

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 22073 of 2012 (H)

PETITIONER(S):

1. ROHINI PRASAD, AGED 53 YEARS,
W/O. KRISHNA PRASAD, PROPRIETRIX
ROHINI PRASAD & ASSOCIATES, 501, LANDMARK ENCLAVE,
SAHODARAN AYYAPPAN ROAD, VALANJAMBALAM, KOCHI-682 016.
2. AASHRAMI CONSULTANCY & TECHNOLOGY PVT. LTD.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT HAVING ITS
REGISTERED OFFICE AT ANANDASHRAMI,
EDAPPALLY, TOLL GATE, KOCHI-682 024,
REPRESENTED BY ITS DIRECTOR, GEORGE SUNIL JOHN,
AGED 49 YEARS,S/O. GEORGE JOHN.
3. TAC-K THE ARCHITECTS CONSORTIUM,
KAIPALLIL BUILDINGS, YWCA ROAD, KOTTAYAM-686 001,
REPRESENTED BY AR.JOSE K.MATHEW,AGED 58 YEARS,
S/O. LATE ADV.K.C.MATHEW.
4. RIYAZ MOHAMMED, AGED 38 YEARS,
S/O. ABDUL RAZAK, PROPRIETOR INDIGO ARKITECTS,
FORT CITY, EAST FORT JUNCTION
RESIDING AT C4-CORAL APARTMENTS, SANKARA IYER ROAD,
POOTHOLE, THRISSUR-680 006

**BY ADVS.SRI.B.JAYASANKAR
SRI.V.B.UNNIRAJ**

RESPONDENT(S):

1. UNION OF INDIA,
REPRESENTED BY SECRETARY TO UNION OF INDIA,
PUBLIC WORKS DEPARTMENT, NEW DELHI-110 001.
2. EXECUTIVE ENGINEER,TRICHUR CENTRAL DIVISION,
CENTRAL PUBLIC WORKS DEPARTMENT,
MUNDASSERY MEMORIAL BUILDING, CHEMBUKAVU,
TRICHUR, PIN-680 020.
3. CHIEF ENGINEER (SZ) III, CPWD,
KORAMANGALAM, BANGALORE, PIN-560 010.

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4. M/S. N.M.SALIM & ASSOCIATES,
10, NIKARTHIL CHAMBERS, BYE-PASS ROAD,
THIRUTHIYAD, CALICUT, KERALA-673 003.
5. M/S. KHAN GLOBAL DESIGN,
BANGALORE (HEAD OFFICE),
3790 7TH MAIN HALL II STAGE, INDIRANAGAR,
BANGALORE-560 038.
6. M/S. DESIGN ASSOCIATES INC.
S: 23-26, 2ND FLOOR, STAR CITY MALL,
MAYUR VIHAR PHASE-I, EXTENSION, NEW DELHI-110 092.

R1 TO R3 BY ADV. SRI.N.NAGARESH,ASG OF INDIA
R4 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-03-2015, THE COURT ON 20-05-2015 DELIVERED THE FOLLOWING:

sts

APPENDIX

PETITIONER(S) EXHIBITS

- P1 :** COPY OF THE TECHNICAL BID DOCUMENT CONTAINING THE TERMS AND CONDITIONS FOR BOTH TECHNICAL BID AND FINANCIAL BID – THE ELIGIBILITY CRITERIA AND CRITERIA RATING ISSUED BY THE 2ND RESPONDENT.
- P2 :** COPY OF THE NOTIFICATION DTD. 14.9.12 NO.54(1)/TRDC/2012/1575, ISSUED BY THE 2ND RESPONDENT.
- P3 :** COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT UNDER THE RI ACT.
- P4 :** COPY OF THE APPLICATION SUBMITTED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT UNDER THE RI ACT.
- P5 :** COPY OF THE REPLY DTD. 21.9.2012 NO.23(124)TRDC/2012/1608 ISSUED BY THE 2ND RESPONDENT TO THE 4TH PETITIONER.
- P6:** COPY OF THE LETTER NO.54(2)/TRCD/2012/1078 DATED 27/6/2012 BY 2ND RESPONDENT TO THE 1ST PETITIONER.
- P7:** COPY OF THE COVERING LETTER NO.P&OA/RPA/CPWD-AMU/001/2K12/2806 DATED 28/06/2012 ISSUED BY THE 1ST PETITIONER TO 2ND RESPONDENT
- P8** COPY OF THE LETTER NO.54(2)/TRCD/2012/1076 DATED 27/6/2012 ISSUED BY THE 2ND RESPONDENT TO THE 3RD PETITIONER.

