

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 11867 of 2014 (G)

PETITIONER(S):

**A. SANJEEVAN NAIR,
AGED 63 YEARS, S/O. LATE P.V. ACHUTHAN PILLAI,
MANAGING PARTNER, M/S. LION PROTECTIVE FORCE,
T.C. 7/806(2), PIPE LINE ROAD, KANJIRAMPARA P.O.,
MARUTHANKUZHI, THIRUVANANTHAPURAM - 695 030.**

BY ADV. SRI.E.S.ASHRAF

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
INDUSTRIES AND COMMERCE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -695 001.**
- 2. THE KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT
CORPORATION (KINFRA), KINFRA HOUSE ANNEXE,
T.C NO. 9/2585, ELANKOM GARDENS, VELLAYAMBALAM,
THIRUVANANTHAPURAM- 695 010.
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 3. OMKAR SECURITY SERVICES,
KARUNAGAPALLY, KOLLAM - 690 518,
REPRESENTED BY ITS PROPRIETOR, JOHN**

R1 BY GOVERNMENT PLEADER SMT.LOWSY A.

R2 BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURYAN THOMAS

R3 BY ADV. SRI.K.SANIL KUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-01-2015, ALONG WITH WPC. 22164/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE ASSISTANT LABOUR OFFICER, THIRUVANANTHAPURAM.

EXHIBIT-P2-TRUE COPY OF THE COMMUNICATION ISSUED BY THE EMPLOYEES PROVIDENT ORGANISATION TO MAKE CONTRIBUTIONS UNDER THE E.P.F SCHEME DATED 19/11/2008.

EXHIBIT-P3-TRUE COPY OF THE COMMUNICATION ISSUED BY THE ESI CORPORATION DATED 28/03/2010.

EXHIBIT-P4-TRUE COPY OF THE CERTIFICATE OF PERFORMANCE ISSUED BY RELIANCE DATED 15/03/2013.

EXHIBIT-P5-TRUE COPY OF THE CERTIFICATE OF PERFORMANCE ISSUED BY NABARD DATED 21/10/2013.

EXHIBIT-P6-TRUE COPY OF THE NOTICE INVITING TENDER ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P7-TRUE COPY OF THE LETTER DATED 11/04/2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P8-TRUE COPY OF THE APPLICATION FILED UNDER THE RIGHT TO INFORMATION ACT DATED 30/04/2014.

EXHIBIT-P9-TRUE COPY OF THE LICENCE DATED 24/04/2014.

EXHIBIT-P10-TRUE COPY OF THE LETTER DATED 26/04/2014 BY THE PETITIONER.

EXHIBIT-P11-TRUE COPY OF THE TENDER DOCUMENT IN RESPECT OF ANOTHER TENDER DATED NIL.

EXHIBIT-P12: TRUE COPY OF THE APPLICATION DATED 29.3.2014 SUBMITTED BY ONE SRI.BABY UNDER THE RTI ACT BEFORE THE 2ND RESPONDENT.

EXHIBIT-P13: TRUE COPY OF THE REPLY DATED 2.5.2014 FURNISHED BY THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT.

EXHIBIT-P14: TRUE COPY OF THE RELEVANT PAGES OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 30.4.2014 AWARDDING WORK ORDER TO THE 3RD RESPONDENT.

EXHIBIT-P15: TRUE COPY OF THE INFORMATION SOUGHT UNDER THE RIGHT TO INFORMATION ACT BY ON SRI.AJAYAKUMAR DATED 10.5.2014.

EXHIBIT-P16: TRUE COPY OF THE REPLY RECEIVED DATED 12.6.2014 FROM THE ELECTION DEPARTMENT OF THE STATE OF KERALA.

Msv/

WP(C).No. 11867 of 2014 (G)

EXHIBIT-P17: TRUE COPY OF THE INFORMATION SOUGHT UNDER THE RIGHT TO INFORMATION ACT BY ON SRI.AJAYAKUMAR.

EXHIBIT-P18: TRUE COPY OF THE REPLY DATED 12.6.2014 FROM THE OFFICE OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

EXT. R2(a): TRUE COPY OF THE TENDER DOCUMENT NO.KINFRA/TVM/ADMN/2014/ST FOR HIRING OF SECURITY GUARDS/SUPERVISORS.

EXT.R2(b): TRUE COPY OF THE LICENSE DATED 20.11.2013, ISSUED BY THE GOVERNMENT TO THE 3RD RESPONDENT UNDER THE PRIVATE SECURITY AGENCIES (REGULATION) ACT, 2005.

EXT. R2(c): TRUE COPY OF THE LETTER DATED 10.4.2013 FROM THE ISSUING AUTHORITY UNDER THE PRIVATE SECURITY AGENCIES (REGULATION) ACT, 2005, PRODUCED BY THE PETITIONER DURING THE TECHNICAL BID OPENING.

EXT. R2(d): TRUE COPY OF THE LETTER DATED 23.4.2014 FROM THE PETITIONER TO THE 2ND RESPONDENT.

EXT. R2(e): TRUE COPY OF THE WORK ORDER DATED 30.4.2014 ISSUED BY KINFRA TO THE 3RD RESPONDENT WITH RESPECT TO THE INSTALLATIONS AND OFFICES AT ERNAKULAM, THIRUVANANDAPURAM, KOLLAM AND PATHANAMTHITTA DISTRICTS.

EXT.R2(f): TRUE COPY OF THE WORK ORDER DATED 30.4.2014 ISSUED BY THIS RESPONDENT TO THE 3RD RESPONDENT WITH RESPECT TO THE INSTALLATIONS AND OFFICES AT KOZHIKODE, KANNUR, MALAPPURAM, WAYANAD, PALAKKAD, IDUKKI, KASARAGOD AND THRISSUR DISTRICTS.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) Nos.11867 & 22164 of 2014

Dated this the 6th day of January, 2015

JUDGMENT

The Kerala Industrial Infrastructure Development Corporation (KINFRA) invited tender for hiring security guards/supervisors as per Ext.R2(a) produced by the second respondent in W.P.(C) No.11867/2014. The Clause 4(6) of Ext.R2(a) stipulates that the agency must have licence under Private Security Agencies Regulation Act, 2005. The petitioners in both the writ petitions submitted their tenders. Along with tender documents, the writ petitioner in W.P.(C) No.22164/2014 produced the licence issued under the above Act. The above licence was granted to run private security agencies in the districts of Thiruvananthapuram, Kollam, Alappuzha, Ernakulam and Pathanamthitta. In fact, the tender was also for area including Kozhikode, Palakkad,

Thrissur, Kannur, Wayanad, Malappuram, Kasargode and Idukki. It appears that there were seven tenderers and of which one was disqualified. It is pertinent to note that none had licence to run Private Security Agency for the entire area for which the notification was issued. The only person at the relevant time was having certain licence for certain areas is the petitioner in W.P.(C) No.22164/2014. Taking note of the fact that the agreement which was in force at that time expiring on 30.4.2014, the petitioner in W.P.(C) No.11867/2014 being the lowest tenderer was given opportunity to produce the licence on or before 23.4.2014. It appears that the petitioner in W.P.(C) No.11867/2014 could not produce the licence before the deadline stipulated by the KINFRA i.e., 23.4.2014. The petitioner therein appears to have obtained Ext.P9 licence. Ext.P9 is dated 24.4.2014. In the meanwhile, considering the exigencies of the KINFRA, the work was awarded to the petitioner in W.P.(C) No.22164/2014 accepting the licence in

respect of the area mentioned in Ext.R2(b) and on condition that the above petitioner shall produce licence for the districts Kozhikode, Palakkad, Thrissur, Kannur, Wayanad, Malappuram, Kasargode and Idukki on or before 31.7.2014.

2. W.P.(C) No.11867/2014 is filed to award the work to him being the lowest tenderer and also based on the licence produced on 24.4.2014.

3. W.P.(C) No.11867/2014 is filed by the petitioner apprehending that the contract will be terminated for non-production of the licence in respect of the area for which he could not produce the licence before the deadline on 31.7.2014. The petitioner submits that he has already made an application by Ext.P4 before the competent authority and awaiting outcome of his application. The contract initially is for one year and it is further extendable based on the decision of the KINFRA. The petitioner in W.P.(C) No.11867/2014, admittedly, was not having relevant licence either at the time of

submitting tender or during the time which he was requested to produce the licence. The extended time was expired on 23.4.2014. The licence procured by him in respect of certain areas was on 24.4.2014. The KINFRA at juncture has no other option but to accept the second lowest tenderer, the petitioner in W.P.(C) No.22164/2014 considering the fact that the previous agreement was expiring on 30.4.2014. This Court while invoking power under Article 226 of the Constitution concerned only about the decision making process of the authority. This Court is of the view, the KINFRA acted *bona fide* to subserve the public interest. The petitioner in W.P.(C) No.11867/2014 was given sufficient opportunity to produce relevant licence. Merely because he could procure the licence after the deadline does not entail in claiming a right based on the lowest tender. In the realm of the contract the state functionary has to weigh various options to subserve the public interest. In such situation, when the petitioner in W.P.(C)

No.11687/2014 failed to produce relevant licence before the deadline, the KINFRA has no other option but to award the work to the second lowest tender. Therefore, the KINFRA is justified in having such course of action. It cannot be termed as arbitrary or tainted with any *mala fides*. Therefore, I am of the view that awarding the work in respect of the agency which has licence to operate in certain area is justifiable. Therefore, the challenge for non awarding the contract to the petitioner in W.P.(C) No.11867/2014 is unsustainable.

4. The next point is based on the apprehended threat of termination of the contract of the petitioner in W.P.(C) No.22164/2014. Admittedly, the above petitioner did not have any licence for the districts Kozhikode, Palakkad, Thrissur, Kannur, Wayanad, Malappuram, Kasargode and Idukki and they were given sufficient time to produce the licence. The time expired on 31.7.2014. It is to be noted that in spite of more than four months after filing the writ petition, they are unable

to produce any licence before the authority. I am of the view that the petitioner cannot take any advantage of the delay in obtaining the licence. Therefore, any threat of termination cannot be prevented.

5. The KINFRA already issued Ext.P5 to the petitioner in W.P.(C) No.22164/2014 stating that if the petitioner fails to produce the licence on or before 31.8.2014, the work order for providing security agency in the districts referred in the notice will be cancelled. Therefore, I do not find any justification in interfering with the decision of the KINFRA in Ext.P5. The petitioner has further grievance in the matter that he has made application by Ext.P4 before the second respondent for obtaining licence. In view of Ext.P4, there shall be a direction to the second respondent to consider Ext.P4 as expeditiously as possible, at any rate, within four weeks and take appropriate decision thereon. If the petitioner in W.P.(C) No.22164/2014 is able to produce licence in respect of the area mentioned in

Ext.P5 within six weeks, all proceedings pursuant to Ext.P5 shall be dropped.

If the petitioner in W.P.(C) No.22164/2014 is not issued with the licence by the second respondent in respect of the area mentioned in Ext.P5, the KINFRA shall invite fresh tender in respect of the area mentioned in Ext.P5 within a further period of four weeks. Till awarding the new contract, the petitioner in W.P.(C) No.22164/2014 shall be permitted to continue.

These writ petitions are disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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