

**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. 6979 of 2015 (V)**  
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**PETITIONERS :**  
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1. SOORAJ, AGED 35 YEARS  
SON OF KRISHNAMURTHY, PROPRIETOR, AQUA FARMS,  
THENARI PO, ELAPPULLI, PALAKKAD DISTRICT
2. HARIDAS T., AGED 49 YEARS,  
KAIKKOLANPOTTAKALAM, CHIRAVATTAM, VEROLI P.O.,  
PALPULLI, PALAKKAD DISTRICT
3. KRISHNANKUTTY, S/O.AARU,  
AARAMURI, THATHAMANGALAM P.O.,  
PALAKKAD DISTRICT
4. MURALEEDHARAN  
SUMASREE, NADUTHARA, PUTHUSSERI P.O.,  
PALAKKAD DISTRICT
5. YOUSUF, AGED 49 YEARS,  
KUTTIPADAMKALAM, MUTHALAMADA P.O.,  
PALAKKAD DISTRICT

BY ADVS.SRI.JACOB SEBASTIAN  
SMT.SHAMSEERA. C.ASHRAF  
SRI.T.U.SUJITH KUMAR  
SMT ANU JACOB

**RESPONDENTS :**  
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1. STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
DEPARTMENT OF FISHERIES, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM 695001
2. THE AGENCY FOR DEVELOPMENT OF AQUACULTURE  
KERALA (ADAK), TC 15/1494, REEJA,  
MINCHIN ROAD, THYCAUD P.O., THIRUVANATHAPURAM-695015  
REPRESENTED BY ITS EXECUTIVE DIRECTOR

R1 BY SENIOR GOVERNMENT PLEADER SRI. JOSEPH GEORGE  
R2 BY ADV. SRI.S.SUDHEESH KUMAR, SC,

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

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1: A TRUE COPY OF THE SUMMARY OF THE PROJECT NAMED  
'MATSYA SAMRUDHI'
- P2: A TRUE COPY OF THE LETTER DATED JULY 20,2012 OF THE SECOND  
RESPONDENT
- P3: A TRUE COPY OF THE LIST OF FISH SEED SUPPLIERS REERRED TO IN  
EXHIBIT P2.
- P4: A TRUE COPY OF THE NOTICE INVITING TENDER DATED FEBRUARY 19, 2015
- P5: A TRUE COPY OF THE REPRESENTATION DATED 26.02.2015 SUBMITTED BY  
THE PETITIONERS ALONG WITH SOME OTHER FISH FARMERS BEFORE THE  
MINBISTER OF FISHERIES

**RESPONDENT(S)' EXHIBITS :**  
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- EXT.R2(A): COPY OF THE MINUTES IN THE MEETING PRESIDED OVER BY THE  
DIRECTOR OF FISHERIES.
- EXT.R2(B): COPY OF THE GOVERNMENT ORDER NO. 30/2012F&PD DT 13/4/2012.
- EXT.R2(C): COPY OF THE TENDER NO. ADAK/B1/589/12 DT 26/5/2012.
- EXT.R2(D): COPY OF THE GOVERNMENT ORDER (P) G.O.(P) NO. 15/2013/FIN.  
DT 7/1/2013.
- EXT.R2(E): COPY OF THE NOTICE PUBLISHED IN THE NEWS PAPERS.

**//TRUE COPY//**

**P.A. TO JUDGE**

**bp**

**P.R. RAMACHANDRA MENON, J.**

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W.P.(C). No. 6979 of 2015

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Dated this the 19<sup>th</sup> day of March, 2015

**JUDGMENT**

The petitioners are stated as small scale agriculturists engaged in fish farming and aquaculture and are running fish hatcheries and fish seeds supply for several years. They are supplying fish seeds to the respondents, to be distributed to the local farmers for the past three years. While so, quite contrary to the terms and conditions issued earlier, the 2<sup>nd</sup> respondent herein floated Ext.P4 tender inviting fresh bid for the next three years, to supply fish seeds, projecting the estimated amount as ₹ 8.3315 crores. According to the petitioners, such a move is only to extend unlawful gains to some fish hatcheries outside the State of Kerala and that no fish hatchery in Kerala is having such a magnitude and financial capacity to take part in the bid pursuant to Ext.P4. The second respondent is attempting to bring about monopoly in the field of supply which is quite detrimental to the rights and interests of the persons like the petitioners. It is in the said circumstance that the petitioners are

constrained to approach this Court as no proper opportunity was obtained to participate in the bid in spite of the fact that the petitioners are continuing/existing suppliers.

