

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 17232 of 2015 (D)

PETITIONER(S):

**SHANAVAS K.S., AGED 32 YEARS,
S/O.SHAMSUDIN, KOMBAN HOUSE, ERUMAMUNDA CHUNGATHARA,
NILAMBUR, MALAPPURAM.**

**BY ADVS.SRI.P.SAMSUDIN
SMT.V.C.ANITHA
SRI.JITHIN LUKOSE**

RESPONDENT(S):

- 1. THE UNIVERSITY OF CALICUT,
REPRESENTED BY ITS PRO VICE CHANCELLOR,
UNIVERSITY CAMPUS, THENJIPPALAM - 673 635,
MALAPPURAM DISTRICT.**
- 2. THE UNIVERSITY ENGINEER, ENGINEERING DEPARTMENT,
UNIVERSITY OF CALICUT,
UNIVERSITY CAMPUS, THENJIPPALAM - 673 635.**
- 3. T.P. VARKEY, PROPRIETOR,
T.P.CONSTRUCTIONS CHIRANGARA, CHALAKKUDY - 680 307,
THRISSUR DISTRICT.**

**R1 & R2 BY ADV. SRI.SANTHOSH MATHEW, SC
R3 BY ADVS. SRI.P.JINISH PAUL
SRI.SREELAL N.WARRIER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-07-2015 THE COURT ON 22-07-2015, DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17232 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE REGISTRATION CARD OF THE PETITIONER.**
- P2- TRUE COPY OF THE CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER PWD BUILDINGS DIVISION MALAPURAM.**
- P3- TRUE COPY OF THE NOTICE INVITING TENDER DATED 20.5.2015.**
- P4- TRUE COPY OF THE ONLINE SUBMISSION OF TENDER FEE AND EMD AND BID SUBMISSION CONFIRMATION.**
- P5- TRUE COPY OF THE PRELIMINARY TENDER AGREEMENT DULY FILED UP AND SIGNED BY THE PETITIONER.**
- P6- TRUE COPY OF THE RELEVANT PAGES OF BILL OF QUANTITY (BOQ) SUBMITTED BY THE PETITIONER.**
- P7- TRUE COPY OF THE PRINT OUT OF THE RATES QUOTED BY THE 4 BIDDERS.**
- P8- TRUE COPY OF THE PRELIMINARY TENDER AGREEMENT SUBMITTED BY THE 3RD RESPONDENT.**
- P9- TRUE COPY OF THE RELEVANT PAGES OF THE PWD MANUAL REVISED EDITION 2012.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.17232 of 2015

Dated this the 22nd day of July, 2015.

JUDGMENT

Aggrieved by the rejection of the petitioner's bid by the respondent university, he has approached this Court with this writ petition.

2. The petitioner is a registered 'A' Class contractor. The petitioner alleges that he has successfully completed major civil works for the Government and public sector undertakings. The second respondent on behalf of the first respondent university, invited online bid for the construction of a Sports Dormitory. The estimated cost of work is Rs.3,54,74,804.36. The earnest money to be deposited is Rs.100000/-. A tender fee of Rs.7875/- is also payable. Submission of bids started on 21.5.2015. The last date for submission of online applications was on 1.6.2015. Last date for submission of hard copies of tender documents was on

4.6.2015. The tenders were to be opened on 4.6.2015. Unlike in usual government contracts, in the present bid, one stipulation was to submit the hard copies of original counter foil of challan in proof of payment of EMD deposit and tender cost along with the tender form. Petitioner submitted online bid. He alleged that all necessary particulars were submitted online. A sum of Rs.1,07,875/- being EMD and tender cost was also paid online. The petitioner alleges that the e-payment was accepted to be successful and all documents were also submitted along with the tender forms on line. There were total five bidders including the petitioner. The other bidders quoted higher amounts. The petitioner alleges that he quoted the lowest bid rate for the work. The estimated rate of Rs.3,54,74,804.36 is the amount quoted by the petitioner. The third respondent quoted Rs.3,61,80,752.97 which is higher than the rate quoted by the petitioner by Rs.7,00,000/-; it is alleged. The grievance of the petitioner is that the bid is confirmed in the name of the third respondent.

On enquiry, it was revealed that the petitioner's bid is rejected for the sole reason that the original counter foil of challan for payment of EMD and tender cost was not submitted along with hard copies of documents. According to the petitioner, by oversight and inadvertent omission, the original challan was omitted to be enclosed along with the hard copies of tender documents. The petitioner points out that the online payment of the amount was accepted as per Ext.P4. The petitioner also alleges that the third respondent has not submitted a duly filled preliminary tender agreement. The petitioner further points out that the third respondent has submitted only the VAT registration certificate in place of experience certificate along with the tender documents.

