

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 16363 of 2015 (S)

PETITIONER :

SANKARANARAYANAN V AGED 40 YEARS
S/O.N.VISWANATHAN, DEVAGIRI, THIRUMALA
ARAMADA VILLAGE, THIRUVANANTHAPURAM TALUK
THIRUVANANTHAPURAM DISTRICT, PIN-695 006.

BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.P.J.JOSE
SRI.K.O.MANUEL (KOPRAMB)

RESPONDENTS :

1. THE STATE OF KERALA
REP. BY CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.695 001.
2. UNION OF INDIA
REP. BY SECRETARY
DEPT. OF URBAN DEVELOPMENT METRORAIL CELL
NIRMAL BHAVAN, NEW DELHI-110 108.
3. THE CENTRAL VIGILANCE COMMISSIONER
O/O THE CENTRAL VIGILANCE COMMISSIONER
SATARKTA BHAVAN, BLOCK-A, GPO COMPLEX
INA, NEW DELHI-110 023.
4. THE PRINCIPAL SECRETARY
PUBLIC WORKS DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.695 001.
5. THE KERALA MONORAIL CORPORATION LIMITED
TC 4/1654, MAYOORAM, NO.7
BELHAVEN GARDENS, KOWDIAR
THIRUVANANTHAPURAM (SOUGHT TO BE RENAMED AS KERALA
RAPID TRANSIT CORPORATION LTD.)
REP. BY ITS GENERAL MANAGER. 695 001.

6. MR. SHEIK PAREED. I.A.S
MANAGING DIRECTOR
KERALA MONORAIL CORPORATION LIMITED, TC 4/1654
MAYOORAM, NO.7, BELHAVEN GARDENS, KOWDIAR
THIRUVANANTHAPURAM (SOUGHT TO BE RENAMED AS KERALA RAPID
TRANSIT CORPORATION LTD. PIN-695 001.
7. DELHI METRO RAIL CORPORATION LTD.
NBCC PLACE, BHEESHMA PITHA MAH MARG., PRAGATHI VIHAR
NEW DELHI-110 003.
8. SHRI.E.SREEDHARAN, AGED 82 YEARS
PRINCIPAL ADVISOR, DELHI METRORAIL CORPORATION LTD.
5TH FLOOR, A WING, METRO BHAVAN
FIRE BRIGADE LANE, BARAKHAMBA ROAD, NEW DELHI-110 001.

R2 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R BY SPL.GOVERNMENT PLEADER, SRI.TOM K. THOMAS
R7 BY SMT.LATHA KRISHNAN, SC, DELHI METRO RAIL CORPN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- P1- TRUE PHOTOSTAT COPY OF THE GOVT. ORDER DATED 28.09.2013 BEARING NO.GO(MS) NO.318/2013/LSGD.
- P2- TRUE PHOTOSTAT COPY OF THE OFFICE ORDER NO.23/7/2007 DATED 05.07.2007.
- P3- TRUE PHOTOSTAT COPY OF REPORT DEALING WITH APPOINTMENT OF CONSULTMENTS-COMMON IRREGULARITIES/LAPSES BY CVC.
- P4- TRUE PHOTOSTAT COPY OF REPORT DATED MAY, 2009 TITLED SELECTION OF CONSULTANTS ISSUED BY SECRETARIAT FOR THE COMMITTEE OF INFRASTRUCTURE, PLANNING COMMISSION, GOVT.OF INDIA.
- P5- TRUE PHOTOSTAT COPY OF TENDER NOTICE, CHENNAI METRO (PAGES 1 AND 2).
- P6- TRUE PHOTOSTAT COPY OF INITIAL PAGES OF THE TENDER NOTICE, NAVI MUMBAI METRO.
- P7- TRUE PHOTOSTAT COPY OF INITIAL PAGES OF THE TENDER NOTICE ISSUED BY BANGALORE METRO RAIL LIMITED.
- P8- TRUE PHOTOSTAT COPY OF THE NEWS ITEMS APPEARED IN THE TIMES OF INDIA DAILY DATED.
- P9- TRUE PHOTOSTAT COPY OF THE RELEVANT PAGES OF THE REPORT GIVEN BY THE ADDITIONAL CHIEF SECRETARY.
- P10- TRUE PHOTOSTAT COPY OF THE CHAPTER X CONTAINED SPECIFIC STATEMENTS REGARDING THE STAND OF DMRC AGAINST LIGHT METRO.
- P11- TRUE PHOTOSTAT COPY OF THE FORWARD DATED 02.06.2012 SUBMITTED BY MANAGING DIRECTOR OF THE 7TH RESPONDENT.
- P12- TRUE PHOTOSTAT COPY OF THE TYPE WRITTEN LETTER ISSUED FROM THE URBAN DEVELOPMENT MINISTRY OF THE 2ND RESPONDENT TO THE HON'BLE CHIEF MINISTER OF KERALA.
- P13- TRUE PHOTOSTAT COPY OF THE PRESS RELEASE ON THE PUBLIC PRIVATE PARTICIPATION SCHEME ISSUED BY THE 8TH RESPONDENT ON 16.05.2015.
- P14- TRUE PHOTOSTAT COPY OF THE CAG REPORT NO.13/13 HAS COME UP SEVERELY AGAINST THE 7TH RESPONDENT.

