

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No.15655 of 2015 (F)

PETITIONER:

**RAILWAY CLEANING & FORWARDING EMPLOYEES
CHARITABLE SOCIETY,REGISTRATION NO.ER.493/2010,
RAJIVE BHAVAN,EDAPPALLY P.O.,KOCHI-682024,
REPRESENTED BY ITS PRESIDENT MR.RASHEED THANATH.**

**BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.P.S.SYAMKUTTAN**

RESPONDENT'S:

- 1. INDIAN RAILWAYS,REPRESENTED BY ITS GENERAL MANAGER,
OFFICE OF THE GENERAL MANAGER,SOUTHERN RAILWAY,
CHENNAI-600008.**
- 2. THE DIVISIONAL RAILWAY MANAGER (COMMERCIAL),
SOUTHERN RAILWAY,THYCAUD P.O.,TRIVANDRUM-14.**

R1&R2 BY SRI.C.S.DIAS,SC, RAILWAYS.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-06-2015, ALONG WITH WPC.15851/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1:TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE PETITIONER SOCIETY.

EXHIBIT-P2:TRUE COPY OF THE AGREEMENT DATED 8.9.2008.

EXHIBIT-P3:TRUE COPY OF THE IDENTITY CARD ISSUED TO SRI.SIVAN.

EXHIBIT-P4:TRUE COPY OF THE LIST OF HEAD LOAD WORKERS WORKING IN THE ERNAKULAM JUNCTION RAILWAY STATION.

EXHIBIT-P5:TRUE COPY OF THE LIST OF HEAD LOAD WORKERS WORKING IN THE ERNAKULAM TOWN RAILWAY STATION.

EXHIBIT-P6:TRUE COPY OF THE ABOVE REPRESENTATION DATED 8.8.2012.

EXHIBIT-P7:TRUE COPY OF THE TENDER NOTICE DATED 10.9.2013 PUBLISHED IN MALAYALA MANORAMA DAILY DATED 10.9.2013.

EXHIBIT-P8:TRUE COPY OF THE TENDER NOTICE PUBLISHED IN THE WEBSITE OF THE RAILWAY.

EXHIBIT-P9:TRUE COPY OF THE RECEIPT OF THE PARCEL HANDLING LABOURS AT ERN-PARCEL OFFICE.

EXHIBIT-P10:TRUE COPY OF THE REPRESENTATION DATED 15.10.2013.

EXHIBIT-P11:TRUE COPY OF THE COUNTER AFFIDAVIT DATED 25.10.2013 FILED BY THE 2ND RESPONDENT IN W.P.(C) NO.25457/2013.

EXHIBIT-P12:TRUE COPY OF THE ORDER NO.K DIS/HLW/1758/2012 DATED 20.7.2013.

EXHIBIT-P13:TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT HAVING NO.C 5690/2013 DATED 19/10/2013.

EXHIBIT-P14:TRUE COPY OF THE JUDGMENT DATED 18.3.2014 IN W.P.(C) NO.25457/2013 AND W.P.(C) NO.27766/2013.

EXHIBIT-P15:TRUE COPY OF THE TENDER NOTICE NO.V/C.441/PHC/VOL.III/13 DATED 15.12.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P16:TRUE COPY OF THE TENDER FORM CREDENTIAL BID SUBMITTED BEFORE THE 2ND RESPONDENT WITH RESPECT TO PARCEL HANDLING AT ERNAKULAM JN.RAILWAY STATION.

EXHIBIT-P17:TRUE COPY OF THE TENDER FORM CREDENTIAL BID SUBMITTED BEFORE THE 2ND RESPONDENT WITH RESPECT TO PARCEL HANDLING AT ERNAKULAM TOWN RAILWAY STATION.

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**EXHIBIT-P18:TRUE COPY OF THE SAID LETTER NO.V/C 441/PHC/TENDER/2015
DATED 6.5.2016 ISSUED BY THE SR.DIVISIONAL COMMERCIAL
MANAGER, DIVISIONAL OFFICE, THIRUVANANTHAPURAM TO THE
PETITIONER.**

**EXHIBIT-P19:TRUE COPY OF THE LETTER NO.V/C441/PHC/VARIOUS/2015
DATED 19.5.2015 ISSUED BY THE RESPONDENT RAILWAYS.**

**EXHIBIT-P20:TRUE COPY OF THE COVER IN WHICH EXT.P19 LETTER WAS
ENCLOSED,WHICH CONTAINS POSTAL SEALS.**

RESPONDENT'S EXHIBITS:

**EXHIBIT R1(1):TRUE COPY OF THE MINUTES OF THE TENDER COMMITTEE
MEETING HELD FOR AWARDED THE CONTRACT FOR PARCEL
HANDLING AT ERNAKULAM JUNCTION RAILWAY STATION.**

**EXHIBIT R1(2):TRUE COPY OF THE DOCUMENT WHICH PROVE THE AGE OF THE
MEMBERS OF THE PETITIONER TO BE ABOVE 30 YEARS OF AGE.**

**EXHIBIT R1(3):TRUE COPY OF THE MINUTES OF THE TENDER COMMITTEE
MEETING HELD FOR AWARDED THE CONTRACT FOR PARCEL
HANDLING AT ERNAKULAM TOWN RAILWAY STATION.**

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P.(C) Nos. 15655 & 15851 of 2015 (F)

Dated this the 19th day of June, 2015

J U D G M E N T

Petitioners in both writ petitions are Societies registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955.

2. W.P.(C) No.15655/2015 is concerned with the tender for award of parcel handling work in the Ernakulam Junction and Town stations and W.P.(C) No.15851/2015 is concerned with the award of the very same work as per the very same notification at the Thrissur Railway Station. The documents are first referred to from W.P.(C) No.15655/2015.

3. Both the petitioners are said to have applied under Ext.P15 tender notification. The petitioner in W.P.(C) No.15655/2015 had been earlier before this Court raising a contention of preferential claim when a tender notification was issued. The writ petitions were disposed of by Ext.P14

judgment wherein it was specifically found that the policy of the Indian Railways discloses that there is a preference given to the Labour Societies in the matter of parcel handling work even when there is a tender notification. It is in this context also the petitioners urge that the petitioner's bid should not have been rejected.

4. The petitioner in W.P.(C) No.15851/2015 also follows suit insofar as relying on the policy of the Railways and the authoritative pronouncement of this Court in Ext.P14 to contend that they too were the only Society who applied for the tender for awarding work in the Thrissur Railway Station.

5. I have heard the learned counsel appearing for the petitioners and the learned Standing Counsel appearing for the Railways.

6. In W.P.(C) No.15655/2015, the rejection was on the ground that the members were above the age of 30 years. Though, there is no specific condition in Ext.P15 that

there is any age restriction on the persons to be employed in parcel handling work, the declaration to be filed is produced at Ext.P16. Ext.P16, in paragraph 6, specifically indicates that the preference granted to Societies is, insofar as providing employment for educated and unemployed youth between the age range of 18 to 30. The declaration categorically is that none of the members are outside the age range specified therein and there is also an understanding that, if it is revealed that any member is lower or above the age range, then the tender would be liable for summary rejection. A mere glance at Ext.P16 would indicate that the petitioner had entered the name of three members, all of whom were above the age of 30 years

7. The learned counsel for the petitioners has a contention that the prescription of the age range from 18 to 30 is unconstitutional and any able bodied person would be entitled to be employed for the parcel handling work. Primarily, it is to be noticed that though the declaration

specifically contained the age range and the stipulation that the members should be within that age range, the petitioner did not challenge such stipulation, but applied under such notification. The declaration specifically indicated the age range and though there can be found no misrepresentation on the part of the petitioner, as is disclosed in Ext.P17, the fact remains that the petitioner had given the names of members who were above the age prescribed, thus rendering nugatory the declaration as such.

8. There is a contention also raised that the Railways had objected, to the name being different in the registration certificate, at Ext.P1. This Court is not convinced that the same was a valid objection and in any event, looking at the finalisation on the credibility bid, this Court does not find that the Railways have raised such an objection. Ext.R-1(1), which is the decision taken on the credibility bid, which preceded the financial bid, indicates that the petitioner Society's tender was rejected for reason of violation of

condition of age criteria in the declaration made in the tender documents itself. In such circumstance, this Court cannot find that there is any illegality in the rejection of the tender since specifically, the declaration made by the petitioner was against the stipulation, but, however, not necessarily a malafide one.

9. The petitioner in W.P.(C) No.15851/2015 was rejected for reason of the petitioner having not satisfied the tender conditions insofar as the prescription of a certificate from the Chartered Accountant. The learned counsel for the petitioner, would draw the attention of this Court to the extracts of the passbook of the Society to show the remittances made therein and contend that the financial capacity of the Society is quite evident from the said document produced as Ext.P3 at page 56 of W.P.(C) No.15851/2015. However, the tender conditions specifically speak of the balance sheet of five years, that too, along with the attested certificate of the Chartered Accountant, stating

the amount received from each and every parcel handling work for the last five years. The said certificate having not been produced the petitioner cannot raise a claim that the financial capacity of the petitioner is otherwise evident. The petitioner failed to qualify the threshold eligibility for reason only of non-production of the documents insisted by the Indian Railways, in the tender.

In such circumstance, the writ petitions would stand dismissed. The petitioner would definitely have liberty to challenge the age stipulation in any further tender notification. No costs

Sd/-
K.VINOD CHANDRAN,
JUDGE