

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WP(C).No.9067 of 2015 (G)

PETITIONER:

**ALEN WILSON,S/O.PAUL WILSON,AGED 25 YEARS,
THALIATH HOUSE,KOTTAMOM,NEELEESWARAM P.O,
KALADY,ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON
SMT.SONIYA SUNNY**

RESPONDENT'S:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF AGRICULTURE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF AGRICULTURE,
VIKAS BHAVAN,THIRUVANANTHAPURAM - 695 033.**
- 3. EXECUTIVE ENGINEER (AGRI),
DEPARTMENT OF AGRICULTURE,
ALAPUZHA,PIN-688 001.**

R1-R3 BY GOVT .PLEADER SRI.ABDUL SALAM.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.9067 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1 - TRUE COPY OF THE RELEVANT PAGE NOTICE INVITING TENDER FOR
WORK ISSUED BY THE SECOND RESPONDENT.**

**EXT.P2 - TRUE COPY OF THE SCHEDULE TO THE TENDER SUBMITTED BY THE
PETITIONER SHOWING THE AMOUNT QUOTED BY HIM.**

**EXT.P3 - TRUE COPY OF THE ORDER DATED 04-03-2015 ISSUED BY THE
SECOND RESPONDENT.**

EXT.P4 - TRUE COPY OF THE G.O(P) NO.03/15/FIN DATED 05-01-2015

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.9067 of 2015

Dated this the 12th day of June, 2015.

JUDGMENT

The petitioner was before this Court challenging Ext.P3 award, made in favour of the petitioner which was tendered by the official respondents. The challenge against Ext.P3 is with respect to the demand for Rs.58,02,100/- (Rupees Fifty eight lakhs two thousand one hundred only). being the amount reduced from the Probable Amount of Cost (PAC). The PAC as per the tender notification for the work of "Chain linked fencing at State Vegetable Farm, Vandiperiyar" in Idukki District was an amount of Rs.3,48,73,544/- (Rupees Three Crores forty eight lakhs seventy three thousand five hundred and forty four only).

2. The petitioner quoted 14.5% below the said PAC and being the lowest tenderor, he was awarded the contract. The unbalanced amount, being the difference between the PAC and

the bid amount as per the tender notification, was to be deposited with the official respondent as an additional performance guarantee. The petitioner contends that the PWD manual of the State stood amended by Ext.P4 and hence there could be no such demand made, since the tender notification itself was subsequent to Ext.P4.

3. The PWD Manual as it stood earlier has been extracted in the Reply Affidavit as hereunder:

"2009.7 Performance Security Deposit.

The selected bidder shall produce a security deposit equal to 10% of the contract amount in the form of Bank Guarantee from any nationalised or scheduled bank which shall remain valid till 28 days from the completion of the defect liability period.

The performance security deposit less any amount due from the contractor shall be returned to him, on written application in the form given in Appendix 2000D after 28 days from the date of completion of the defect liability period.

If the bid of the successful bidder is unbalanced in any item in the case of item rate contractor or in total in the case of percentage rate contract, relation to the estimate, the difference in cost should be deposited as performance security deposit for unbalanced price in addition to the normal performance security deposit."

4. The modification made in Ext.P4 order was as hereunder:

"i. Performance Guarantee will be 5% of the contract value.

ii. At least fifty percent of the Performance Guarantee will be in the form of Treasury Fixed

Deposit and the rest in the form of Bank guarantee or any other forms prescribed in the revised PWD Manual.

iii. In addition to Performance Guarantee, Security Deposit for a work shall be collected by deduction from the running/final bill of the contractors @2.5% of the gross amount of each running and/or final claims till expiry of defect liability period.

iv. Security Deposit can be released against bank guarantee on its accumulation to minimum amount of Rs.5 lakh. The minimum amount of Bank Guarantee shall not be less than Rs.5 lakhs at a time."

5. The modification was only in the matter of performance security deposit *inter alia* reducing it to 5% of the contract value as against 10% stipulated earlier. However, the clause with respect to the unbalanced amount being the difference between the PAC and the bid amount remained as such. It is to be specifically noticed that the Government Order did not substitute the earlier clause of performance security deposit but only modified it to the extent noticed at Ext.P4. The stipulation with respect to the unbalanced amount stood as such in the PWD Manual.

6. The learned counsel for the petitioner would invite this Court's attention to the CPWD Manual based on which modifications were brought; in Ext.P4, to contend that the CPWD

Manual, does not speak of any deposit of unbalanced amount. Ext.P4 cannot be understood as a complete adoption of the CPWD Manual. The Government only thought that the stipulation as to the performance guarantee/security deposit as provided in the CPWD Manual could be adopted also in the case of Government contracts tendered by the State.

7. Further, it is to be noticed that, Ext.P1 is the notification, by which the tenders were invited, which was subsequent to Ext.P4 order modifying the PWD Manual. Ext.P4 specifically provided so in Clause 3(c)(ii), which is extracted hereunder:

"i) If the quoted PAC differ estimate PAC by more than 25%, the bid will be rejected.

ii) If the quoted PAC differ estimate PAC upto 25%, the bidder will remit performance guarantee equal to the unbalanced price in the estimate P.A.C. And quoted P.A.C. This will be released only after satisfactory completion of the work.

iii) No interest, in any circumstances, shall be payable by the department to the bidder for the EMD/security deposit/performance guarantee furnished."

8. In such circumstances, the understanding of the Government also even at the time of publication of Ext.P1 notification was that Ext.P4 only intended modification of the performance guarantee/security deposit and did not at all tinker

with the stipulation for deposit of unbalanced amount. It is also to be noticed that the petitioner with open eyes applied for the tender and on having successfully bid, challenged the award on the ground of a notification issued modifying the PWD Manual. This Court has already found that the challenge raised by the petitioner cannot be sustained. The petitioner cannot also turn around and assail a condition under which he bid for the tender.

The writ petition hence would stand dismissed. Since the petitioner had, immediately on the award, approached this Court and this Court having granted a stay, the petitioner shall be granted 14 days from today on the same terms as earlier, to conclude the contract by executing the agreement, without imposition of any penalty.

The writ petition dismissed with the above observation.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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