3. In the statement filed by the respondent University, it is contended that as per the Notice Inviting Tender, seven documents were to be uploaded in the first cover, which includes payment details of EMD and cost of tender documents. It was stipulated that the second cover containing

the financial bid would be opened only if the first cover containing the technical details are satisfactorily uploaded. It was pointed out that the four items uploaded by the petitioner in the first cover were perfect and admitted. However, the petitioner had not uploaded the payment details of EMD and cost of tender in the first cover. Instead, he had uploaded a NA (Not Applicable) statement. Moreover, the tender document which contains the tender conditions and declarations were not signed by the petitioner in all the relevant pages. According to the respondent, this document actually would be a part of agreement to be executed by the bidder. It was contended that it was signed by someone else at the last page which does not match with the original signature of the petitioner. Hence, those two documents were not acceptable at the time of verification of first cover. Therefore, the systems automatically does not allow the tender inviting authority to proceed to next stage of financial evaluation section of the tender of the petitioner.

4. The third respondent also filed a counter affidavit almost on the same line with the statement filed by the respondent university.

5. The petitioner filed a reply affidavit controverting the allegations of the statement as well as the counter affidavit filed by the respondent university.

6. Arguments have been heard.

7. The learned counsel for the petitioner would submit that the hard copies of the counter foil of original challan is insisted only as proof of online remittance of EMD and cost of tender form. According to the learned counsel for the petitioner, online payment of the above amount was successfully done and Ext.P4 is ample proof for payment of EMD and cost of tender form. Therefore, according to the petitioner, the inadvertent omission in submitting the original challan is pardonable and the petitioner is ready to submit the original challan before the second respondent at any time. It was also argued that the petitioner has quoted the lowest and

competitive bid for the work and the rate quoted by the petitioner is lower than the rate quoted by the third respondent by Rs.7 lakhs and if the petitioner is excluded and the work is awarded to the third respondent, the university exchequer would suffer a minimum loss of Rs.7 lakhs.

8. Admittedly, the conditions including 10 and 15 of the general conditions as is evidenced from the site relating to e-GP (Electronic Government Procurement System) clearly shows that the submission of original bank challan for the payment of EMD deposit to the tender inviting the authority is mandatory and the failure of the same would warrant some other rejections. It is relevant to note that the requirements regarding two documents viz; (1) The scanned copies of the tender documents and (2) proof of online payment of EMD and cost of tender form, which are serially listed as Item No.5 and 7, were not satisfied by the petitioner. It was noticed by the authority that the scanned copy of the tender documents were defectively uploaded as all pages other than the last page did

not contain any signature and the last page did not contain the correct signature corresponded to other admitted documents. Further the proof of online payment of EMD and cost of tender form were not uploaded at all. The petitioner's own e-documentation would show that they have marked the said relevant documents as NA, meaning 'Not Applicable'. The above two, has led to the respondent university to reject the technical bid of the petitioner.

9. The admitted omissions which was mandated as per the e-GP system rendered the bid incapable of acceptance. A variation in the petitioner's case alone would result in undue arbitrariness and illegality. He was strenuously argued by the learned counsel for the petitioner inviting my attention to Ext.P9, which is a copy of the relevant page of PWD Manual revised edition 2012, which states that the officer inviting tenders may condone minor defects if any and allow the tender to be included for tabulation. According to the learned counsel for the petitioner, omission to sign or omission to include all or

any of the document with the tender as well as the failure to produce the original challan for remittance of EMD provided are minor defects which could be condoned in the light of Ext.P9. I am not inclined to accept the said submission.

10. This Court in **Thomas P.C and Company v. Executive Engineer, Central Public Works Department** [2013 KHC 47] has observed that in the absence of provision in the tender notification, the disqualified tenderer cannot rectify mistake at a later stage after opening of tender. Here, there is no specific provision in the tender notification providing an opportunity to rectify the mistake. Therefore, the petitioner cannot place the reliance on Ext.P9.

11. It is a settled law that a person participating in the tender process has no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. Here, the petitioner has participated in the tender as

per the specifications in the tender notification with his eyes wide open. A person can be said to be aggrieved only when he is denied the legal right by someone, who has a legal duty to do something or to abstain from doing something. In this case, there is no such denial of legal right to the petitioner.

Therefore, this Court is of the definite view that the petitioner is not entitled to the relief as prayed for. In the result, the writ petition fails and accordingly it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.