

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 13998 of 2015 (Y)

PETITIONER(S):

1. EX-SERVICE WELFARE SAMITHY,
THRISSUR DISTRICT, C541-170, AYYANTHOLE,
CIVIL LANE KANJANI ROAD,
THRISSUR, REPRESENTED BY THE SECRETARY
K.R GOPINATHAN NAIR, AGED 66 YEARS,
S/O.RAGHAVAN NAIR, 'VIJAYA NIVAS',
P.O. CHELAKKARA, THRISSUR DISTRICT.
2. KERALA STATE EX-SERVICE LEAGUE,
(REGISTRATION NO.K.20/65/77/92),
VIMUKTHA BHADA BHAVAN, CIVIL LANE,
KANJANI ROAD, P.O AYYANTHOLE, THRISSUR-680 003,
REPRESENTED BY THE SECRETARY K.R GOPINATHAN NAIR,
AGED 66 YEARS, S/O. RAGHAVAN NAIR, VIJAYA NIVAS,
P.O CHELAKKARA, THRISSUR DISTRICT.

BY ADV. SRI.RAJIT

RESPONDENT(S):

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE,
NEW DELHI - 110 001.
2. NATIONAL RESEARCH INSTITUTE FOR PANCHAKARMA
(CENTRAL COUNSEL FOR RESEARCH IN AYURVEDIC SCIENCE,
P.O CHERUTHURUTHI, THRISSUR DISTRICT,
REPRESENTED BY THE ASSISTANT DIRECTOR DR.G.K SWAMY 679 531.
3. K.R. RAJAN,
ADMINISTRATIVE OFFICER,
NATIONAL RESEARCH INSTITUTE FOR PANCHAKARMA,
(CENTRAL COUNSEL FOR RESEARCH IN AYURVEDIC SCIENCE,
P.O. CERUTHURUTHI, THRISSUR DISTRICT - 679 531.

msv/

WP(C).No. 13998 of 2015 (Y)

* **ADDITIONAL R4 IMPEADED**

- 4. M/S.PROTECTO SECURITY SERVICE,
A.C.COMPLEX, CHEVOOR, THRISSUR,
REPRESENTED BY THE MANAGING PARTNER.**

* **IS IMPEADED AS PER ORDER DTD.29.6.2015 IN IA.NO.8983/2015 IN WP(C).**

**R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1 & R2 BY ADV. SRI.M.RAJENDRA KUMAR, CGC
R4 BY ADVS. SRI.HUSSAIN KOYA VALIYAVEEDAKATH
SRI.K.ANAND
SRI.K.V.RAJENDRAN (WANDOOR)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE REGISTRATION CERTIFICATE IN RESPECT OF THE PETITIONER SOCIETY.

EXHIBIT P2 TRUE COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE 1ST PETITIONER SOCIETY.

EXHIBIT P3 TRUE COPY OF THE NOTIFICATION.

EXHIBIT P4 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P5 TRUE COPY OF THE COMMUNICATION DATED 21-04-2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE CIRCULAR ISSUED BY THE DIRECTORATE OF SAINIK WELFARE DTD.10.6.1985.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): PHOTOSTAT COPY OF THE INSTITUTE'S LETTER NO.F.NO.2/13/2014-NRIP/ESTT. DTD.7.5.2015.

EXT.R2(b): PHOTOSTAT COPY OF THE AGREEMENT DTD.21.1.2013 WITH 1ST RESPONDENT.

EXT.R2(c): PHOTOSTAT COPY OF THE MINUTES OF THE PURCHASE COMMITTEE DTD.1.4.2015.

EXT.R2(d): PHOTOSTAT COPY OF THE QUOTATION RECEIVED FROM M/S PROTECTO SECURITY SERVICE.

EXT.R4(a): TRUE COPY OF THE DEED OF PARTNERSHIP OF THE FIRM OF THIS RESPONDENT'S FIRM.

EXT.R4(b): TRUE COPY OF THE PROVIDENT FUND REGISTRATION CERTIFICATE.

EXT.R4(c): TRUE COPY OF THE ESI REGISTRATION CERTIFICATE.

