

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 4560 of 2015 (T)

PETITIONER(S) :

REDLANDS ASHLYN MOTORS PLC., THRISSUR,
REPRESENTED BY IT'S MANAGING PARTNER, ASHLYN ANTONY,
KARIKATH LANE, M.G.ROAD, THRISSUR.

BY ADV. SRI.C.M.SURESH BABU

RESPONDENT(S) :

1. THE MANAGING DIRECTOR,
KERALA AGRO INDUSTRIES CORPORATION LTD.,
KISSAN JYOTHI, FORT P.O., THIRUVANANTHAPURAM-695 023.
2. THE CHAIRMAN, TECHNICAL COMMITTEE,
THRISSUR PONNANIKOLE DEVELOPMENT AUTHORITY,
KLDC BUILDING, CHEMBOOKAVU, THRISSUR-680 020.
3. THE CHAIRMAN, THRISSUR PONNANI COLE DEVELOPMENT
AUTHORITY, KLDC BUILDING, CHEMBOOKAVU, THRISSUR-680 020.
4. THE DISTRICT COLLECTOR, THRISSUR AND SPECIAL OFFICER,
THRISSUR-PONNANI KOLE DEVELOPMENT AUTHORITY,
KLDC BUILDING, CHEMBOOKAVU, THRISSUR-680 020.
5. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF AGRICULTURE, SECRETARIAT,
THIRUVANANTHAPURAM.

* ADDITIONAL R6 IMPEADED

6. M/S.VST TILLERS TRACTORS LIMITED,
P.O BOX NO.4801, MAHADEVPURA POST, WHITE FIELD ROAD,
BANGLORE -560 048.

* ADDITIONAL R6 IS IMPEADED AS PER ORDER DATED 21.07.2015 IN
I.A.NO.10421 OF 2015.

R1 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

R4 & R5 BY SR.GOVERNMENT PLEADER SRI.S.ABDUL SALAM
ADDL.R6 BY ADSV. SRI.T.K.RAJESHKUMAR
SMT.T.N.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-09-2015,
THE COURT ON 16-09-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 :** TRUE COPY OF THE TENDER NOTIFICATION DATED 21-01-2014 BY 1ST RESPONDENT.
- EXT.P2 :** TRUE COPY OF COMMUNICATION DATED 06-06-2014 ISSUED BY 1ST RESPONDENT.
- EXT.P3 :** TRUE COPY OF COMPUTER PRINT OUT OF THE TECHNICAL EVALUATION SUMMARY DATED 20-09-2014 OF THE 2ND RESPONDENT.
- EXT.P4 :** TRUE COPY OF THE COMMERCIAL TEST REPORT OF THE PETITIONER'S RP.824 SELF PROPELLED RIDING TYPE RICE TRANSPLANTER, ISSUED BY THE SOUTHERN REGION FARM MACHINERY TRAINING AND TESTING INSTITUTE, ANANTHAPUR (A.P), RELEVANT PAGE.
- EXT.P5 :** TRUE COPY OF THE REPRESENTATION DATED 04-10-2014 SUBMITTED TO THE 4TH RESPONDENT.
- EXT.P6 :** TRUE COPY OF THE LAWYER NOTICE DATED 28-10-2014 ISSUED TO THE RESPONDENTS 1 TO 4.
- EXT.P7 :** TRUE COPY OF THE LAWYER NOTICE DATED 10-12-2014 ISSUED TO THE RESPONDENTS 1 TO 4.
- EXT.P8 :** TRUE COPY OF THE REPLY NOTICE DATED 05-01-2015 ISSUED BY THE 4TH RESPONDENT.
- EXT.P9 :** TRUE COPY OF THE NEWS ITEM PUBLISHED IN RASHTRA DEEPIKA DAILY DATED 25-09-2014.
- EXT.P10 :** TRUE COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 29-09-2014.
- EXT.P11 :** TRUE COPY OF COMMUNICATION DATED 20TH APRIL, 2011 ISSUED BY THE DEPUTY COMMISSIONER, MINISTRY OF AGRICULTURE GOVERNMENT OF INDIA.
- EXT.P12 :** TRUE COPY OF CERTIFICATE DATED 01.05.2013 ISSUED BY THE SHAMKRIS GLOBAL, MUMBAI.
- EXT.P13 :** TRUE COPY OF THE R.T.I APPLICATION DATED 01.10.2014 SUBMITTED TO THE TESTING AUTHORITY, MINISTRY OF AGRICULTURE, ANANTHAPURI.
- EXT.P14 :** TRUE COPY OF THE REPLY DATED 28.10.2014 FROM THE MINISTRY OF AGRICULTURE, ANANTHAPURAI.
- EXT.P15 :** TRUE COPY OF LETTER DATED 08.10.2014 OF THE DEPUTY COMMISSIONER, MINISTRY OF AGRICULTURE WITH THE PROCEEDINGS OF THE WORKSHOP HELD ON 09.09.2014.
- EXT.P16 :** TRUE COPY OF THE MANUFACTURING LICENCE DATED 22.01.2009 ISSUED BY THE MINISTRY OF COMMERCE AND INDUSTRY.

