

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 5092 of 2014 (J)

PETITIONER:

**A DAVID, AGED 62 YEARS,
S/O. ANTONY, MANAYATHU VEEDU,
KARITHURA, CHAVARA, KOLLAM DISTRICT.**

BY ADV. SRI.N.SUNIL JOSEPH

RESPONDENT(S):

- 1. INDIAN RARE EARTHS LIMITED,
CHAVARA P.O., KOLLAM DISTRICT, PIN - 691 583,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. THE HEAD,
INDIAN RARE EARTHS LIMITED, CHAVARA P.O.,
KOLLAM DISTRICT, PIN - 691 583.**
- 3. SENIOR NANAGER (PURCHASE),
INDIAN RARE EARTHS LIMITED, CHAVARA P.O,
KOLLAM DISTRICT, PIN - 691 583.**
- 4. IRE LOADING UNLOADING WORKERS WELFARE FORUM
AND IRE CIVIL CONTRACT WORKERS WELFARE FORUM,
INDIAN RARE EARTHS LIMITED, CHAVARA P.O.,
KOLLAM DISTRICT, PIN - 691 583.**
- 5. SRI.ARUN PURUSHOTHAMAN,
S/O. LATE PURUSHOTHAMAN, PURUSHOTHAPURAM,
VALIYAKULANGARA, OACHIRA P.O, PIN - 690 525.**

**R1 TO R 3 BY SRI.M.GOPIKRISHNAN NAMBIAR, SC
ADVS. SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS**

R4 BY ADV. SRI.PAULSON C.VARGHESE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1- TRUE COPY OF THE TENDER NO. 01/13-14 DATED 10/05/2013.
- EXHIBIT-P2- TRUE COPY OF THE LETTER DATED 30/05/2013 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT-P3- TRUE COPY OF THE VOUCHER DATED 31/05/2013 ISSUED IN FAVOUR OF THE PETITIONER.
- EXHIBIT-P4- TRUE COPY OF THE LETTER DATED 21/06/2013 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P5- TRUE COPY OF THE LETTER DATED 27/06/2013 OF THE PETITIONER.
- EXHIBIT-P6- TRUE COPY OF THE LETTER NO. C5-2986/13 DATED 02/07/2013 OF THE SECRETARY, CHAVARA GRAMA PANCHAYATH.
- EXHIBIT-P7- TRUE COPY OF THE LETTER DATED 02/07/2013 OF THE PETITIONER.
- EXHIBIT-P8- TRUE COPY OF THE LETTER DATED 11/09/2013 OF THE PETITIONER.
- EXT-P8(A)- TRUE COPY OF THE POSTAL RECEIPT.
- EXHIBIT-P9- TRUE COPY OF THE LETTER DATED 19/12/2013 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT-P10- TRUE COPY OF THE COMPLAINT DATED 13/01/2014 OF THE PETITIONER.
- EXHIBIT-P11- TRUE COPY OF THE ORDER DATED 30/08/2013.

RESPONDENT(S)' EXHIBITS:

- EXT.R4A : TRUE COPY OF THE BYE LAWS OF IRE LOADING, UNLOADING WORKERS WELFARE FOURUM.
- EXT.R4B: TRUE COPY OF THE BYE LAWS OF IRE CIVIL CONTRACT WORKERS WELFARE FORUM.
- EXT.R4C: TRUE COPY OF THE LETTER DATED 21.6.2013 ISSUED TO THE PETITIONER.
- EXT.R4D : TRUE COPY OF THE REPLY LETTER DATED 2.7.2013 SUBMITTED BY THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 5092 of 2014

Dated this the 23rd day of February, 2015

JUDGMENT

The award granted to the 5th respondent to run the canteen in the 4th respondent's establishment pursuant to Ext.P1 tender floated by the 4th respondent is under challenge in this writ petition, mainly for the reason that the 5th respondent is not having the requisite qualification/experience to run the canteen.

2. The case of the petitioner is that pursuant to Ext.P1 notification issued by the 4th respondent, the petitioner submitted his tender. It is stated that the petitioner is having all the requisite qualification and experience. But, without any regard to the credentials of the petitioner, permission/award to run the canteen was granted to the 5th respondent by the 4th respondent, extending undue favours. It is pointed out that the specific stipulation as per Ext.P1 with regard to experience is two years, which the 5th respondent is not having. It is stated that the canteen was being run in the 4th respondent's establishment, by

the father of the 5th respondent from 01.04.2011. The father of the 5th respondent took his last breath on 05.11.2011 and as such, the period during which the canteen run by the deceased father ought not to have been reckoned to be in the credit of the 5th respondent, so as to compute the requisite extent of experience. This in turn is under challenge in this writ petition.

3. A detailed counter affidavit has been filed by the 4th respondent producing copies of the relevant documents as Exts.R4(a) to R4(d).

4. Heard the learned Counsel for the petitioner, the learned Counsel for the 4th and 5th respondents.

5. The canteen concerned herein is a statutory canteen. Ext.P1 tender notification was issued on the basis of the requisition made by the 4th respondent in this regard. The tenure of the contract was for a period of one year. According to the 4th respondent, the 5th respondent satisfied the requisite norms and produced all the relevant materials; particularly in terms of column 14 of Ext.P1. In the case of the petitioner herein, he had no valid trade licence and no number of such licence was pointed

out at any point of time, which was stated as compulsory as given in Ext.P1 itself. Reference is also made to the reply submitted by the petitioner vide Ext.R4(d), in response to R4(c), wherein it is conceded that no valid trade licence was in existence as on the relevant date and that the version of the petitioner was that, such licence will be procured and produced once the bid was confirmed in favour of the petitioner.

6. The learned counsel appearing for the 1st respondent points out that the tenure of the contract was only for a period of one year as prescribed under Clause No. 1 referred to against column No.14 of Ext.P1. The factual position is asserted by the learned counsel for the 4th respondent as well, with reference to the specific pleading pointed out in the counter affidavit. It is also pointed out that, the one year period pursuant to Ext.P1 was already over in September, 2014 and that the existing arrangement was extended by a further period of one year, as per the Board resolution of the 4th respondent.

7. The petitioner, though had filed the writ petition in February, 2014, has not caused to make any challenge with

regard to the subsequent course and events and cause of action with reference to Ext.P1, which was only an yearly contract, which period is already over.

8. In the above circumstance, this Court does not find it necessary to interfere with the cause of action projected in the writ petition, which has become stale. Accordingly, the writ petition stands dismissed.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

lk/kp/-