RESPONDENTS' EXHIBITS :

- R2(A):** COPY OF THE ELIGIBILITY CRITERIA AS MENTIONED IN THE NIB
- R2(B):** COPY OF THE NIB, EVALUATION OF TECHNICAL BIDS
- R2(C):** COPY OF THE EXPERIENCE CERTIFICATE SUBMITTED BY 1ST PETITIONER.
- R2(D):** COPY OF THE EXPERIENCE CERTIFICATE SUBMITTED BY 3RD PETITIONER.
- R2(E):** COPY OF THE EXPERIENCE CERTIFICATE SUBMITTED BY 3RD PETITIONER.
- R2(F):** COPY OF THE DECLARATION OF 3RD PETITIONER
- R2(G):** COPY OF THE EXPERIENCE CERTIFICATE OF THREE QUALIFIED CONSULTANTS
- R2(H):** COPY OF THE LETTER ISSUED BY 3RD RESPONDENT

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R2(I): COPY OF THE CRITERIA RATING UNDER CLAUSE 9 OF NIB

R2(J): COPY OF THE WORKS AWARDED BY TECHNICAL COMMITTEE TO VARIOUS PARTICIPANTS

R2(K): COPY OF THE REPLY TO RTI QUESTIONS

R2(L): COPY OF THE LETTER FORWARDED TO 3RD RESPONDENT

R2(M): COPY OF THE LETTER ISSUED BY 3RD RESPONDENT FOR OPENING OF FINANCIAL BID OF THREE CONSULTANT.

R2(N): COPY OF THE LETTER RECEIVED FROM 3RD RESPONDENT

R2(O): COPY OF THE EXPERIENCE CERTIFICATE ISSUED BY THE REGISTRAR, KANNUR UNIVERSITY

R2(P): COPY OF THE EXPERIENCE CERTIFICATE 4TH RESPONDENT

R2(Q): COPY OF THE EXPERIENCE CERTIFICATE FURNISHED BY 5TH RESPONDENT

R2(R): COPY OF THE EXPERIENCE CERTIFICATE FURNISHED BY THE 6TH RESPONDENT.

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.22073/2012

Dated this the 20th day of May, 2015

JUDGMENT

Alleging manipulation in the selection process of architects for architectural consultancy services in the matter of construction of various buildings for Aligarh Muslim University Centre at Perinthalmanna at Malappuram District, the petitioners have come up before this Court.

2. The petitioners allege that they are architects and are doing consultancy in architecture. According to them, they are having necessary experience and expertise to offer the complete design, planning and specialised consultancy services required for various types of buildings.

3. The Central Public Works Department (CPWD) has been entrusted with the work of development of a world class campus for Aligarh Muslim University

