

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

W.P.(C).No.2954 of 2015 (T)

PETITIONER(S):-

M/S. PULARI PLANTATIONS PRIVATE LIMITED,
PERIKINAL BUILDING, HEAD OFFICE: RAJAKKAD PO.,
IDUKKI DISTRICT - 685566,
REPRESENTED THROUGH ITS DIRECTOR - M.M. LAMBODHARAN

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL.

RESPONDENT(S):-

1. SPICES BOARD,
SUGANDHA BHAVAN, N.H. BY-PASS, P.B. NO.2277,
PALARIVATTOM PO, KOCHI-682025.
2. THE ASSISTANT DIRECTOR - MARKETING,
SPICES BOARD, SUGANDHA BHAVAN, NH BY PASS, PB,NO.2277,
PALARIVATTOM PO, KOCHI 682025
3. THE KERALA CARDAMOM PROCESSING AND
MARKTING COMPANY LIMITED,
"SPICES HOUSE", BUILDING NO K.P.1/174/-B, THEKKADY - 685 509.
4. MAS ENTERPRISES LIMITD,
X-677, MAS BUILDING, VADANMEDU - 685 551
5. SOUTH INDIAN GREEN CARDAMOM COMPANY LIMITED,
XBVII/225-228, VECHORATHU BUILDING, VANDANMEDU-685 551.
6. CARDAMOM PLANTER'S ASSOCIATION NO.285,
C.P.A BUILDING, KUMILY ROAD, IDUKKI-685 619.
7. THE CARDAMOM PLANTER'S AND
MARKETING CO -OPERATIVE SOCIETY LTD,
"SPICE HOUSE", BUILDING NO.1/174-B, THEKKADY-685 509.

8. UNION OF INDIA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF COMMERCE AND INDUSTRY,
NEW DELHI-110001.

R1 & R2 BY ADVS. SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC.

R3 & R7 BY ADV. SRI.BECHU KURIAN THOMAS.

R4 BY ADVS. SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZHAY.

R5 BY ADVS. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN

R6 BY ADVS. SRI.C.HARIKUMAR
SMT.C.B.ANURUOPA

R8 ASSISTANT SOLICITOR GENERAL OF INDIA BY SRI.N.NAGARESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT. P1: COPY OF FORM-A SUBMITTED BY THE PETITIONER.
- EXT. P2: COPY OF THE ELIGIBILITY CRITERIA FOR E-AUCTION LICENCE.
- EXT. P3: COPY OF THE OWNERSHIP CERTIFICATE NO.A6-969/14
DATED 3.8.2014 ISSUED BY BISONVALLEY GRAMA PANCHAYAT.
- EXT. P4: COPY OF THE DEED OF LEASE DATED 10.12.2014.
- EXT. P5: PHOTOGRAPH.
- EXT. P6: COPY OF THE BILL NO.130 DATED 17.12.2014 ISSUED BY
THRASS BAZAR.
- EXT.P7: PHOTOGRAPHS.
- EXT.P8: PHOTOGRAPH.
- EXT.P9: COPY OF THE LETTER NO.MKT/E-AUCTION 0002/2013/2714
DATED 9.1.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P10: COPY OF THE LETTER DATED 12.1.2015 ISSUED BY
THE PETITIONER.
- EXT.P11: COPY OF INSPECTION /VALUATION REPORT DATED 12.1.2015
WITH RESPECT TO THE PROPERTY OF M/S THAVALAM
ESTATE & DEVELOPERS PVT. LTD.
- EXT.P12: COPY OF INSPECTION/VALUATION REPORT DATED 12.1.2015
WITH RESPECT TO THE PROPERTY OF M/S THAVALAM
ESTATE & DEELOPERS PVT. LTD.
- EXT.P13: COPY OF THE LIST OF MEMBERS OF 1ST RESPONDENT BOARD.
- EXT.P14: COPY OF HE LIST OF DIRECTORS OF 3RD RESPONDENT.
- EXT.P15: COPY OF THE LIST OF DIRECTORS OF 4TH RESPONDENT.
- EXT.P16: COPY OF THE LIST OF DIRECTOR OF 5TH RESPONDENT.
- EXT.P17: COPY OF CASH BILL NO.3384 DATED 15.1.2015.
- EXT.P18: COPY OF CASH BILL NO.4586 DATED 17.1.2015.
- EXT.P19: COPY OF 23RD ANNUAL REPORT OF 3RD RESPONDENT.
- EXT.P20: COPY OF 2ND ANNUAL GENERAL MEETING OF
7TH RESPONDENT.

- EXT.P21: COPY OF THE FACE PAGE OF THE WEB SITE MAINTAINED BY THE 3RD RESPONDENT.
- EXT.P22: COPY OF THE DETAILED TRACK EVENTS OF EXT.R1(b) DOWNLOADED FROM INDIAPOST.GOV.IN.
- EXT.P23: PHOTOCOPY OF THE SPEED POST COVER IN WHICH EXT.R1(b) CONTAINED.

RESPONDENT(S)' EXHIBITS:-

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- EXT.R1(a) TRUE COPY OF THE AMENDED CARDAMOM (LICENSING AND MARKETING) RULES, 2014, NOTIFIED IN THE GAZETTE ON 18.11.2014.
- EXT.R1(b) TRUE COPY OF THE LETTER/REPLY DATED 23.01.2015 ALONG WITH INSPECTION REPORT ISSUED BY THE RESPONDENTS TO THE PETITIONER.
- EXT.R1(c) TRUE COPY OF THE REPRESENTATION DATED 16.12.2014 SENT BY THE SPICES PLANTERS ASSOCIATION TO THE RESPONDENTS.
- EXT.R1(d) TRUE COPY OF THE INTERIM ORDER DATED 12.01.2015 PASSED IN W.P.(C).NO.1035/2015(D).
- EXT.R3(a) TRUE COPY OF THE ORDER DATED 09.01.2015 IN W.P.(C). NO.589 OF 2015.
- EXT.R5(1) TRUE RELEVANT PAGE OF THE PASSPORT NO.Z2390723 OF MR.MATHEW SAMUEL KALARICKAL.
- EXT.R5(2) TRUE RELEVANT PAGE OF THE PASSPORT OF MR.SAM MATHEW KALARICKAL BEARING NO.Z2678926.
- EXT.R7(a) TRUE COPY OF THE ORDER DATED 12.1.2015 IN WP(C).NO.1035/2015.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.2954 of 2015-T

Dated this the 03rd day of August, 2015

JUDGMENT

The petitioner challenges Exhibit P9 order, by which the e-auction license was declined. The grounds on which the challenge is made are that, (i) the criteria on which Exhibit P9 order was passed having not been disclosed to the petitioner earlier to Exhibit P9 and (ii) the conflict of interest insofar as the Directors of the respondents 3 to 5 being members of the Board of the 1st respondent.

2. The petitioner applied for e-auction license by Exhibit P1, as per the 'eligibility criteria' laid down in Exhibit P2. The petitioner relies on Exhibits P3 and P4, to evidence the sufficiency of the space for carrying on the auction and produces certain photographs of machineries, which, according to him, are available in his premises. The petitioner also specifically refers to the invoice, produced at Exhibit P6, to controvert the allegation in Exhibit P9 that an Electronic

Scale was not available in the petitioner's premises. The petitioner having been issued with Exhibit P9, submitted Exhibit P10 objections and is said to have went on with the procedure of obtaining a bank guarantee, to satisfy the eligibility criteria of security deposit, as is evidenced at Exhibits P11 and P12.

3. The petitioner contends that the inspection though conducted on 19.12.2014, was in a biased manner and no copy of the report was supplied to him. The requirements, the absence of which were found to be against the petitioner in Exhibit P9, were said to have been never put to the petitioner. The entire exercise was a farce, insofar as the respondents 3 to 7, who were granted licenses, having their Directors in the Board of the 1st respondent. This raises serious question of conflict of interest and vitiates the very issuance of the licenses, is the argument.

4. I have heard the learned counsel for the petitioner and the counsels for respondents 3 to 7 as also the Standing Counsel for respondents 1 and 2.

5. Exhibit P2 is the 'Eligibility Criteria for e-auction license'. The applicants were required, under Clause 6, to have sufficient storage facilities or godown and collection depots, including electronic weighing machines and moisture meters at the pooling centre. By Clause 16, the list of godown / pooling centers existing and proposed and proof of documents of the godown / pooling centers owned / leased / rented by the company was to be produced. The details of cleaning facilities, machineries and godowns available at the pooling centers or in other places were also to be provided, as per Clause 17. True, there was no exact area specified for conducting the auction of cardamom. However, it is the specific contention of the respondent-Board that as per the Rules applicable to the award of e-auction licenses, being the Cardamom (Licensing and Marketing) Rules, 1987 as amended in 2014, the satisfaction of the Board, as to the suitability of the premises offered and sufficient storage or godown or collection depot facility to store the cardamom pooled and for cleaning and grading of cardamom as provided under Rule 4, is mandatory.

6. It is trite that a satisfaction required to be arrived at by a public authority cannot be left to the whims and fancies of such authority. Nor can it be said to be a variant depending upon each of the applicants. However, in the present case, none of these grounds can be taken, since Exhibit P9 specifically finds that normally in one auction about 50 MT (metric tons) is the minimum quantity brought in and, hence, the required space of storage would be 75 MT. These are affairs of the specific business, which the petitioner ought to have been aware of, especially when he declares to be engaged in such business and seeks a license for enabling e-auction with the Board. The petitioner also does not have a case that either of the respondents 3 to 7 lack such facilities.

7. It is pertinent that the respondents 3 to 7 were persons who had earlier licenses and had applied for renewal in the present period as per Exhibit P2. It is also not disputed that, along with respondents 3 to 7 another seven concerns were also given the e-auction license, making the total licensees 12 in number. It is quite significant that there is no

restriction in the number of e-auction licenses to be issued and the petitioner has been excluded not for the reason that he having not come within the zone of consideration. The petitioner was denied license only for having not satisfied the basic requirements.

8. With respect to the other requirements, even Exhibit P2 eligibility criteria specifically provided for cleaning facilities and machineries. Exhibit P9, by paragraph No.2, finds that neither mechanical nor manual cleaning / grading facilities are noticed in the proposed main godown or in any of the collection centers. Paragraph 3 also found that there is no evidence produced to show that an Electronic weighing machine and Moisture meter at the main godown / storage or collection depots are provided. These facilities, on inspection, were found to be absent, on which the petitioner's application for e-auction license was declined.

9.The reliance placed on Exhibit P6 invoice is specious, to say the least. When the application at Exhibit P1, in accordance with Exhibit P2 eligibility criteria, was made on

16.12.2014, the petitioner is said to have purchased an Electronic Scale on 17.12.2014, one day after the application was made. Further, as is pointed out by the learned counsel for the respondents 3 to 7, there is nothing produced to indicate that the petitioner had registered himself with the Department of Legal Metrology after the purchase made at Exhibit P6, which condition is available in Exhibit P6 itself. Definitely no reliance can be placed on the photographs produced, since that would lead to an assumption that the photographs produced were in fact of the machineries available in the premises of the petitioner. The inspection found otherwise and this Court cannot looking at the photographs alone come to a different finding.

10. Further ground raised by the petitioner is with respect to the conflict of interest, insofar as the respondents 3 to 5 having its Directors in the Board of the 1st respondent. Two Directors of the 3rd respondent and one Director of the 4th respondent, admittedly, are members of the 1st respondent-Board. As to the 5th respondent, the Board Member

and the Director are said to be father and son. The petitioner would make much of the conflict in interest insofar as the Directors of the licensees being in the Board relying on the decision in ***Board of Control for Cricket in India v. Cricket Assn. of Bihar*** [2015 (3) SCC 251].

11. At the outset, it is to be noticed that the contention of the Spices Board is that, the Board does not itself take a decision to issue the licenses and all of these Directors of respondents 3 to 5 are appointed from the persons involved in the trade as per the statute, being the Spices Board Act, 1956. The Directors of the respondents 3 to 5, who are said to be members of the Board, are appointed by the Ministry of Commerce and Industry, Government of India in their capacity as representatives of Traders, Farmers, Planters, etc.; of spices in general and cardamom in particular. The Board members are said to have no role in the general administration or the day-to-day affairs of the 1st respondent. Their presence is more insofar as formulating policy and taking decision for overall development of the industry. The presence of such

persons in the Board were always known to the petitioner and the same was available in the website of the 1st respondent also. The petitioner had been also aware that the respondents 3 to 7 were already licensees of e-auction, under the Board. The petitioner had willingly participated in the e-auction licensing process and had made an application claiming to have satisfied the guidelines and on being rejected; turned around to challenge the same on the ground of conflict of interest.

12. As was noticed above, the petitioner does not have a contention that either of the party-respondents do not have the basic requirements, which was found against the petitioner. The petitioner also does not have a case that no inspection was conducted. Nor does he have a contention that the space available is one which is satisfactory and conducive to the conduct of the e-auctions, as has been stated in Exhibit P9. The mere fact that exact measurements of the space was not given in the guidelines, would not deviate from the fact that the guidelines provided for satisfactory space being available

with specific facilities; along with machineries. The petitioner would, merely on the basis of an invoice [Exhibit P6], Exhibit P3 ownership certificate, Exhibit P4 lease and on the basis of the photographs [Exhibits P5, P7 and P8] assert that the machineries were available at the time of inspection.

13. No reliance at all can be placed on these materials to upset the factual findings on inspection. Even the averments in the writ petition does not commend a re-look into the inspection report. The vitiating factor raised on the ground of conflict of interest has already been found to be unsustainable. In such circumstances, this Court does not find any reason to interfere with the rejection at Exhibit P9, of the petitioner's e-auction license application.

The writ petition would stand dismissed. The parties are directed to bear their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]