

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 6691 of 2015 (J)

PETITIONER/PETITIONER:

M/S.BASE CHEMICAL INDUSTRIES
REPRESENTED BY MANAGING PARTNER, ABDUL MAJEED PULATH
S/O.VEEERANKUTTY PULATH, S/O.VEEERANKUTTY PULATH
KOZHIPARAMBA.P.O, PUNNAPALA, VIA.WANDOOD
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.SHIBILI NAHA
SRI.SAJU RAGHAVAN

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM.
2. REHABILITATION PLANTATIONS LTD,
(A JOINT VENTURE OF GOVT.OF INDIA AND GOVERNMENT OF KERALA)
REGISTERED OFFICE, PUNALUR, KOLLAM DISTRICT
REPRESENTED BY ITS MANAGING DIRECTOR.
3. ANNA INDUSTRIES,
KOLANCHERRY, REPRESENTED BY ITS MANAGING PARTNER
KOLENCHERY.P.O, ERNAKULAM DISTRICT.
4. ANNA AGRO INDUSTRIES,
REPRESENTED BY ITS MANAGER, KOLENCHERRY.P.O
ERNAKULAM DISTRICT.
5. CENTRAL VIGILANCE COMMISSION,
SATARKA BHAVAN, G.P.O.COMPLEX, BLOCK-A
INA, NEW DELHI-110023.

R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.SAJI VARGHESE
R2 BY ADV. SMT.MARIAM MATHAI
R3,R4 BY ADV. SRI.SAJEEV KUMAR K.GOPAL
R1 BY SENIOR GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 TRUE COPY OF THE E-TENDER NOTICE DATED 9.12.2014 ISSUED BY THE 2ND RESPONDENT
- EXT.P2 TRUE COPY OF THE TERMS AND CONDITIONS ATTACHED TO EXT.P1 NOTIFICATION DATED 9.12.2014
- EXT.P3 TRUE COPY OF TENDER.OFFER DETAILS DATED 6.1.2015 DOWNLOADED FROM THE WEBSITE OF THE 2ND RESPONDENT
- EXT.P4 TRUE COPY OF THE FIELD TRIAL REPORT DATED 25.2.2015
- EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 20.2.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P6 TRUE COPY OF THE RELEVANT PAGES OF THE STORE PURCHASE MANUAL.
- EXT.P7 TRUE COPY OF THE CIRCULAR/OFFICE ORDER NO.68/10/05 ISSUED BY THE CENTRAL VIGILANCE COMMISSION NEW DELHI DATED 25.10.2005.
- EXT.P8 TRUE COPY OF THE CIRCULAR NO.01/01/2010 DATED 20.1.2010.
- EXT.P9 TRUE COPY OF THE TEST REPORT CONDUCTED BY THE PLANTATION CORPORATION KERALA THROUGH RUBBER RESEARCH INSTITUTE OF INDIA DATED 03.03.2015.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SJ

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.6691 of 2015

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Dated this the 8th day of April, 2015

JUDGMENT

Petitioner has approached this Court with the following prayers:-

"i) Issue a writ of mandamus or any other appropriate writ order or direction commanding the 2nd respondent not to proceed ahead in furtherance of Ext.P4 or finalise the award pursuant to Ext.P1 E-tender notice.

ii) Issue any appropriate writ order or direction to 2nd respondent to consider Ext.P5 representation submitted by the petitioner and report to this Hon'ble Court.

iii) Declare that award of contract to respondents 3 and 4 consequent to Ext.P4 would be violative of Ext.P6 guidelines, Ext.P7 and P8 circulars.

iv) Declare that the procedure adopted by the 2nd respondent is arbitrary and opposed to Article 14 and Article 229 of the Constitution of India."

2. The matter is brought up at the instance of the second respondent company- a Joint venture undertaking of the Government of India and Government of Kerala seeking to vacate the interim stay passed by this Court on 03.03.2015. Tender

relates to supply of adhesive to fix rain guards to rubber trees to facilitate 'Monsoon tapping'.

3. Heard both the sides in detail. Pursuant to the order passed by this Court on 06.04.2015, all the relevant files are brought by the second respondent and placed for perusal of this Court. Submission on behalf of the second respondent is made with reference to the contents of the file.