RESPONDENT(S)' EXHIBITS & ANNEXURES :

- ANNEXURE I:** PHOTO COPY OF THE COMMERCIAL TEST REPORT IN THE MONTH OF DECEMBER 2011 REGARDING THE REDLANDS RICE TRANSPLANTER, MODEL-CHAMPION RP 824.
- ANNEXURE II:** MINUTES OF THE TECHNICAL COMMITTEE MEETING HELD ON 23.07.2014 IN THE OFFICE OF THRISUR-PONNAI KOLE DEVELOPMENT AUTHORITY.
- ANNEXURE III:** REPORT OF TECHNICAL COMMITTEE ON THE AMENDMENT OF EARLY RECOMMENDATION ON 8 ROW RIDING TRANSPLANTER ON 25.10.2014.
- ANNEXURE R1(A):** TRUE COPY OF THE TEST REPORT OF DECEMBER, 2011 BY THE SOUTHERN REGION FARM MACHINERY TRAINING & TESTING INSTITUTE, ANANTAPUR REGARDING THE RICE TRANSPLANTER OF THE PETITIONER.
- ANNEXURE R1(B):** TRUE COPY OF THE TEST REPORT OF AUGUST, 2001 BY THE SOUTHERN REGION FARM MACHINERY TRAINING & TESTING INSTITUTE, ANANTAPUR REGARDING THE RICE TRANSPLANTER OF THE ADDITIONAL 5TH RESPONDENT.
- EXHIBIT R1(A):** TRUE COPY OF THE GOVERNMENT ORDER NO.49/13/AGRI DATED 12.03.2013 FOR TECHNICAL SCRUTINY OF THE PROJECTS AND MAKING RECOMMENDATIONS TO THE IMPLEMENTING DEPARTMENTS.
- EXHIBIT R1(B):** TRUE COPY OF THE EXTRACTS OF THE MINUETS OF THE TECHNICAL COMMITTEE HELD ON 23.07.2014.
- EXHIBIT R1(C):** TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 18.09.2014 OF THE TECHNICAL COMMITTEE.
- EXHIBIT R1(D):** TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 29.09.2014 OF THE TECHNICAL COMMITTEE.
- EXHIBIT R1(E):** TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 25.10.2014 OF THE TECHNICAL COMMITTEE.
- EXHIBIT R1(F):** TRUE COPY OF THE TEST CERTIFICATE PRODUCED BY THE PETITIONER ALONG WITH HIS BID DATED JANUARY 2014.
- EXHIBIT R4(A):** PHOTOCOPY OF THE RELEVANT PAGES OF THE TENDER NOTIFICATION DATED 21.01.2014.
- EXHIBIT R4(B):** PHOTOCOPY OF THE LETTER VIDE NO.8-1/2004-MY(I&P) ISSUED BY THE MINISTRY OF AGRICULTURE, GOVERNMENT OF INDIA ALONG WITH THE LIST OF DESIGNATED AGENCIES.
- EXHIBIT R6(A):** COMMERCIAL TEST REPORT OF THE MACHINE ADDITIONAL 5TH RESPONDENT ALONG WITH THE REPORT OF THE ENGINE PERFORMANCE TEST IN THE MONTH OF AUGUST 2001.

//TRUE COPY//

P.S.TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.4560 of 2015

Dated this the 16th day of September, 2015

JUDGMENT

The petitioner participated in tender for the supply of Riding Type Rice Transplanters under the Integrated Kule-Land Development Programme.

