

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WA.No. 1989 of 2015

JUDGMENT DATED 19-08-2015 IN WP(C) 21848/2015
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APPELLANT(S)/6TH RESPONDENT:

**SRI.G.JAGANATHAN, S/O.GOPALAN, AGED 56 YEARS,
CONTRACTOR, THRISHNALAYAM, ANAKOTTOOR P.O.,
KOTTARAKKARA, KOLLAM, PIN - 691 505.**

BY ADV. SRI.A.CHANDRA BABU

RESPONDENT(S)/RESPONDENTS 1 TO 5:

- 1. R.VISWANATHAN,
S/O.RAGHAVAN, VARUTHUNDIL VEEDU, NEELESWARAM P.O.,
KOTTARAKKARA TALUK, KOLLAM DISTRICT-695 506.**
- 2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT THIRUVANANTHAPURAM.**
- 3. THE NEDUVATHOOR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
NEDUVATHOOR P.O., KOTTARAKKARA TALUK,
KOLLAM DISTRICT - 691 506.**
- 4. THE ASSISTANT ENGINEER, NEDUVATHOOR GRAMA PANCHAYATH,
NEELESWARAM P.O., KOTTARAKKARA, KOLLAM - 691 506.**
- 5. THE EXECUTIVE ENGINEER, KOLLAM JILLA PANCHAYATH,
LOCAL SELF GOVERNMENT DEPARTMENT, THEVALLY P.O.,
KOLLAM - 691 009.**
- 6. THE ASSISTANT EXECUTIVE ENGINEER,
KOTTARAKKARA BLOCK PANCHAYATH,
E.T.C. P.O., KOTTARAKKARA TALUK, KOLLAM - 695 506.**

R1 BY ADV. SRI.B.MOHANLAL

R2 BY GOVERNMENT PLEADER SRI.P.I.DAVIS

R3 & R4 BY ADV. SRI.K.V. ANIL KUMAR

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 1989 of 2015

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Dated this, the 10th day of September, 2015

J U D G M E N T

Shaffique, J.

The 6th respondent in WP(C) No.21848/2015 has filed this appeal challenging judgment dated 19/8/2015 by which the learned Single Judge had allowed the writ petition and directed respondents 1 to 5 to proceed with Ext.P1 tender submitted by the tenderers including the petitioner, ignoring additional conditions in Ext.P1 to the extent it directs production of documents as mentioned in NIT to be sent by speed post and to finalise the tender proceedings within a period of two weeks from the date of receipt of a copy of this judgment.

2. The facts involved in the writ petition would disclose that based on Ext.P1 notice inviting tender, petitioner as well as the 6th respondent and many others have submitted their tender. Petitioner's tender was not finalised alleging that he had not forwarded certain documents by speed post. According to the

petitioner, there was no such necessity and if at all there was such a stipulation, it was against the e-tender process. The tenders were invited by e-tender and according to the petitioner, he had submitted all necessary documents through e-tender and therefore there was no reason not to consider his tender.

3. After evaluating the contentions urged on behalf of either parties, learned Single Judge allowed the writ petition after forming an opinion that in the case of e-tender, there was no necessity of sending documents by speed post.

4. Learned counsel for the appellant while impugning the aforesaid judgment submits that petitioner had not complied with clause 3 of the notice inviting tender, which reads as under;

"3. The scanned copies registration certificate duly attested by an Engineer not below the rank of Assistant Engineer, Preliminary Agreement and EMD exemption certificate (if any) shall be submitted on line and subsequently in a separate cover physically before the time fixed for tender opening. More details on EMD & Cost of Tender documents/bid submission fee are mentioned in this document".

5. It is relevant to note that when the department had invited tenders based on the procedure of e-tender, production of

the attested copies before opening of the tenders is only a mere formality. The necessity of producing such documents is only for verification whether the scanned copies of e-tender are available with the petitioners. There is no necessity to send the same by speed post. In fact, the petitioner had approached the Court by contending that his tender was not being considered since he did not send the documents by speed post. We do not find any such necessity in the notice inviting tender and no such stipulation is contained in the tender itself.

6. Under such circumstances, we are of the view that in the absence of any provision enabling the tenderers to submit the documents by speed post, there was no necessity for the Panchayat and its authorities to have not considered the tender submitted by the petitioner.

7. Learned counsel appearing for the writ petitioner would submit that he has already been awarded the work by the Panchayat after considering all the tenders. This aspect has been supported by the learned counsel appearing for the Panchayat also.

Having regard to the fact that the appellant is unable to

W.A. No.1989/15

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point out any infirmity in the judgment of the learned Single Judge, we do not find it necessary to interfere with the aforesaid judgment. That apart, it is brought to the notice of this Court that the petitioner was the lowest tenderer. No infirmity can be found out in the notice inviting tender or the procedure followed. Hence, this writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge