

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WA.No. 1775 of 2015 () IN WP(C).15063/2015

AGAINST THE JUDGMENT IN WP(C) 15063/2015 DATED 10.7.2015

APPELLANT(S)/PETITIONERS :-

1. FASEENA V., AGED 28 YEARS
D/O.KUNJABDULLA, VALAPPIL VEEDU, KAMBLAKKADU
WAYANAD DISTRICT.
2. SELMA A.P., AGED 32 YEARS
W/O.MARSHAD, POOVATHUMKANDY, MOOZHICAL
CHELAVOOR P.O, KOZHIKODE-673 571.
3. A.P.MOIDEEN, AGED 61 YEARS
S/O.HASSAN, VADAKKEDTHU THAZHEM, VIRIPPIL
MUZHIKKAL, CHELAVOOR P.O, KOZHIKODE.
4. MOIDEENKOYA, AGED 45 YEARS
S/O.ALAVI, KANIYARAKKAL HOUSE, KUNNAMANGALAM AMSOM
KARANTHOOR DESOM, KOZHIKODE.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN
SMT.UMMUL FIDA

RESPONDENT(S)/RESPONDENTS :-

1. THE SECRETARY,
KUNNAMANGALAM BLOCK PANCHAYATH, KUNNAMANGALAM
KOZHIKODE DISTRICT-673 571.
2. KUNNAMANGALAM BLOCK PANCHAYATH
KUNNAMANGALAM, KOZHIKODE DISTRICT-673 571
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1775 of 2015

Dated this the 11th day of August 2015

J U D G M E N T

Shaffique, J.

The appellants have approached this Court challenging the judgment dated 10.7.2015 in W.P.(C) No.15063 of 2015, by which, the writ petition filed by them has been dismissed by the learned Single Judge.

2. The facts as disclosed in the writ petition would indicate that the petitioners had participated in a tender invited by the respondent Panchayat for allotment of rooms on lease in the shopping complex constructed by the Panchayat. The petitioners submit that they have complied with the tender conditions and participated in the auction and it was found that for certain rooms, the petitioners had given highest bid. However, instead of finalising the tender proceedings, a resolution, Ext.P5, has been passed by the Panchayat informing that the auction proceedings were decided to be cancelled and the Secretary was directed to take steps for re-tender.

3. It is inter alia contended by the petitioners that the reasons stated in Ext.P5 was absolutely baseless and if certain persons, who had participated in the tender had not deposited Earnest Money Deposit, that was not a reason for not accepting the tender submitted by the petitioners.

4. Counter affidavit has been filed by respondents 1 and 2 inter alia stating that in addition to the fact that there was procedural irregularity in the auction by which certain persons, who had not submitted their Earnest Money Deposit was permitted to participate in the auction, it was also noticed that there were several allegations in the matter, as the sealed tenders were opened, the next day after the public auction was conducted. Allegations were also raised against the Panchayat for proceeding with the tender in a hasty manner and that was also a reason for cancelling the tender and going for re-tender.

5. Learned Single Judge, after evaluating the respective contentions of the parties, dismissed the writ petition on the ground that the Panchayat was justified in proceeding with the re-tender taking into account the factual aspects involved in the matter, especially, on the grounds stated in the counter affidavit.

6. Learned counsel for the appellants submits that the reasons stated in Ext.P5 could not have been used against the petitioners, especially, when the petitioners had participated in the tender after depositing their Earnest Money Deposit. It is submitted that those persons, who have not deposited their Earnest Money Deposit should have been kept away from the tender proceedings and the tenders of the petitioners should have been accepted. It is also argued that the learned Single Judge had taken into consideration other reasons stated in the counter affidavit for the purpose of negating the claim made by the petitioners.

7. Learned counsel appearing for the respondent Panchayat would however submit that the Panchayat had gone for re-tender on account of certain irregularities, which had been noticed in the tender process and the re-tender is posted tomorrow.

8. Having regard to the aforesaid factual situation, we are of the view that as far as the petitioners are concerned, they do not have any legal right to demand that tender ought to have been awarded in their favour. Their offer has been considered, but, it

has been decided by the Panchayat not to proceed with the tender. Ext.P5, of course, states only the reason that certain persons, who had participated in the tender had not deposited their Earnest Money Deposit. In fact that itself is sufficient reason to indicate that the procedure adopted by the Panchayat was totally wrong. Any person who had not deposited Earnest Money Deposit should not have been permitted to participate in the tender. Therefore, we do not think that there was any illegality on the part of the Panchayat in taking proceedings for re-tender on the said ground alone.

9. Further, it is indicated in the counter affidavit that there had been other irregularities noticed by the Secretary especially, when the sealed tender was opened one day after the day of public auction. This process apparently, would not amount to any transparency as there is every chance of manipulation. When such a reason has been stated by the Panchayat, it may not be possible for this Court to ignore such state of affairs and permit the Panchayat to proceed in accordance with the original tender. Under such circumstances, we do not think that there is any error on the part of the learned Single Judge to have dismissed the claim

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made by the petitioners. Having found that there is any such error, we do not think that we should interfere with the judgment of the learned Single Judge by exercising the appellate jurisdiction. Accordingly, this writ appeal is dismissed.

Learned counsel for the appellants submits that they have not taken back the Earnest Money Deposit as well as other deposit made by them. We make it clear that the amount deposited by them shall suffice for the next tender as well.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt