

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 8482 of 2015 (I)

PETITIONER :

**V.M.ZAKKEER BABU, AGED 41 YEARS,
S/O.VALLRAKODATH HOUSE, MUTTOM,
THAIKKATTUKARA.P.O., ALUVA-683 106**

**BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.ADARSH KUMAR**

RESPONDENTS :

- 1. CORPORATION OF COCHIN
ERNAKULAM, PIN-682 011,
REPRESENTED BY ITS SECRETARY**
- 2. THE SECRETARY,
CORPORATION OF COCHIN, ERNAKULAM, PIN-682 011**
- 3. SHAJI,
S/O.RAJAN, MANIYATTIL HOUSE, KAKKANADU.P.O,
ERNAKULAM DISTRICT.**

**R1 & R2 BY ADV. SRI.V.E.ABDUL GAFOOR,SC,
R3 BY ADV. SRI.P.M.ZIRAJ
BY SRI.P.K.SOYUZ,SC,COCHIN CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON 10-07-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: SERIES : TRUE COPIES OF THE EXPERIENCE CERTIFICATES ISSUED TO THE PETITIONER
- EXHIBIT P2: TRUE COPY OF THE TENDER NOTICE DATED 5.11.2014.
- EXHIBIT P.3: TRUE COPY OF WP(C) 31941/2014 WITHOUT EXHIBITS
- EXHIBIT P.4: TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN WP(C)31941/2014.
- EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN WP(C)31941/2014.
- EXHIBIT P6: TRUE COPY OF THE TENDER NOTIFICATION DATED 6.3.2015.
- EXHIBIT P7: TRUE COPY OF COMMUNICATION DATED 16.3.2015 ALONG WITH EMD RECEIPT.
- EXHIBIT P8: COPY OF THE EXPERIENCE CERTIFICATES ISSUED BY THE SOME CLIENT'S OF THE PETITIONER.
- EXHIBIT P9: COPY OF THE COMMUNICATION ISSUED BY THE COCHIN CORPORATION WASTE SHIFTING LORRY OWNERS ASSOCIATION, DT 23/3/2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 8482 of 2015

Dated this the 10th day of July, 2015.

JUDGMENT

The petitioner has approached this Court seeking a direction to quash clause 8 of Ext.P6 tender notification insofar as it prescribes a pre-qualification stipulation that 20 or more tipper lorries ought to have been in operation for two or more previous years and the tender/bidder ought to have executed work to the tune of ₹2 Crores to be considered eligible to award the work for removing solid waste from the various parts of the respondent Corporation.

2. The petitioner is desirous of assisting the first respondent corporation in removal and transportation of solid wastes within the corporation limits by executing works on contract basis or otherwise. The petitioner alleges that he quoted the lowest bid per lorry load for removal of waste viz; ₹2,585/-. According to him, this was in full and sufficient compliance of Exts.P2 and P3. However, the third respondent,

who had quoted an exorbitant rate of ₹2,800/- per lorry load of removal of waste, had chosen to approach this Court by filing W.P.(C) No.31941 of 2014 stating that he is an A class contractor and claiming an alleged right of precedence over the petitioner herein. The challenge to the successful award of tender to the petitioner was negated by this Court as per Ext.P5 judgment. The second respondent was directed to consider and pass orders on the representation filed by the third respondent, after affording him an opportunity of being heard. The petitioner alleges that the second respondent thereafter issued a belated communication for a hearing on a particular day and the parties were present and heard. However, no consequent orders were passed by the second respondent. According to the petitioner, the delay in passing formal orders was to singularly favour the third respondent, who was holding over as the waste management contractor in the place of the petitioner. His further grievance is that to make thing worse, respondent 1 and 2 had issued Ext.P6

tender notification dated 6.3.2015 wherein a conscious attempt has been made in favour of the third respondent to exclude the petitioner and all other prospective bidders by including Clause 8 which prescribes certain pre-qualification stipulation as stated above. According to the petitioner, the same is illegal and liable to be quashed.

3. During the pendency of the petition, the petitioner filed I.A.No.6646 of 2015 for a direction to respondents 1 and 2 to accept the tender of the petitioner and consequently award the tender, that forms the subject matter of this writ petition. Against that, the third respondent has filed a counter affidavit justifying the stipulations in Clause 8. He further contended that the petitioner does not have enough lorries to face in case of crises like strike etc.

4. The learned Single Judge, who considered the interlocutory application, directed the respondent corporation to open the bids and to consider the petitioner's offer as well, without reference to condition No.8, which shall be eventually

determined by this Court.

5. The respondent Corporation filed a statement contending that Clause 8 of Ext.P6 tender condition stipulates prior experience in supplying Tipper Lorries for Government or Quasi Government agencies in previous years. Those who participate in tender have to show experience in supplying at least 20 Tipper Lorries for the previous 2 years and should have executed this kind of work for at least ₹2 Crores. This condition is included considering alarming increase in quantum of waste which the Corporation has to handle on day to day basis. The Corporation is collecting 200 tons of waste per day. This waste collected from the Cochin Corporation area is to be transported to the Bhramapuram Plant which is 22 km. away from the city. For this purpose, the corporation requires 30-40 Tipper Lorries over and above the vehicles owned by the corporation. This waste has to be removed everyday to avoid environmental pollution and to control epidemics which may be caused due to the accumulation of waste. As stated above, to

avoid accumulation of waste and to remove the waste on a daily basis, the person who is getting the contract should have enough number of vehicles to supply for the uninterrupted removal of the waste. It is to ensure the uninterrupted removal of waste that clause 8 is included in the tender conditions. Clause 8 was included only to ensure removal of waste in an efficient manner. The petitioner is having only 2 vehicles and is doing this activity of removal of waste in Kalamassery Municipality. It is submitted that as per clause 3 of tender condition, those who participated in the tender should remit ₹7,50,000/- as EMD and receipt for the same has to be produced along with the tender documents. However, the petitioner has not remitted ₹7,50,000/- for participating in Ext.P6 tender. He has produced copy of a receipt which he received while remitting EMD amount for previous tender. The petitioner has violated conditions as contemplated in clauses 3 and 8 of Ext.P6 tender. It is not possible to accept the copy of receipt of EMD which the petitioner deposited for participating

in the tender for the last financial year. It is further stated that as per the interim order of this Court, the tender submitted by three persons, including the petitioner's were opened. The corporation has not taken any decision on these tenders since the matter is pending before this Court. Clause No.8 is included to ensure that the removal of the waste is done without any interruption and to ensure the areas within the limits of the Cochin Corporation is free from pollution due to accumulation of waste in the interest of public at large.

6. Arguments have been heard.

7. The learned counsel for the petitioner would argue that conscious circumstances have been made in favour of the third respondent to the exclusion of the petitioner and all other prospective bidders by including clause 8 of Ext.P6. The impugned pre-requisite as rightly pointed out by the petitioner has no nexus with any reasonable object sought to be achieved. Evidently, the petitioner was the lowest bidder. Once the work is awarded by the respondent, it is the duty of

the person who is awarded with the work, to make the vehicles available for transportation of the waste. As rightly pointed by the learned counsel for the petitioner, the inclusion of clause 8 would lead to trade monopoly. The conditions of supply of minimum number of 20 tipper lorries continuously for two years is hopelessly vague, as submitted by the learned counsel for the petitioner. The stand taken by the Corporation that any prospective bidder ought to have supplied a minimum of 20 tipper lorries for the purpose of garbage clearance, which is not a routine or regular activity to assume that every participant in the bidding process would have required experience. Of course, the Corporation can ensure that the person, who is entrusted with the work, has the ability to honour the contract once he becomes the successful bidder. For that, the Corporation can insist for the production of suitable guarantee. The stand of the Corporation that those who participate in tender have to show experience in supplying at least 20 tipper lorries for the previous two years for any

activity for announcing that the bidders could not commit any default is actually a smokescreen to sideline participants, like the petitioner. The stipulation that the tenderers ought to have executed work to the tune of ₹2 Crores is also without any basis, as the said clause has the effect of incentivizing and giving a premium to exorbitant rates like the tender quoted by the third respondent, while the tenders like the petitioner are deprived of such an opportunity, merely on account of the fact that they quoted lower bids and work more efficiently and productively.

8. Incidentally, the learned counsel for the petitioner would submit that the EMD of Rs.7.5 lakhs deposited by the petitioner is still with the respondent corporation which should be adjusted against the EMD for the current year.

In the result, the writ petition is allowed. Clause 8 of Ext.P6 tender notification is quashed, insofar as it prescribes a pre-qualification stipulation that 20 or more tipper lorries ought to have been operated for two or more previous years

and the further stipulation that the tenderer/bidder ought to have executed work to the tune of Rs.2 crores to be considered eligible is quashed. Respondents 1 and 2 are directed not to insist upon the said criteria which is impugned and to accept the petitioner's bid qua Ext.P6 notification de hors strict compliance with the pre-qualification criteria stipulated in clause No.8 of Ext.P6 tender notification.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.