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P15- TRUE PHOTOSTAT COPY OF THE REPORT OF THE PRESS TRUST OF INDIA
DATED 24.4.2013.

P16- TRUE PHOTOSTAT COPY OF THE PROJECT REPORT SUBMITTED BY 7TH
RESPONDENT.

P17- TRUE PHOTOSTAT COPY OF THE OFFICE ORDER NO.75/12/04 DATED
24.12.2004 ISSUED BY THE 3RD RESPONDENT.

P18- TRUE PHOTOSTAT COPY OF THE ORDER DATED 21.03.2012.

P19- TRUE PHOTOSTAT COPY OF THE REPRESENTATION TO RESPONDENTS 1,4,5
AND 6 WITH COPY TO A NUMBER OF AUTHORITIES DATED 16.05.2015.

P20- TRUE PHOTOSTAT COPY OF THE DETAILED REPRESENTATION TO
RESPONDENTS 1,4,5 AND 6 WITH COPY TO A NUMBER OF AUTHORITIES
DATED 21.05.2015.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.P.(C) No. 16363 OF 2015

Dated this the 2nd day of June, 2015

JUDGMENT

Shaffique, J.

The petitioner has approached this Court seeking the following reliefs:

"(i) Declare that the proposed move of the 1st respondent State to advert to the process of nomination as against the accepted and well declared process of global tendering in the matter of appointment of the general consultant for the monorail/light metro projects at Thiruvananthapuram and Kozhikode is illegal and against the principles contained under Article 14 which is highlighted by the Apex Court in the decision reported in "Nagar Nigam Meerut v. Al-Faheem Meat Exports Pvt. Ltd and others" and issue a writ order or direction in the nature of Mandamus or other appropriate writ directing the respondents No.1 and 5 and any other respondents connected with assignment of contract of the said project to forthwith stop all process of appointment by nomination.

(ii) Issue a writ, order or direction in the nature of Mandamus or other appropriate writ, directing the respondents NO.1, 4, 5 and 6 or the concerned among them to forthwith take action to invite global tenders to appoint General consultant for the monorail/light metro projects at Thiruvananthapuram and Kozhikode, in the interest of justice."

2. Petitioner, claims to be a *pro bono publico*, has approached this Court inter alia contending that he is a person

having knowledge in the matter of Metro/Rapid Transit Rail Systems which are being introduced in Major Cities of different States. It is submitted that the establishment of mono-rail project/light metro is being implemented by the Government of Kerala in two cities, Thiruvananthapuram and Kozhikode. The contention raised by the petitioner is that being a Government contract transparency to the maximum is to be adverted to especially in the case of establishment of mono rail project. Under normal circumstances e-tendering process is being done for awarding the contracts in different categories of works which is accepted by the Supreme Court in **Nagar Nigam Meerut v. Al-Faheem Meat Exports Pvt. Ltd and others** [2006 (13) SCC 382]. As far as the present project now envisaged by the Government of Kerala is concerned, the complaint of the petitioner is that the State of Kerala is proceeding in a manner to award the contract on nomination basis. This according to the petitioner is in gross violation of Article 14 of the Constitution of India and is arbitrary.

3. Having heard learned counsel for the petitioner and having perused the averments made in the writ petition, it is clear that, as matters stand now, the Government has only prepared a Detailed Project Report (for short 'DPR'), which is produced as Ext.P16 in this case. As far as the DPR is concerned, it is prepared by the Delhi Metro Rail Corporation Limited in October 2014 and various recommendations have been made as to how the project should be implemented. It is apparent from the other documents produced that the final decision in regard to the recommendations made in the DPR is yet to be taken by the Government. Whether the entire work will be entrusted to respondents 7 and 8 or to any other agency are matters to be considered by the Government at the time when the Project is being implemented. As matters stand now, there is no finality on the said issues.

4. Under such circumstances, we do not think that this Court can interfere with such policy decisions of the Government at this stage of proceedings and therefore we are of the view that the Writ Petition is premature.

5. Learned counsel for the petitioner points out that the intention of the Government is to award the work in relation to the present project to respondents 7 and 8. It is submitted that unless a tender procedure is adopted, there will not be transparency in the matter. It is apparent that such decision has not yet been taken by the Government and it is not proper for this Court to interfere at this stage.

Accordingly, we do not think that the directions as sought for can be granted at this stage of proceedings and we do not intend to interfere at a stage when the Government is only considering the project and modalities are being worked out. Therefore, the Writ Petition is closed without prejudice to the right of the petitioner to agitate the matter as and when cause of action arises.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**