

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).NO. 4936 OF 2015 (N)

PETITIONER(S):

**K.A. MOHANDAS, PROPRIETOR, LINK LAND TRADERS,
DOOR NO.39/1454, RAMAN KUTTY ACHAN ROAD,
ERNAKULAM, KOCHI- 682 016.**

**BY ADVS.SRI.T.K.RAJESHKUMAR,
KUM.APARNA SOMARAJAN.**

RESPONDENT(S):

**THE MANAGING DIRECTOR,
KERALA SMALL INDUSTRIES
DEVELOPMENT CORPORATION LTD.,
(SIDCO), 6TH FLOOR, HOUSING BOARD BUILDING,
SANTHINAGAR, THIRUVANANTHAPURAM- 695 001.**

BY ADV. SRI.R.T.PRADEEP.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: A TRUE COPY OF THE PROFILE OF THE PETITIONER.
- P2: A THE TRUE COPY OF THE RELEVANT PART OF NOTICE ALONG WITH THE E-TENDER INVITING E TENDER.
- P3: A TRUE COPY OF THE BAD SUBMISSION CONFIRMATION ISSUED BY THE E-TENDERING SYSTEM, GOVERNMENT OF KERALA, DATED 28.11.2014.
- P4: A TRUE COPY THE REPRESENTATION DATED 09.02.2015.

RESPONDENT'S ANNEXURES:-

- ANNEXURE I COPY OF THE NOTICE DATED 13/02/2015 TO PETITIONER INFORMING THE REASONS FOR REJECTION OF TECHNICAL BID.
- ANNEXURE II COPY OF THE CORRIGENDUM DIRECTING TO SUBMIT HARD COPIES OF UPHOLDED DOCUMENTS OF TECHNICAL BID ON 02/12/2014.
- ANNEXURE III COPY OF THE GENERAL TERMS AND CONDITIONS FOR E-PROCUREMENT.
- ANNEXURE IV COPY OF THE REPORT OF TENDER EVALUATION COMMITTEE COMMUNICATED TO THE STANDING COUNSEL OF RESPONDENT DATED 26/02/2015.
- ANNEXURE V COPY OF THE RELEVANT PAGE OF ELIGIBILITY CRITERIA FOR THE BIDDERS IN THE E-TENDER.

//TRUE COPY//

P.A. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 4936 of 2015

Dated this the 19th day of March, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

- "1) To direct the respondent to consider Exhibit. P4 representation dated 09.02.2015 submitted by the petitioner to reload the data's and documents including the Consortium Agreement uploaded by the petitioner and requesting the respondents to clear the technical problem of the official e-Tender portal before finalizing and awarding the Global e-Tender reference no.E&I/BTM/2014-15 to meet the interest of justice.*
- 2) To grant any other further or consequential relief the petitioner for and this Hon'ble Court deems fit in the facts and circumstances off the case."*

2. The case of the petitioner is that, the petitioner is doing business in the name and style as "Link Land Traders" engaged in the field of supply of materials to various Governmental and other Institutions in response to the Global E-Tender floated by the respondent. Pursuant to Ext.P2, the petitioner submitted bid, confirmation of which is discernible from Ext.P3. But nothing was heard after submitting the bid and on enquiry, the petitioner has been given to understand that some of the vital documents uploaded by the petitioner

were not found on the website and steps were being taken to oust the petitioner from the field of consideration. This made the petitioner to submit Ext.P4 representation on 9.2.2015 and approached this Court by filing the writ petition for having considered the bid submitted by the petitioner as well. It is stated that the petitioner submitted the bid, joining hands with a foreign consortium partner, which is permissible as per the terms of the tender. The credentials of the petitioner however came to be ignored, thus denying opportunity to participate in the bid and hence the challenge.

3. The respondent Corporation has filed a statement pointing out that, the petitioner did not submit the consortium agreement along with the tender as required. The last date for submitting the bid was 29.11.2014. The petitioner produced the hard copy only on 02.12.2014. The submission of hard copy was only to cross check the facts and figures furnished by way of e-tender and the subsequent production of hard copy cannot rectify the defect with regard to the non submission of relevant documents at the time of submission of tender, which otherwise will only enhance the time limit, which is not possible. The learned Standing Counsel for the Corporation submits that, no document was produced by the petitioner to

substantiate the experience and it was in the above circumstance, that the technical bid submitted by the petitioner was rejected.

4. When the matter came up for consideration before this Court on 03.03.2015, the following interim order was passed:

“The learned standing counsel appearing for the respondent points out that as per the norms of the tender, copy of which has been produced as Annexure-1, the lead member is necessarily to be an Indian Company, though, the consortium partner could be a Foreign Company. In the case of the petitioner, he is only an individual and not a Company and as such the petitioner is not entitled to participate in the bid. It is also pointed out that the petitioner did not produce proof of the requisite experience of 10 years along with the tender and as such the claim is not correct or sustainable and is not liable to be entertained. In the above circumstances, this Court does not find it as a fit case, to grant any interim order.

List the matter for consideration after 10 days.”

5. The learned standing counsel for the respondent sought to explain the eligibility criteria, copy of which has been produced as Annexure V, along with the statement dated 27.02.2015. Clause 2 of the eligibility criteria clearly specifies

that, 'the bidder shall be an Indian Company/ Consortium of maximum two companies. The lead member of the consortium shall be an Indian Company and the other Company can be a foreign company'. In the case of the petitioner herein, the petitioner is only an 'individual' and the establishment of the petitioner is only a proprietorship concern. This being the position, the consortium agreement stated as executed between the petitioner and consortium partner cannot cure the defect in so far as the petitioner does not satisfy the requirements.

6. The learned counsel for the petitioner points out that, such a stipulation as given in Annexure V, is not in conformity with the 'store purchase manual' and as such, no reliance can be placed on Clause 2 of Annexure V.

7. This Court finds it difficult to accept such proposition in so far as no such case as to the infringement of any provisions of the 'store purchase manual' is raised by the petitioner anywhere in the writ petition.

8. After hearing both the sides, this Court finds that, interference is not possible in view of the specific terms prescribed as to the eligibility criteria and further when, such criteria prescribed by the respondent are not under challenge

in this writ petition.

Interference is declined and the writ petition is dismissed accordingly. It is however made clear that this will not be a bar in the way of the petitioner to challenge the course and proceedings, if any violation of the relevant provisions of law/procedure is involved, by way of appropriate proceedings and if it is maintainable in accordance with law.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

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