2. The second respondent has filed a counter affidavit pointing out that the idea and understanding of the petitioners are throughly wrong and misconceived. It is stated that, the existing contract with the persons concerned is valid for a period of three years which will come to an end by 31<sup>st</sup> May, 2015. The existing arrangement was pursuant to a tender notification issued earlier and after identifying the eligible persons, preparing a list, to effect the supplies and orders are being given on a rotation basis, without any complaint from any corner. Coming to the present issue, after considering the various facts and figures, it has been decided to go for 'e-tender', more so in view of the mandate of the orders issued by the Government particularly by way of Ext.R2(d) G.O. Bearing No. G.O.(P) NO.15/2013/Fin. dated 7.1.2013.

3. Considering the extent of requirement and demand supply ratio, the total estimate was roughly fixed accordingly, as given in Ext.P4. It is stated that the tenderer does not require

to quote for the entire amount of more than ₹8 crores so as to participate in the bid and that, the parties are at liberty to submit the bid in respect of the particular item or items for which they want to participate. Separate items/heads have been given in the tender form. The version of the 2<sup>nd</sup> respondent is discernible from paragraph '5' of the statement, which reads as follows:

"5. It is submitted that as per G.O.(P) No.15/2013/Fin. dated 07.01.2013, the Government have issued orders that all Government Departments & PSUs will strictly follow the e-procurement system for all tenders exceeding ₹25 lakh. A true copy of the Government Order (P) G.O.(P) No.15/2013/Fin. dated 07.01.2013 is produced herewith and marked as Exhibit R2(d). The estimated requirement of fish/scampi seeds for the next one year for the implementation of various aquaculture projects in the state is approximately 13.6 crores of seeds which have an estimated cost of ₹9 crores. In view of the Government Order 47<sup>th</sup> Executive Committee meeting held on 05.01.2015 directed to follow e-procurement system for the purchase of fish/scampi seeds. It is submitted that ADAK has no way other than to implement e-tender procedures as prescribed in the Government Order read above in view of the fact that ADAK is a Government Agency. The present Government Order aimed at more transparency and economy in the supply of seeds. The Government have all the powers to change the practices being followed in the supply of seeds as a part of policy. The contention that no fish hatcheries in Kerala have the

magnitude and financial capacity to take part in the tender is also not true to facts. There is provision in the tender notice to quote the rate for a single species of seed or quote rate for various species jointly or by forming groups of suppliers.”

4. It has been pointed out by the learned Standing Counsel for the second respondent that, the version of the petitioner that the attempt of the said respondent is to oust the bidders from Kerala is the farthest and imaginative one and contrary to the actual facts and figures. It is stated that pursuant to Ext.P4 tender, 11 bidders from Kerala submitted tenders, among which, one was rejected as technically not qualified. All the other tenders, being technically qualified, are to be considered with regard to the price quoted by them.

5. In spite of the fact that the petitioners are existing suppliers, for reasons best known to them, they did not participate in the bid within the prescribed time and the last date is already over. It is also asserted in the said statement that, the only change sought to be effected was, to switch over the system by way of 'e-tender'. The last date for bid submission was on 11.3.2015 and the date of opening was fixed as 16.3.2015. The Tender was given vide publicity as per Ext.R2(e) notice published

in the leading newspapers. It is added that, there is no intent to create monopoly to any hatcheries outside the State.

In view of the assertion made from the part of the second respondent that, the tender specification was published in the website as clearly stipulating the scope of the tender, making all interested parties to be aware that they could participate in the tender 'item wise', this Court finds that no prejudice has been caused to the petitioners in any manner and there is no justification for not participating in the tender. In the said circumstance, this Court finds it difficult to interfere in the matter. No tenable ground is raised. Interference is declined and the writ petition is dismissed.

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

kp/-