EXT.R4(d): TRUE COPY OF THE REGISTRATION UNDER KERALA SHOPS AND COMMERCIAL ESTABLISHMENT ACT CERTIFICATE.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No. 13998/2015**

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Dated this the 28th Day of September, 2015

J U D G M E N T

The writ petition is filed by a registered association of Ex-Servicemen challenging Exhibit P5 rejecting quotation of the first petitioner for supply of manpower to the 2nd respondent institution. This Court on 12-05-2015 ordered as follows:

“If contract is not already awarded, same shall be done only after obtaining orders from this Court.”

2. Thereafter, the interim order is continuing. Essentially, the writ petitioners' challenge is in respect of rejection of award of contract to the first petitioner.

3. The petitioners in the writ petition allege that the first petitioner had submitted all requisite documents. However, now an attempt is being made to award contract to other private parties, who were found not eligible. The allegation is made against a private party, who was not on record in the writ petition stating that that the private party is an unqualified agent. Thereafter, the petitioner filed I.A.No. 8983 of 2015 for impleading

the 4th respondent. In para.4 of the inter locutory applicaton, it is stated as follows:

“4. It is only after filing of the counter affidavit, the petitioner has come to know of the contract being awarded to M/s.Protecto Security Service. Therefore, it is highly necessary in the interest of justice to implead M/s.Protecto Security Service as additional 4th respondent in the writ petition, failing which I will be put to irreparable injury and loss.”

4. Thereafter, by order dated 29/06/2015, impleading petition was allowed. The obvious allegation in the writ petition is not in respect of the 4th respondent, as the petitioner has no idea regarding identity of the persons to whom the contract is going to be awarded.

5. The question is whether rejection of the first petitioner's quotation is illegal or not. The petitioner and the 4th respondent alone were participants to the tender. The bid of the first petitioner was the highest, admittedly, the rate quoted by the 4th respondent is the lowest. In normal circumstances that is the only criteria for acceptance. Though, there is no specific challenge regarding disqualification of the fourth respondent either in the relief or in the pleadings, after adverting to the fervent arguments of the learned counsel for the petitioner, this Court has addressed the same.

6. The petitioner's challenge is that the 4th respondent did not fulfil the conditions in Exhibit P3 notification for empanelment of manpower agencies. The learned counsel further points out that, it is in violation of clause 6 and 8 in Exhibit P3. Clauses 6 and 8 reads as follows.:

“6 The quotation should clearly state whether they are authorised by Central Govt./State Govt. to provide the required categories of manpower and fulfill the statutory requirements of being registered with the State Govt./ESIC, EPF and other Statutory Bodies, if any, and provide copies of relevant documents in support of the same.

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8. The criteria for selection of the manpower agency will be the year track record of providing quality personnel and amount of the service charge quoted by them. Keeping in view M/o Finance, Govt. of India, instructions, the institute will be liable to pay only 75% of Service Tax and the remaining 25% will have to be borne by the firm, subject to any change notified by the Govt.”

7. In the counter affidavit filed by the second respondent, it is stated as follows in paragraph 14:

“In contrast to the claims of the 1st petitioner, it may please be noted that the M/s.Protecto Security Service also fulfills the requirements as per conditions laid by the Institute in the Quotation notice with the following:

a. Registration with Labour Dept. of Kerala

- : 4 : -

- b. Registration with EPF and ESIC
- c. Possession of PAN card in the name of the firm

Copy of quotation received from M/s. Protecto Security Service, Thrissur with supporting documents is produced herewith and marked as Exhibit R2(d)."

8. It is further stated that the petitioner as well as the 4th respondent are equally qualified to take part in the tender. The Authority is satisfied with the qualification of the 4th respondent. This Court is not an Appellate Authority to sit upon the decision of an Authority when the Authority states satisfaction. The 2nd respondent also produced all the documents to show that the 4th respondent fulfilled the conditions. In the absence of any specific challenge regarding nonfulfilment of the conditions, this Court need not make a roving enquiry as to the satisfaction of the 2nd respondent for awarding the work to the 4th respondent. I do not find any merit in the writ petition and accordingly, it is dismissed.

Sd/-

(A.MUHAMED MUSTAQUE, JUDGE)

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