135 of 2014 and respondents 6 and 7 competed for grant of a contract in relation to the work of fabrication, erection and replacement of 52 Nos. of Stainless Steel Ordinary Shutters and Hoisting Mechanism of the Kuttanad Package - Modernisation of SWB (Salt Water Bund) at Thanneermukkom under the control of the State Government and its Water Resource Department. It can never be disputed that, that project is a critically important for management of the Kuttanadan Belt and has to be done on a war footing basis to ensure that the works get completed so that the progress of the work does not get affected by the change of climate including the arrival of the monsoon.

5. Respondents 6 and 7 in W.P(C).No.4135 of 2014 are the writ petitioners in the captioned writ petitions succeeded in the pre-qualification bid. The writ petitioner challenged the pre-qualification clearance given to respondents 6 and 7. During

the pendency of W.P(C).No.4135 of 2014, the financial bids were permitted to be opened. It was noted that the writ petitioner's bid was the highest. The pre-qualification was challenged after the opening of the financial bid. The writ petitioner in W.P(C). No.4135 of 2014 had quoted the highest and the lowest quotation came from the 6th respondent. The learned single Judge found that the pre-qualification of respondents 6 and 7 in that writ petition cannot be countenanced since there was clear illegality on the part of the official respondents in having pre-qualified them. Detailed reasons are stated in the impugned judgment to hold so. We excuse ourselves from elaborating further on that because, by now, what is germane for consideration are different other aspects.

6. Here, we may recall that the pre-qualification of the writ petitioner in W.P(C). No.4135 of 2014 was not impeached by respondents 6 and 7 in that writ petition. So much so, what was germane for consideration would have been only the financial bid of the writ petitioner therein, who had quoted the highest. As per the judgment in W.P(C).No.4135 of 2014, the learned

single Judge set aside the pre-qualification of respondents 6 and 7 and relegated the matter to the authorities to re-consider the whole issue and take a final decision in the matter. At that stage, as already noted, the pre-qualification of the writ petitioner in W.P(C). No.4135 of 2014, namely, M/s.Precision Infratech Ltd. was not under challenge.

7. Thereafter, having regard to the immediate requirement to go ahead with the work, it appears that the authorities, in their wisdom, took recourse to a procedure whereby they entered into negotiation with M/s.Precision Infratech Ltd., which had quoted the highest. The result of the negotiation was that the quotation of M/s.Precision Infratech Ltd. was tapered down to that of 6th respondent who had quoted the lowest. Therefore, from the financial angle and in the interest of the State, it is, by now, satisfactorily settled that no loss will be sustained to the exchequer by the work being awarded to M/s.Precision Infratech Ltd., which had already been cleared in the pre-qualification bid and whose financial bid was eligible to be considered. The subsequent negotiation with that bidder cannot be treated as illegal. Be that as it may, respondents 6 and 7 in

W.P(C).No.4135 of 2014 filed the captioned writ petitions challenging the procedure adopted by the authorities in entering into negotiation with M/s.Precision Infratech Ltd. It appears that collaterally through those writ petitions they also appeared to challenge the pre-qualification of M/s.Precision Infratech Ltd. In our view, it was too late in the day to raise such a question, when M/s.Precision Infratech Ltd. had filed W.P(C).No.4135 of 2014 challenging the pre-qualification bid of respondents 6 and 7, though the respondents in the writ petition never questioned the locus standi or the eligibility of M/s.Precision Infratech Ltd. to challenge the pre-qualification bid of respondents 6 and 7 on the ground that M/s.Precision Infratech Ltd. did not have appropriate pre-qualification or that the pre-qualification was unsustainable. In this view of the matter, we are unable to countenance any challenge to the pre-qualification of M/s.Precision Infratech Ltd. at this point of time.

8. Having seen that the financial bids have now been settled by awarding the work to M/s.Precision Infratech Ltd. at a negotiated rate, which is nothing but the rate quoted by the lowest tenderer, namely, the 6th respondent in W.P(C). 4135 of

2014, we see no illegality in the realm of awarding of contract which would be justiciable in writ jurisdiction under Article 226 of the Constitution of India in relation to the facts and figures of the case in hand. No public interest whatsoever would be curtailed. No private interests of any of the contesting parties, which are justiciable on the face of Part III of the Constitution, also arose for decision in favour of the writ appellants and the petitioners in the captioned writ petitions.

9. For the aforesaid reasons, the writ appeals and the writ petitions fail.

In the result, the writ appeals and the writ petitions are dismissed.

Sd/-

THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.