4. Mr.Saji Varghese, the learned counsel appearing for the second respondent submits that the sample supplied by the petitioner along with the samples supplied by the other five tenderers was tested by a Committee consisting of highly placed officers of the respondent, by applying the adhesive to the rubber trees, to test its quality to hold the 'rain guard' by periodical monitoring for sixteen days. The sample supplied by the petitioner turned to be defective and the same was oozing down, which could not fix hold the rain guard to the trees. Defects were noted in respect of the samples of other three bidders as well. In the said circumstances, the bids submitted by the four bidders including the petitioner were rejected and the

bids submitted by the remaining two were considered. After negotiations, the rate quoted by the 3rd respondent was brought down lower to the rate quoted by the petitioner and the proceedings are intended to be pursued and finalised accordingly.

5. The learned counsel submits that, exactly same was the practice being followed by the second respondent for the past more than two decades. The sample supplied by the bidders had to be physically tested by conducting the field trial, so as to decide the feasibility and suitability of the material to be supplied. It is pointed out that in the year 2011-12 also, the petitioner had participated in the tender and was placed as No.2. The very same procedure was followed then, so as to assess the quality of the sample. No challenge was raised by the petitioner, in any manner. It is stated that, in the year 2014-15 the petitioner was Rank No.1 based on the sample produced, but the rate quoted by the petitioner happened to be higher than 'L1', having being placed as L2. But still, the merit of the case was considered after the quality analysis and the petitioner was

awarded the contract for the year 2014-15, which by itself shows that the 2nd respondent was having absolutely no mala fides and was proceeding in a transparent manner. Coming to the year 2015-16, similar exercise was pursued and it is because of the fault of the sample, that the petitioner's tender came to be rejected and that there is absolutely no plea of mala fides, submits the learned counsel.

6. With regard to the contentions raised by the petitioner with reference to 'Clause 26' of Ext.P2 tender conditions, the learned counsel submits that, it only gives power and authority of the Company, whereby the company reserved the right to have any sample tested in appropriate laboratory, which process is always open and if it is necessitated, such a testing can be done which does not mean that the system which is being followed now should give way to the 'testing of sample' in a laboratory, to have the product accepted. The learned counsel further submits that, even now the 2nd respondent is ready to have the sample tested, so as to make the proceedings transparent and prove the bona fides, but for the time constraint.

The urgency pointed out is that, before the monsoon starts, the matter has to be finalised and the rain guard has to be fixed to the trees. The delay would affect as many as 1200 workers as well, who are engaged in the plantations of the second respondent. The approximate deal per month is stated as of about ₹2 crores and there is a chance to lose nearly ₹12 crores, if timely action is not taken. It is further stated that, the measures being taken by the second respondent are as part of the rehabilitation process to accommodate the repatriated Sri Lankan refugees.

7. With regard to the contentions raised by the petitioner with reference to Exts.P6,P7 and P8, the learned counsel submits that Ext.P6 is not applicable to the 2nd respondent herein, as the same is applicable only to Government and the Governmental departments. The 2nd respondent is a Company incorporated under the relevant provisions of the Company's Act, 1956 and hence the same is not applicable. Same is the position with regard to Exts.P7 and P8 as well, which have been issued by the Central Vigilance Commission. In the instant case, the State

Government is having 60% share and as such, the circular, if at all any issued by the State Vigilance Commission will be applicable and not Exts.P7 and P8.

8. After hearing both the sides and also after perusing the files, this Court finds that the interim order already passed by this Court does not require to be continued. Accordingly, the interim order is vacated.

9. The learned counsel for the 2nd respondent makes a fair submission to the effect that, the sample submitted by the petitioner will be sent for test and analysis by the competent authority (Rubber Board) forthwith and if the 2nd respondent gets a favourable report from the Rubber Board within 10 days, the said result will be considered and the petitioner's case also will be considered and that further negotiations will be made with the petitioner and the 3rd respondent, before finalising the bid. It is also added by the learned counsel for the 2nd respondent that, notwithstanding the present insinuating circumstances, by virtue of the bid quoted by the petitioner, another contract has been given to the petitioner, last week

which reflects the bonafides and transparent approach of the second respondent. This being the position, this Court does not find it necessary to keep the matter pending here. Submission made by the learned counsel for the 2nd respondent is recorded. The writ petition is disposed of, in terms of the submissions as mentioned above.

**P.R.RAMACHANDRA MENON,
JUDGE**

sj