

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 6432 of 2014 (D)

PETITIONER:

**BIJU MANNUEL,
PURAYIDATHIL CONSTRUCTION & ENGINEERING,
PUTHENVEETIL BUILDING,
KANJIRAMATTOM BYEPASS JUNCTION, THODUPUZHA.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

RESPONDENT(S):

**1. THE KERALA POLICE HOUSING &
CONSTRUCTION CORPORATION LTD,
CHANDRASEKHARAN NAIR STADIUM, PALAYAM
THIRUVANANTHAPURAM-695033,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.**

**2. PETER KURIAKOSE,
KUNNATH HOUSE, KAKKANAD, C.S.Z.E.POST,
COCHIN-37.**

**R1 BY ADV. SRI.T.K.BIJU, SC, KPHCC
R2 BY ADVS. SRI.V.K.ISSAC
SRI.ISAC SANJAY
SRI.LEGY ABRAHAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- | | |
|---------------|--|
| EXT.P1 | COPY OF THE CONTRACTOR'S REGISTRATION CARD IN THE NAME OF THE PETITIONER |
| EXT.P2 | COPY OF THE CERTIFICATE ISSUED BY THE UNIVERSITY ENGINEER DATED 8.10.2013. |
| EXT.P3 | COPY OF THE NOTIFICATION IN THE MATHURBHUMI DAILY DATED 25.9.2013 |
| EXT.P4 | COPY OF THE LETTER DATED 21.11.2013 BY THE PETITIONER TO THE 1ST RESPONDENT |
| EXT.P5 | COPY OF THE QUESTION SUBMITTED BY V.D.JOSE TO THE PUBLIC INFORMATION OFFICER AND THE ANSWER FURNISHED BY HIM DATEAD 10.2.2014 |
| EXT.P6 | COPY OF THE QUESTION SUBMITTED BY K.J.ALEX TO THE PUBLIC INFORMATION OFFICER AND THE ANSWER FURNISHED BY HIM DATED 10.2.2014. |

RESPONDENT(S)' EXHIBITS

- | | |
|------------------|--|
| EXT.R1(A) | COPY OF THE TENDER NO.NIT NO.KPHCC/09/2013-14 DT.25/9/13 ISSUED BY THE R1 |
| EXT.R1(B) | COPY OF THE COMPLETION CERTIFICATE ISSUED BY THE MAHATMA GANDHI UNIVERSITY DT.8/10/13 TO THE PETITIONER |
| EXT.R2(A) | COPY OF LETTER NO.KPHCC/3332/2011/QM(PART) DATED 27/11/13. |

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 6432 of 2014

Dated this the 20th day of January, 2015

J U D G M E N T

The 1st respondent issued Ext.P3 notification for the construction works of Hi-Tech Dairy Farm Phase-II at Kolahalamedu. However the petitioner was not considered for the award of work. The work appears to have been awarded to the 2nd respondent. Challenging the award of the work to the 2nd respondent, this writ petition is filed.

2. A counter affidavit has been filed by the 1st respondent. It is stated in the counter affidavit filed by the 1st respondent that one of the eligibility condition to participate in the tender is execution of one or more major original civil construction works costing more than 50% of the estimate PAC of the work successfully during the last three years prior to the date of issue of tender form. It is the case of the 1st respondent that the petitioner has not produced any proof regarding the same at the time of issuance of tender form. Though it is stipulated that tender form will be issued only on proof of satisfaction of such eligibility condition, the

form was issued to the petitioner on condition that the petitioner shall produce experience certificate before the opening of the tender. The petitioner produced Ext.R1(b) at the time of tender and on the basis of R1 (b), the petitioner was permitted to participate in the tender. After participation, a complaint was received from the 2nd respondent. On verification, it is found that the petitioner has executed the work far below of the 50% of of the estimated PAC and accordingly the petitioner's tender was rejected. The petitioner has a case that he was never communicated about the rejection.

3. The 2nd respondent has filed a statement. It is stated that he has already executed the major part of the work and any discrepancy in this stage would upset the work awarded to him. An additional statement also has been filed before this Court by the 1st respondent to affirm that the petitioner was communicated with the rejection. It is further stated in the additional affidavit that the work was awarded to the 2nd respondent as per the order

dated 28.12.2013 and an agreement was executed on 9.2.2014. It is also stated that the work is at the final stage of competition.

4. The award of the contract and its norms is in the domain of public functionary. The authority while awarding contract is accentrated by the public interest. It is true that there is nothing on record to indicate that the petitioner has been communicated about the rejection, nevertheless it does not call for an interference by this Court as the work appears to have been almost completed. If the authority itself have ensured that while issuing tender forms, the petitioner has sufficient eligibility, the issue would not have arisen in this case. Admittedly, at the time of issuing tender forms, eligibility has to be satisfied. However, violating the norms, the tender form has been issued. The petitioner has a case that he is fully qualified to participate in the tender process. The petitioner submits that Ext.P2 is the completion certificate issued by the Mahatma Gandhi University which would clearly indicate that he has executed the work

sufficient to qualify him to participate in the tender process. This Court by invoking power of judicial review cannot unsettle, what is already carried out by the 2nd respondent based on the award of work. Therefore, without going to the other aspects of issues, I am of the view that any interference at this stage is against the public interest. Therefore, leaving open all the issues, the writ petition is disposed of. The petitioner is at liberty to approach the civil court claiming for damages, if any due, for decline of award of work.

With the above liberty this writ petition is disposed of. No costs.

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/