

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No.1688 of 2015 (I)

PETITIONER :

**C.SAJEEV, AGED 52 YEARS
S/O. LATE K.CHELLAPPAN, CHARUVILA HOUSE
PERUMPUZHA P.O., KOLLAM.**

**BY ADVS.SRI.R.SURAJ KUMAR
SRI.SUNIL J.CHAKKALACKAL
SMT.V.BEENA
V.DEEPA**

RESPONDENTS :

- 1. STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT OF KERALA
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. THE CHIEF ENGINEER (BUILDINGS)
PUBLIC WORKS DEPARTMENT, MUSEUM P.O.
THIRUVANANTHAPURAM. 695 001**
- 3. THE SUPERINTENDING ENGINEER (BUILDINGS)
PUBLIC WORKS DEPARTMENT, SOUTH CIRCLE
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695 001**
- 4. A.NAZEER
THEJUS, ATTINGAL, THIRUVANANTHAPURAM.695 001**

**R1-R3 BY ADV. GOVERNMENT PLEADER SRI.MUHAMMED SHAFI.M
R4 BY ADV. SRI.J.JULIAN XAVIER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE NOTICE INVITING TENDER DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE 1ST RESPONDENT.**
- EXT.P2 - TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER.**
- EXT.P3 - TRUE COPY OF THE ONLINE TENDER DOCUMENT SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**
- EXT.P4 - TRUE COPY OF THE APPLICATION DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE DEPARTMENT.**
- EXT.P5 - TRUE COPY OF THE FINANCE BID OPENING SUMMARY. DATED 8.1.2015**
- EXT.P6 - TRUE COPY OF THE COMPARATIVE CHART DOWN LOADED FROM THE OFFICIAL WEBSITE OF THE DEPARTMENT**
- EXT.P7 - TRUE COPY OF THE REPRESENTATION DT. 01.01.15.**
- EXT.P8 - TRUE COPY OF THE TENDER BID OPENING SUMMARY DT. 09.1.15.**
- EXT.P9 - TRUE COPY OF THE COMMUNICATION DT. 14.1.15.**

RESPONDENT(S)' EXHIBITS

- EXT.R4(a) - A TRUE COPY OF THE SIGNED TENDER DOCUMENT SUBMITTED BY THE 4th RESPONDENT.**

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFIQUE, J

W.P.(C).No.1688 of 2015

Dated this the 9th day of April, 2015

JUDGMENT

The petitioner challenges the award in favour of the fourth respondent by Ext.P9 dated 14.1.2015

2. The short facts involved in the writ petition would disclose that the Public Works Department has invited tender for carrying out the construction work of the new block in Government High School, Attingal, for an estimated amount of Rs.3,32,21,127/-. The notice inviting tender was published through website and the bidders were directed to submit their bids online as well as to submit hard copies. There is no dispute about the fact that the fourth respondent was the lowest tenderer. But according to the petitioner, the tenders submitted by the fourth respondent ought not have been accepted and it should have been rejected on account of the fact that the e-tender submitted by him was not proper. It is inter alia contended that as per the tender conditions, all the columns which are required to be filled up was manually

filled up and when the petitioner verified the e-tender of the fourth respondent, it was noticed that he has not filled up most of the columns and therefore the respondent authority ought to have rejected his tender. The learned counsel refers to the judgment of the Supreme Court in **Tata Cellular v. Union of India** [(1994) 6 SCC 651] to contend that the award of the work cannot go beyond the terms and conditions of the tender and under such circumstances the Public Works Department ought to have rejected the petitioner's tender.

3. Counter affidavit has been filed by the respondent inter alia stating that as per the notice inviting tenders, the contractors/bidders have been given the option to submit e-tender as well as hard copies. Both the e-tender as well as the hard copy was opened on the same day. It was found that the fourth respondent's tender was the lowest and therefore decision was taken to award him the work in terms of Ext.P9.

4. In regard to the filling up of various columns, it is submitted that only certain details were not filled up

by the fourth respondent whereas, the material particulars relating to the rate quoted and other details were clearly shown in the e-tender itself. That apart the hard copy which was submitted contained all the particulars.

5. Counter affidavit has been filed by the fourth respondent, inter alia stating that it was only on account of mistake in some columns especially in the column of 'Experience' and 'Name' were not filled up, which could not have been material on account of the fact that on the same day hard copy has been submitted to the authorities which tallied with the tender submitted by the petitioner. Further it is submitted that the petitioner is a registered contractor and his experience is well known to the department as well.

6. Though the learned counsel for the petitioner is justified in submitting that as per e-tender procedure is concerned, all the particulars has to be mentioned, the question is whether at a stage when e-tender as well as hard copy method was adopted by the department, it is necessary to reject a tender merely for the reason that

some columns had not been filled up.

7. It is not in dispute that as far as the hard copy is concerned, all particulars have been given by the fourth respondent. Even the petitioner also had submitted the hard copy. It is also pointed out before this Court that the rate quoted by the fourth respondent was 5% above the estimated rate, whereas the petitioner's rate was 15.90% above the estimated rate. The difference according to the learned Government Pleader will come to more than Rs.14 lakhs.

8. Having regard to the aforesaid factual situation arising in the present case, I do not think that it would be justifiable on the part of this Court to interfere with the award of work by the Public Works Department, especially on account of the fact that the rate quoted by the fourth respondent is much less than what is quoted by the petitioner. Rejection of the tender is purely within the realm of jurisdiction of the awarder of the work. If the Public Works Department did not find that the tender of the fourth respondent should not have been rejected on

account of the mere fact that some of the columns in the e-tender was not filled up, it is not open for a competitor to contend that the whole exercise has to be redone at this stage. The awarder of the work is always entitled to verify whether any essential term of the tender has been complied or not. Under such circumstances, to avoid any delay in the execution of the work, I do not think that this Court should interfere with the award in favour of the fourth respondent.

Accordingly this writ petition is dismissed.

Sd/-
A.M.SHAFFIQUE
JUDGE

VS

/TRUE COPY/

PA TO JUDGE