

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 19020 of 2015 (B)

PETITIONER:

**PAUL. V. THOMAS,
GOVERNMENT CONTRACTOR, VETTUVAZHY PUTHENPURA,
MEEMPARA P.O, PUTHENCRUZ, ERNAKULAM DISTRICT -682 308**

**BY ADVS.SRI.C.A.MAJEED
SRI.K.H.ASIF
SMT.RAAGA R.RAMALAKSHMI
SRI.K.J.SHARATH KUMAR**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY SPECIAL SECRETARY,
WATER RESOURCES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM- 695 001**
- 2. THE CHIEF ENGINEER,
IRRIGATION AND ADMINISTRATION, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM -695 001**
- 3. THE SUPERINTENDING ENGINEER,
IRRIGATION CENTRAL CIRCLE, JALA BHAVAN, CHEMBUKKAVU,
THRISSUR -680 020**
- 4. KERALA STATE CONSTRUCTION CORPORATION LTD.,
REPRESENTED BY THE MANAGING DIRECTOR,
DOOR NO.30/1521-A, UNDER THE BRIDGE,
NORTHERN SIDE OF RAILWAY, PONNURUNNI, VYTILA,
KOCHI- 682 019**

**R1 TO R3 BY SR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R4 BY ADV. SRI.M.V.THAMBAN, SC., KSCC LTD.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 19020 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- A PHOTOCOPY OF THE TENDER NOTICE FOR PRE-QUALIFICATION AND AWARD OF WORKS ISSUED BY THE 3RD RESPONDENT VIDE NO.PQ 02/SEICC/2014-2015 NS DTD 1/4/2015
- P2: A PHOTOCOPY OF THE SPECIAL CONDITIONS TO EXT.P1 NOTICE ISSUED BY THE 1ST RESPONDENT
- P3:- A PHOTOCOPY OF THE SYSTEM GENERATED TECHNICAL BID EVALUATION SUMMAY ISSUED BY THE 2ND RESPONDENT DTD 19.6.2015
- P4:- A PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD 19/6/2015
- P5:- A PHOTOCOPY OF THE BID SUBMISSION CONFIRMATION ISSUED BY THE 1ST RESPONDENT ON 25/06/2015 TO THE PETITIONER.
- P6:- A PHOTOCOPY OF THE EXPERIENCE AND FINANCIAL STATEMENTS OF THE PETITIONER MARKED AS SCHEDULE A TO E TO THE PRELIMINARY AGREEMENT

RESPONDENT(S)' EXHIBITS & ANNEXURES:

ANNEX R3(A) COPY OF THE CORRIGENDUM PUBLISHED ON 07/04/2015

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J.

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Dated this the 17th day of July, 2015

J U D G M E N T

The petitioner is aggrieved by the denial of consideration in the pre-qualification stage of a tender issued, evidenced at Exts.P1 and P2. Obviously, the rejection was by Ext.P3 on the ground that the preliminary agreement is in stamp paper for Rs.150/-. Admittedly as of now, only the 4th respondent is pre-qualified and all other three tenderors were disqualified at the pre-qualification stage itself.

2. The contention of the petitioner is that the tender notification at Exts.P1 and P2 indicated that the preliminary agreement should be in the stamp paper of Rs.150/-. A revision in the rates of stamp duty also came into effect only on 01.05.2015. The petitioner's tender was on 28.04.2015.

3. Probably keeping in mind the possible revision, the

department would have thought of coming out with a notification that the stamp paper should be of Rs.500/-. Obviously, that should be since the agreement would be executed only after 01.05.2015. However that is a defect which could be cured and is not fundamental at the pre-qualification stage. In any event, the Government's contention is also that the corrigendum notification is issued on 07.04.2015 directing all the tenderors to submit a preliminary agreement on stamp paper of Rs.500/-. The alleged notification is also produced at Annexure R3(a) and this Court having gone through it, finds that it is inscrutable and nothing is evident as to any direction having been given that the stamp paper should have been of Rs.500/-. The ground for rejection is a mere defect; which is the only inference even if the revision was notified by the respondent. Going by the decision of the Hon'ble Supreme Court reported in **Rashmi Metaliks Limited and Another v. Kolkata**

Metropolitan Development Authority and Others [(2013) 10 SCC 95] the defect insofar as pending an agreement in stamp paper of Rs.150/- instead of Rs.500/- cannot be understood to be an essential term of qualification, on facts. The notification specified stamp paper of Rs.150/- even if the notification of enhancement was proper, the deficiency ought to have been directed to be rectified.

4. The learned Standing Counsel appearing for the 3rd respondent has also filed a statement, in which it is stated that they have produced the stamp paper of Rs.500/-. However, nothing is evident as to on what basis such stamp paper was produced or how they came to know of the revision made.

5. In such circumstance, the rejection of the petitioner at the pre-qualification stage would be set aside. The petitioner would within a week from 27.07.2015, produce the preliminary agreement in stamp paper of Rs.500/-. The finalisation of the

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pre-qualification bid shall be kept in abeyance till 03.08.2015. The petitioner's bid also shall be considered and it is made clear that this Court has not made any observations on even the pre-qualification of the petitioner and has merely set aside the rejection on the ground of the stamp paper not being sufficient.

The writ petition is allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.