2. The tender bid consists of technical bid and financial bid.

3. One of the technical bid requirement is the production of scanned copy of test certificates/report issued from the testing centre authorized by the Government of India.

4. The petitioner's tender has been rejected for want of compliance of technical bid. This action is under challenge in this writ petition.

5. The contract has been awarded to the additional 6th respondent on account of rejection of the petitioner's technical bid.

6. The Technical Committee evaluated three bidders. One of the bidders, namely, Greaves-Taiwan was found not suitable in

Kole lands. Therefore, it was not recommended for purchase. The other two bidders are the petitioner and the additional 6th respondent. The Committee as per the meeting held on 23.7.2014 recommended the machines of the petitioner as well as the 6th respondent for the financial bid.

7. In the Technical Committee meeting held on 18.9.2014, the Committee felt that a detailed technical scrutiny of the documents of the petitioner is required. This was based on a complaint placed before the Committee.

8. Thereafter, the Technical Committee meeting was held on 29.9.2014. It is noted in the meeting that the petitioner has no manufacturing unit for rice Transplanters in India as claimed by them and they are just assembling the machine parts of unknown manufacturer at Coimbatore.

9. The Technical Committee meeting was held on 25.10.2014 made final recommendations. In the meeting, following recommendations were made:

- i) The test report No.47/432, January 2014 of SRFMTT1, Ananthapur produced by Redlands

company has not complied with engine performance test.

- ii) The performance test for the machine up to 3.4KW is to be tested at designated centres notified by Government of India.
- iv) Any test report from the 28 designated centres for the testing of farm machinery up to 3.4KW has not been produced by the company as on the date of submission of tender ie. 22.02.2014.
- vi) Hence the Technical Committee makes an amendment to its early recommendation as per the minutes dated 23.7.2014, that the transplanter RP 924 of M/s.Redlands Ashlyn Motors PLC, Thrissur is not technically qualified to be considered for the purchase. It has not fulfilled all the statutory requirements of the commercial test report as per the guidelines issued by the Government of India.

10. In this matter, a counter affidavit has been filed by the first respondent. Along with the counter affidavit, the first respondent produced Exts.R1(a) to R1(f). In Ext.R1(f) would show that the engine fitted with machine offered by the petitioner did not have valid satisfactory engine performance test.

11. Therefore, the question now remains whether the

rejection of petitioner's tender for want of technical bid is correct or not. The petitioner would argue that the engine of the machinery offered by them is having ISI, ISO-9000 marks. The petitioner also relies upon Ext.P11 produced along with the reply affidavit. Ext.P11 is an order of the Government of India.

12. Ext.P11 was issued by taking note of the substantial delays in releasing test reports by Farm Machinery Training and Testing Institutes (FMTTI) especially for agricultural machinery and equipment those are fitted with small engines as motive power source. It stipulates that FMTTI can release test certificates without conducting performance test provided engine is of reputed make ISI, ISO-9000 etc.

13. However, it is to be noted along with statement filed by the first respondent on 12.8.2015, certain documents are produced to counter the reliance placed by the petitioner on Ext.P11. There are Annexures R1(a) and R1(b), the petitioner's machineries are referred for test report. In Annexure-R1(a), the engine performance test was not conducted due to heavy black smoke from exhaust. It is also seen that the petitioner also made a

request to withdraw test sample.

14. The evaluation by Technical Committee is based on certain parameters. There is no dispute that the engine performance test was not conducted. In the facts and circumstances of the case, the petitioner cannot avail the benefit of Ext.P11. Ext.P11 cannot be relied as a matter of right to exempt from production of engine performance test. Ext.P11 enables the authority not to insist for performance in certain circumstances mentioned therein. This enables the authority to presume performance based on brand mark. The Technical Committee evaluated the technical bid by relying Annexures R1 (e) and (f) produced along with the statement filed by the first respondent. These documents are sufficient to hold otherwise.

15. The scope of judicial review is limited to examine the exercise of decision making process. The respondents have taken the decision by following the norms. There is no arbitrariness in exercise of such power. Therefore, this Court need not interfere with the decision to reject the petitioner's technical bid.

In view of the discussions as above, this writ petition is liable to be dismissed. Accordingly, it is dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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