Centre on a plot of 302 acres of land in Malappuram District. Approximate estimate of the project is 100 crores for the first phase. For the purpose of construction, the second respondent invited bids from experienced architects for architectural consultancy services. The selection process and the procedure for criteria rating are specified in the bid document itself. The first part of the selection process consists of pre-qualification as prescribed in Ext.P1. The petitioners allege that out of various contestants/ participants from all over the country, only 10 architects were shortlisted for technical presentation and the petitioners were also there in the 10 shortlisted participants. It is further alleged that all of them presented the technical presentation and applying the criteria rating to be followed as per Ext.P1, all bidders except respondents 5 and 6 were on equal footing. The petitioners allege that if the procedure contemplated in the bid document regarding the criteria rating is applied, the petitioners are entitled to

get full points enumerated under clauses 2 to 6 of criteria rating in bid document and the variation, if any, can be only in the evaluation of technical presentation. The petitioners allege that after 45 days, they were served with a notification intimating that respondents 4 to 6 were selected for opening their financial bids. On receipt of Ext.P2 notification, apprehending foul play and manipulations on the part of the second respondent, the petitioners submitted applications seeking certain vital informations regarding the ratings for the technical presentation. They allege that the second respondent purposefully evaded furnishing the information sought for in the application which would expose the manipulation in the selection process. It is with this background, the petitioners have come up before this Court.

4. In the counter affidavit filed by respondents 1 to 3, it is averred that 15 bid forms were issued to various parties upon remittance of prescribed fee for the application forms. Out of them, only 10 have

submitted duly filled bid forms within the stipulated time. As per Ext.R2(a) notice, all the bidders were supposed to fulfill the eligibility criteria. It was contended that as per paragraph-2 of Ext.R2(a), technical bids should be evaluated as per the marking procedure explained in the technical bid document constituted by the department and the authorised committee should decide the eligible bidders and the decision of the committee would be final and binding on the bidders. Scrutiny of the technical bid of the first petitioner and the third petitioner were found to be defective since they were not fulfilling the eligibility criteria to the extent of producing the relevant documents required for the above purpose. Though the first petitioner has produced the experience certificate issued by one T.P.Anil Kumar, according to the respondents, was in no way connected with the institution on behalf of whom he had issued the certificate. The first petitioner has also produced yet another certificate from another institution which did

not contain signature of the authority concerned. The so called defective certificates are produced as Exts.R2 (c) and R2(d). It is further contended that the third petitioner has not furnished certificate of work experience to fulfill the eligibility criteria and instead have produced the certificates issued by one Sandip Foundation to one Sanjay M.Patil who is a stranger. The competent authority has approved three agencies for opening the financial bid. All the 10 consultant firms, who had submitted the bid forms, were invited for the technical presentation. Individual marks were awarded by the committee members which were experts in the field of activity for more than 25 years of experience, based on the criteria rating as mentioned under clause 9 of the technical bid document. Ext.R2 (j) is the copy of marks awarded by the members to various participants. It was contended that the entire technical evaluation was collectively done by the members of the technical committee. Therefore, they prayed for a dismissal of the writ petition.

5. In the counter affidavit filed by the 4th respondent, it was contended that the 4th respondent has participated in the bid strictly in accordance with Ext.P2 notification and the technical bids were evaluated as per the marking procedure explained in the technical bid document. All the 10 consultant firms who have submitted the bid forms were invited for technical presentation. It was also contended that as per Ext.P1, the decision of the authorised committee is final and is binding on all the bidders. Therefore, they pray for the dismissal of the writ petition.

6. The petitioners have filed a reply affidavit and respondents 1 to 3 have filed an additional counter affidavit.

7. Arguments have been heard.

8. The petitioners are aggrieved by Ext.P2 intimation styled as notification dated 14.9.2012 stating that the third respondent had approved respondents 4 to 6 for opening financial bids based on the evaluation of technical bids. The petitioners allege

that apprehending foul play and manipulations on the part of the second respondent, they submitted applications seeking certain vital informations regarding the ratings for technical presentation and the second respondent has evaded furnishing the information sought for by the petitioners. According to the petitioners, Ext.P5 reply issued by the second respondent, who is in possession of the required information sought for, would go to show that he wanted to hide the informations sought for in the applications which would expose manipulation in the selection process.

9. The definite case of the petitioners is that the selection process was manipulated at every stage to favour the 4th respondent consultancy firms which do not have local set up in Kerala. It was pointed out that they were awarded marks for parametre No.3 in spite of the fact that they do not have any local set up in Kerala. It is also pointed out that respondents 1 to 3 have made unauthorised corrections in the mark

sheets prepared by the members of the technical committee. It is further contended that Ext.P2 notification is not in conformity with Ext.P1. According to the petitioners, financial bids of only those architects who scored more than 75 rating points are only liable to be opened. It was argued that the 6th respondent who was shortlisted for opening the financial bid has not scored the requisite rating points as specified in Ext.P1 and hence, the number of consultants who has been qualified to be shortlisted is less than three. It is also stated that Et.P2 notification is in violation of the General Financial Rules 2005 which governs the field in such selection process by all the departments of Government of India.

10. The eligibility criteria specified in Ext.R2(a) notification stipulates that the applicants shall have atleast 5 years experience in design and preparation of detailed Architectural drawings. It further stipulates that the applicants should have designed atleast one project for any educational institute costing not less

than ₹15 crores during the last five years ending in March 2012. It further stipulates that the applicant shall have an average annual financial turn over of ₹20 lakhs during the last three financial years ending 31st March 2011. It also stipulates that the application forms (duly filled in) along with the requisite enclosures received from the applicants would be scrutinized by CPWD to determine their eligibility based on the criteria mentioned in the application form. Ext.R2(a) also mandates that the applicant who submits the certificate of work experience which shall clearly indicate the gist of work for which the architectural designs were carried out by the bidder and that the certificate shall be obtained from an officer not below the rank of an Executive Engineer.

11. According to the petitioners, the supporting documents produced by them along with the bid would unequivocally establish their qualifications and technical capability. They would point out that the third petitioner viz.Aashrami Consultancy &

Technology Pvt.Ltd. is even now doing consultancy work for the CPWD for the projects, viz. Indian Maritime University (IMU) and Centre for Marine Living Resources & Ecology (CMLRE) and the second respondent is aware of the fact that the third petitioner is doing consultancy work for the projects under the CPWD. However, he is pretending ignorance to favour the 4th respondent who has not even fulfilled the eligibility criteria to participate in the technical presentation; it is alleged.

12. Respondents 1 to 3 along with their counter affidavits have produced experience certificates as those submitted by the qualified consultants. According to the learned counsel for the petitioners, Ext.R2(g) would unequivocally go to show that none of the certificates produced as Ext.R2(g) is issued by an officer not below the rank of an Executive Engineer. It was also pointed out that a perusal of the certificate issued to the 4th respondent would show that it is not in respect of any particular educational institution as

stipulated in Ext.R2(a) and it pertains to work in various campuses of the institutions affiliated to the Kannur University and it was not issued by an officer not below the rank of an Executive Engineer. Majority of the work specified therein pertains to construction of compound walls, staff quarters, library building and not in respect of any one project whereas Ext.R2(c) submitted by the petitioners is issued by an Executive Engineer and it pertains to campus planning of Educational institutions and the total project cost is ₹73 crores.

13. As rightly pointed out by the learned counsel for the petitioners, the only stipulation in Ext.R2(a) is that the certificate should be from an officer not below the rank of an Executive Engineer and there is no stipulation in Ext.P1 that the certifier should be attached with the institutions for whom he had issued the certificate as contended by respondents 1 to 3.

14. After the submission of the bid documents, the second respondent after scrutinizing the technical

bids issued Ext.P6 notice to the first petitioner on 27.6.2012 pointing out the alleged shortcomings in the technical bid submitted by him. The petitioners point out that in compliance with Ext.P6, the petitioners had furnished the details sought for as per Ext.P7. A similar letter was also issued by the second respondent to the third petitioner on 27.6.2012, a copy of which is marked as Ext.P8. The petitioners allege that the deficiency pointed out in Ext.P8 was also rectified by the third petitioner as per Exts.R2(e) and R2(f). They allege that along with the same, the required TDS certificates were also handed over to the second respondent. It is relevant to note that only after curing the defects in the bid documents submitted by the petitioners, the petitioners are allowed to participate in the technical presentation. Therefore, the second respondent cannot be heard to say that the bid submitted by the petitioners 1 and 3 were defective. The second respondent is not entitled to apply a different yardstick to the petitioners and the 4th

respondent in considering the eligibility criteria to participate in the bid. The definite stand taken by the respondents is that none of the participants other than the first petitioner had submitted a certificate of work experience from an officer not below the rank of an Executive Engineer. Ext.R2(g) pertaining to the 4th respondent does not confirm the requirements stipulated in Ext.R2(a) and all the more, the Registrar who had issued the same is not competent to issue such a certificate, that too without the concurrence of the University Syndicate. The contention taken by the respondents that the invitation to perform the technical presentation was not a pre-qualification or shortlisting does not appear to be true in the light of what has been stated above. It was only after the scrutiny of the bid documents and confirming that the petitioners were pre-qualified, they were allowed to perform the technical presentation.

15. The petitioners have also challenged the competence of the technical committee constituted to

evaluate the technical bid. The learned counsel for the petitioners points out that only the master plan and conceptual drawings and specifications for buildings included in the first list were submitted with the technical bid. Experience in architectural consultancy for educational institution/ university/IT campuses and institutional training centres having facilities of academic, administrative, residential, hostel blocks, sports complexes were given due weightage in the award criteria as well. The respondents' contention that in the evaluation criteria, criterion 1(b) alone is the exclusive architectural merit concern criteria is factually incorrect. The criteria (a) to (b) under clause-1 is concerning architectural merits which can be assessed only by experts in the same discipline. Therefore, the contention of the respondents that only 10 marks are there for architectural merits and balance 90 marks is interdisciplinary cannot be accepted. It is also relevant to note that no experts in the interdisciplinary were seen included in the

technical committee. Ext.R2(h) produced by the respondents would show that the technical committee constituted in this case, consists of three Civil Engineers, one Architect and one Dr.P.Muhammed, who is seen included in the experts. The discipline to which the aforesaid Dr.P.Muhammed belongs is not disclosed. The petitioners allege that he is not an expert in any of the disciplines mentioned above or competent to judge the criteria specified in Ext.R2(i). Any way, he has also participated in the evaluation process and awarded marks to the participants. In the light of what has been stated above, this Court is of the view that there is also force in the allegation raised by the petitioners that the technical committee constituted by the third respondent was incompetent to evaluate the performance of the technical presentation based on any of the criteria rating under clause (1) specified in Ext.R2(i). It is true that the petitioners were aware that the technical bid was supposed to be evaluated by a committee authorised

by the department as specified in the technical bid document. However, they were unaware of the expertise of the members who constituted the committee and it was never disclosed to them.

16. The designing of a university is a very serious matter affecting the moulding of the nation's new generations as the future of the students who use the campus for more than 100 years would be moulded in the said environment.

17. As rightly pointed out by the learned counsel for the petitioners, it requires a lot of thinking process in the designs before it is finally presented for evaluation and it is not simple as giving consultancy for constructing a compound wall, a staff quarters or even a library building.

18. The 4th respondent has not produced any certificate from an officer not below the rank of an Executive Engineer to substantiate his work experience. Ext.R2(g) certificate issued by the Registrar does not pertain to campus planning or to a

single project for any educational institution.

19. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioners are entitled to get the relief prayed for.

In the result, this writ petition is allowed. It is hereby declared that the rejection of bids of the first and third petitioners and the selection process as well as Ext.P2 notification are bad in law. Therefore, Ext.P2 is quashed. Respondents 1 to 3 are directed to open the financial bids of all participants/bidders irrespective of the points scored in the technical bid/presentation and award the consultancy services to the participants who scored the maximum overall marks in the technical and financial bids taken together. This process shall be completed within a period of three months from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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P.S.TO JUDGE