

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 8487 of 2013 (I)

PETITIONER(S):

**JOHNY YOHANNAN, AGED 55 YEARS,
S/O.YOHANNAN, CONTRACTOR, AYNIVEETIL HOUSE,
VALARA P.O., ADIMALY, IDUKKI DISTRICT.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SMT.M.BINDUDAS**

RESPONDENT(S):

- 1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF WATER RESOURCES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE SUPERINTENDING ENGINEER,
IRRIGATION PROJECT CIRCLE, MUVATTUPUZHA-686 661.**
- 3. THE EXECUTIVE ENGINEER,
IRRIGATION DIVISION, IDUKKI, KATTAPPANA P.O.,
IDUKKI DISTRICT, PIN-685 508.**

BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-05-2015, ALONG WITH WPC. 303/2014 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE LICENCE OF THE PETITIONER ISSUED BY THE
2ND RESPONDENT WITH REGISTER NO.3A/SEPCM/2011-2012.

EXHIBIT P2: TRUE COPY OF THE DETAILS OF WORKS EXECUTED BY THE
PETITIONER WITH EFFECT FROM 16.10.2007.

EXHIBIT P3: TRUE COPY OF THE PERFORMANCE CERTIFICATE NO.A2-2230/08
DATED 7.2.2013 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE PERFORMANCE CERTIFICATE ISSUED BY THE
ASSISTANT EXECUTIVE ENGINEER, LOCAL SELF GOVERNMENT
DEPARTMENT, SUB DIVISION, ADIMALY, IDUKKI.

EXHIBIT P5: TRUE COPY OF THE PERFORMANCE CERTIFICATE ISSUED BY THE
ASSISTANT EXECUTIVE ENGINEER, LOCAL SELF GOVERNMENT
DEPARTMENT, SUB DIVISION, ADIMALY, IDUKKI.

EXHIBIT P6: TRUE COPY OF GO(P)NO.154/72/PW DATED 24.7.1972 ISSUED BY THE
GOVERNMENT.

EXHIBIT P7: TRUE COPY OF THE ORDER DATED 4.8.2008 ISSUED BY THE
1ST RESPONDENT.

EXHIBIT P8: TRUE COPY OF THE PROCEEDINGS NO.F3-339/2010 DATED 30.11.2012
ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P9: TRUE COPY OF LETTER DATED 11.1.2013 SUBMITTED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P10: TRUE COPY OF THE ORDER NO.F3.339/2010 DATED 14.2.2013 ISSUED
BY THE 2ND RESPONDENT.

EXHIBIT P11: TRUE COPY OF THE REPRESENTATION DATED 27.2.2013 SUBMITTED
BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): PHOTOCOPY OF THE ORDER VIDE G.O.(P) NO.154/72/PWD DTD.24.7.1972.

EXT.R2(b): PHOTOCOPY OF THE VIDE CIRCULAR NO.25935/MP1/11/WRD
DTD.16.1.2012.

//TRUE COPY//

P.S.TO JUDGE

K. VINOD CHANDRAN, J

W.P(C) Nos. 8487 of 2013, 303 of 2014,
2801 of 2014 & 6678 of 2014

Dated this the 25th day of May, 2015

J U D G M E N T

The petitioners are contractors who were aggrieved by an order of blacklisting made by the Government for reason of the petitioners having been presumed of having committed collusion by reason of not having submitted tenders with “quotation” for three works in the subject division after having purchased the tenders. The above writ petitions have been filed by “A” Class contractors of the Government, the two separate writ petitions by each being necessitated for reason of the petitioners seeking for consideration as licensed contractors with respect to two fresh tenders floated by the Government. The documents referred to are as produced in W.P(C) No. 6678/2014.

2. The petitioners licences were cancelled, by order No.339/2010 dated 14.02.2013 produced in the respective writ

petitions. It is also submitted that on admission , the petitioners were permitted to quote for the fresh tenders which quotes, however were not successful. The specific contention put forward by the learned counsel for the petitioner is that Ext.P2 is a circular bearing No.25935/MP1/11/WRD dated 16.1.2012, issued by the Principal Secretary, Water Resources (MP) Department, in which the blacklisting with respect to non submission of tenders consecutively for three works would be confined to a period ranging from three to six months. The circular as is evidenced from a reading of the same, is said to have been issued with respect to the Water Resources Department, on the basis of an enquiry conducted by the Director, Vigilance and Anti Corruption Bureau, necessitating a fool proof tender system.

3. True, the circular confines the period of suspension to be between three months to six months, on failure of submission of tenders, consecutively for three works after purchase

of tender forms. Denial of renewal of registration can only be if such instances have occurred consecutively on five times.

3. The impugned order at Ext.P3 is not seen issued on the basis of the circular issued by the Principal Secretary and is based on G.O(P) No.154/72/PW dated 24/7/1972, which is produced as Ext.P6 in W.P(C) No.8487/2013. The impugned order does not even refer to the circular produced at Ext.P2 based on which the above writ petitions are filed. A reading of the Government Order produced at Ext.P6 in WP(C) No.8487/2013 would indicate that as far back in 1972 a clause was incorporated in the Rules governing the conditions of Registration of Contractors. The incorporated clause is as follows:

“Blacklisting (vi): Collusion will also be considered by one of the malpractices. The contractors who purchase tenders in any sub division, division or circle and who do not tender consecutively for

three works in a sub-division, division or circle respectively will be considered as having committed collusion and be blacklisted.”

4. As per the said Government Order with the intention of avoiding collusion, which was found to endanger the very spirit of competitive tenders, a specific clause for Blacklisting was brought in, wherein there was a presumption that if a licensed contractor purchases his tenders in any sub-division, division or circle, and does not submit the same consecutively for three works, then, the same would be treated as an act of collusion deeming it to be a mal practice resulting in blacklisting of such contractors. Though such a presumption is raised, definitely, the same is rebuttable.

5. It is not disputed that the petitioners were issued with notice before the order was passed at Ext.P3. It is an admitted fact that on three consecutive occasions, the petitioners had purchased

tender forms and not submitted the tenders with their bids. The petitioners are stated to have been not aware of the rule and the explanation raised is also one of hospitalisation. The Government considered the contentions and found that ignorance of the rule is not an excuse for committing breach and there was no substantiation of the explanation offered as to the hospitalisation.

6. That ignorance cannot be pleaded to explain the breach committed by the contractors, is trite and the Government rightly found so. Admittedly, the contractors were registered after 1972, that is, after the rule was incorporated. On such incorporation as per Ext.P6, the presumption with respect to blacklisting becomes a condition of registration granted as per the rules. Any breach would attract blacklisting as has been stated in the Government Order; unless otherwise satisfactorily explained.

7. It is also to be noticed that there is no challenge against the Government order. The learned counsel for the

petitioner contends that the Government has not considered the plea of the petitioner in W.P(c) No.8487/2013 that his wife was hospitalised. In fact, specifically the Government had noticed the explanation with respect to hospitalisation, but, had rejected the same on the ground of no substantiating documents having been produced. This Court does not find any infirmity in the same. The petitioners from whom explanations were sought for not resorting to blacklisting, as provided in the rules, cannot merely assert a fact without proper substantiation. The malpractice alleged is of a serious nature and one which affects the very spirit of the Government resorting to competitive tenders for award of works carried out by its various departments. The contractors against whom such action is duly notified cannot rest content with a mere explanation, without substantiating the same. Ext.P2 is of no consequence in the teeth of the specific provision brought into the rules.

WPC.Nos.8487/2013 and connected cases

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In such circumstance, this Court does not find any ground to interfere with the orders challenged herein above. Writ petitions are dismissed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge