

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 10972 of 2014 (V)

PETITIONER(S) :

MATHAI THOMAS
PULLATTU VEEDU, ARYANKAVU P O,
KOLLAM.

BY ADVS.SRI.V.V.ASOKAN (SR.)
SRI.R.JAIKRISHNA

RESPONDENT(S) :

1. DIVISIONAL FOREST OFFICER,
ACHENKOVIL FOREST DIVISION, ACHENKOVIL P.O.,
KOLLAM-689 696.
2. CHIEF CONSERVATOR OF FOREST,
SOUTHERN CIRCLE, VANASREE COMPLEX,
CHINNAKKADA P.O., KOLLAM-691 001.
3. ADDITIONAL PRINCIPAL CHIEF FOREST CONSERVATOR,
SOUTHERN CIRCILE,
VANASREE COMPLEX, CHINNAKKADA P O, KOLLAM-691 001.

BY GOVERNMENT PLEADER SRI.THOMASKUTTY M.A. &
BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1:- TRUE COPY OF THE TENDER NOTIFICATION AS PUBLISHED IN THE MALAYALA MANORAMA DAILY DTD 24/11/2013.
- EXT. P2:- TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER DTD 8/1/2014.
- EXT. P3:- TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DTD 27/1/2014.
- EXT. P4:- TRUE COPY OF THE REPLY GIVEN BY THE PUBLIC INFORMATION OFFICER, DIVISIONAL FOREST OFFICER, PUNALUR, DTD 21/6/2013.
- EXT. P5:- TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DTD. 6/2/2014.
- EXT. P6:- TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT DTD. 20/2/2014.
- EXT. P7:- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 4/3/2014.
- EXT. P8:- TRUE COPY OF THE LETTER OF THE 1ST RESPONDENT DTD. 12/3/2014.
- EXT. P9:- TRUE COPY OF THE RE-TENDER NOTICE ISSUED BY THE 1ST RESPONDENT DATED 12/01/2015.
- EXT. P10:- TRUE COPY OF THE RE-TENDER FORM DATED NIL.

RESPONDENT(S) ' EXHIBITS :

- EXT. R1(A):- TRUE COPY OF TENDER NOTIFICATION PUBLISHED IN THE GOVERNMENT GAZETTE NO.49 DATED 10/12/2013.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J.

W.P.(C) No. 10972 of 2014 (V)

Dated this the 21st day of May, 2015

J U D G M E N T

The petitioner was aggrieved with the non-acceptance of the alleged condition of extension of time, sought for by the petitioner, in execution of the contract which is seen to have been awarded to him by Ext.P5.

2. The brief facts to be noticed are that the respondents – Officers of the Forest Department of the State, called for sealed tenders from A-class contractors registered under the Forest Department for working down timber as round logs, billets, firewood and teak poles from the marked trees standing in the plantations, mentioned in the schedule appended to tender notice no.A3-2567/12 dated 16.11.2013, produced along with the counter affidavit as Ext.R1(a). The approximate contract value was Rs.79.25 lakhs and the Earnest Money Deposit came to Rs.1,98,125/-.

3. The petitioner's quotation was accepted and the petitioner was called for negotiations, in which the petitioner reduced the tendered rate from 70% above the approximate contract value to 55% and then to 34.5%. The petitioner was awarded the work as per Ext.P5, on behalf of the Chief Forest Conservator. The work was awarded at a rate above 34.5% of the approximate contract value as agreed to by the petitioner. The work was to be executed within three months from the date of execution of the agreement; which agreement had to be executed as per the note to Ext.R1(a). The petitioner admittedly did not execute the agreement nor comply with the note to the tender notice dated 16.11.2013, purportedly due to the refusal of the department to grant extension of time for execution of the contract, from that specified in the tender notification.

4. The writ petition was filed before this Court contending that the petitioner had specifically sought for extension of time to six months, from the three months as

per the tender notice. It was also alleged that the petitioner had reduced the quoted rate only on the specific condition of grant of extension of time. A status quo order was granted and subsequently, while the writ petition was pending, this Court modified the interim order of status quo. By order dated 2.12.2014, the respondents were permitted to re-tender the work, without forfeiting the earnest money deposit paid by the petitioner. The petitioner hence sought for an amendment challenging Ext.P9 re-tender notification itself.

5. The work was re-tendered, but, however, there was no takers and it is submitted on behalf of the respondents that the work is now sought to be carried out by the Department itself under the 'Convenor System', as has been done in the nearby plantations.

6. At the outset it is to be noticed that, but for the assertion of the petitioner that the reduction in contract rate was on condition of extension of time, there is no

material to substantiate the same. Admittedly, the tender notification specified the area in which the work had to be carried out, that too within a period of three months from the date of execution of the agreement, and the petitioner had submitted the quotation fully aware of the period within which the work had to be completed. True, the petitioner had, subsequent to the submission of tender, filed two representations before the Divisional Forest Officer and the Chief Forest Conservator, produced respectively at Exts. P2 and P3, claiming extension of time. But even the said representations do not indicate that the reduction of the quoted rate was on condition of extension of time. Again, despite Ext.P5 order being issued awarding the contract, the petitioner did not execute the agreement nor did he comply with the conditions as per the note in the notification.

7. The note appended to the notification in Ext.R1(a) is extracted hereunder:

"കുറിപ്പ്:സ്വീകാര്യമായ ദർഘാസ് സമർപ്പിക്കുന്ന കരാറുകാരൻ കരാർ തുക 3 ലക്ഷം രൂപയിൽ അധികരിക്കുന്ന പക്ഷം കരാർ തുകയുടെ 10 ശതമാനം വരുന്ന തുകയ്ക്കുള്ള റവന്യൂ അധികാരികൾ നൽകുന്ന സോൾവൻസിയോ അല്ലെങ്കിൽ ദേശസാൽകൃത ബാങ്ക് നൽകുന്ന ബാങ്ക് ഗ്യാരൻറിയോ ഉടമ്പടി വയ്ക്കുന്നതിന് മുൻപായി ഹാജരാക്കേണ്ടതാണ്. ദർഘാസ് അംഗീകരിച്ച് അറിയിക്കുന്ന തീയതി മുതൽ 15 ദിവസത്തിനകം മൊത്തം കരാർ തുകയുടെ 5 ശതമാനം തുക അല്ലെങ്കിൽ 1 ലക്ഷം രൂപ ഏതാണോ കുറവ് ആ തുക സെക്യൂരിറ്റിയായി കെട്ടിവച്ച് ₹100 മുദ്രപത്രത്തിൽ നിശ്ചിത കരാർ ഒപ്പ് വയ്ക്കേണ്ടതാണ്. കൂടാതെ അടങ്കൽ തുകയിൽ നിന്ന് കുറഞ്ഞ നിരക്ക് രേഖപ്പെടുത്തുന്ന ദർഘാസുകാർ എത്രശതമാനം തുകയാണോ കുറച്ച് രേഖപ്പെടുത്തിയിരിക്കുന്നത് എങ്കിൽ ആയതിനുള്ള തുകയ്ക്ക് തുല്യമായ സംഖ്യ പെർഫോമൻസ് ഗ്യാരൻറിയായി കെട്ടിവയ്ക്കേണ്ടതാണ്. ദർഘാസ് സമർപ്പിക്കുന്ന കരാറുകാർ നിശ്ചിത സമയത്തിനുള്ളിൽ സമർപ്പിക്കുന്ന നിയമപ്രകാരമുള്ള പോസ്റ്റ് ഓഫറുകളും സ്വീകരിക്കുന്നതാണ്. ടിംബർ, കഴകൾ, വിറക്, എന്നിവയ്ക്ക് പ്രത്യേകം പ്രത്യേകം ദർഘാസ് നിരക്ക്

രേഖപ്പെടുത്തി സമർപ്പിക്കുന്ന ദർഹാസുകൾ ഒരു
കാരണവശാലും സ്വീകരിക്കുന്നതല്ല. എന്തെന്നാൽ
പ്രസ്തുത തോട്ടത്തിലെ എല്ലാ ജോലികളും
പൂർത്തിയാക്കുന്നതിനുവേണ്ടിയുള്ള ദർഹാസാണ്
ഇപ്രകാരം ക്ഷണിച്ചിരിക്കുന്നത്."

8. Exts. P2 and P3, it is to be reiterated, do not indicate that the reduction of rate was on condition of extension of time to six months from the three months as notified in the tender notice. Further the petitioner had expressed his inability to complete the work within the three months time specified; since the petitioner was apprehensive that there would not be available enough labour to complete the work within the stipulated period, especially since the three month period had only 76 working days. That was an issue which the petitioner ought to have reckoned before submitting a tender, to the notification, which specifically indicated the period for completion of work. There is also no nexus discernible as to the contract value agreed by the petitioner and the time required for

execution of the work. One does not in any manner control the other and the extension sought, can only be considered as an after thought. It cannot at all be found that the reduction agreed to by the petitioner, as admitted by the petitioner, was on a specific condition of extension of period of work to six months from the three months, as notified in the tender notice.

9. It cannot also be ignored, as submitted by the learned Special Government Pleader (Forest), that the petitioner after having been issued with Ext.P5 dated 06.02.2014, by covering letter (Ext.P6) dated 20.02.2014, failed to execute the agreement and comply with the conditions as indicated in the extracted note above. The petitioner, having not complied with the conditions specified in Ext.P5 and the tender notification, approached this Court with the assertion that the reduction of contract value was only on condition of extension of time to six months. In fact, the petitioner ought to have executed the

agreement and commenced the work, upon which alone the petitioner could have raised a valid contention of extension of time. Especially since the petitioner was aware of the fact, even while submitting the tender that the period mandated for completion of the work was three months from the date of execution of the agreement.

10. The contention with respect to the extension of time, as asserted by the petitioner, has already been negated by this Court. In such circumstances, this court does not discern any ground to direct the award of the work as per Ext.P5, at this point of time, for reason only of the default committed by the petitioner in not having executed an agreement and complied with the tender conditions. The petitioner on a specious premise, based on an extension of time sought for against the terms of the notification, failed to effectuate the conclusion of the contract awarded, by execution of the agreement. The petitioner by his own default of not having concluded the contract has declined

himself the locus standi to raise a valid cause of action for now being awarded with the contract.

11. As to the challenge against the re-tender, it is to be noticed that the same was specifically on the direction of this Court issued on 2.12.2014, by which the earlier interim order of status quo was modified to the effect that the respondents would be free to re-tender the work. In any event, the re-tender did not evoke any response and, as submitted by the learned Special Government Pleader (Forest), the Department is attempting to carry out the work by itself. The order granting permission to re-tender remains unchallenged.

12. What remains is the claim of the respondents for forfeiture of the EMD, as also the damages to be mulcted on the petitioner. A reading of the tender notice as indicated at Ext.R1(a) bearing no. A3-2567/2012 dated 16.11.2013, with respect to the subject matter of the above writ petition, does not disclose any condition stipulated therein, as to the

forfeiture of the EMD or the damages being recovered from the petitioner herein. However, the tender notice specifically refers to G.O. (MS) No.226/81(F) dated 16.12.1981, the conditions of which are also said to be applicable to the subject tender notice, under which notification the petitioner is also registered as an A-class contractor under the Forest Department. The same is not made available by either parties.

13. Hence, the question of forfeiture of EMD and the recovery of damages would be left open, however, making it clear that the same can be proceeded with only if the tender conditions, by any legally accepted mode, speaks of such forfeiture or recovery of damages. If at all, any such order is passed, the petitioner shall be issued with notice specifically indicating the power invoked by the Department in either forfeiting the EMD or recovering the damages. Such notice, if any, shall be issued

within a period of two months from today and if not the EMD shall be returned to the petitioner within two months thereafter.

The Writ Petition is dismissed with the above observations. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE