

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. 21682 of 2013 (I)

PETITIONER :

**SHAJAHAN J.,
AGED 52 YEARS, S/O. LATE JAMALUDEEN,
THUMBIKUNNATHU VEEDU, EDAMON P.O.,
PUNALUR-691307.**

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF FOREST & WILD LIFE
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.**
 - 2. KERALA FOREST DEVELOPMENT CORPORATION
DIVISIONAL OFFICE, VELLAYAMBALAM, SASTHAMANGALAM P.O.
THIRUVANANTHAPURAM-10,
REPRESENTED BY ITS CHAIRMAN.**
 - 3. THE DIVISIONAL MANAGER
KERALA FOREST DEVELOPMENT CORPORATION
DIVISIONAL OFFICE, VELLAYAMBALAM, SASTHAMANGALAM P.O.
THIRUVANANTHAPURAM-10.**
- R1 BY SPL. GOVT. PLEADER (FOREST) SRI.M.P.MADHAVANKUTTY
BY GOVT. PLEADER SRI. MANOJ P. KUNJACHAN
R2 & R3 BY ADVS. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

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

Mn

...2/-

WP(C).No. 21682 of 2013 (I)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1- COPY OF THE AUCTION/TENDER ADVERTISEMENT DATED 26-04-2013
PUBLISHED BY THE 3RD RESPONDENT.**
- EXHIBIT P2- COPY OF THE REPRESENTATION DATED 08-05-2013 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.**
- EXHIBIT P3- COPY OF THE REPRESENTATION DATED 24-05-2013 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.**
- EXHIBIT P4- COPY OF THE NOTICE DATED 08-08-2013 ISSUED BY THE 3RD
RESPONDENT.**
- EXHIBIT P5- COPY OF THE REPRESENTATION DATED 23-08-2013 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.**
- EXHIBIT P6- COPY OF THE TENDER/AUCTION ADVERTISEMENT DATED 20-08-2013.**

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R1(a) COPY OF THE SALE NOTIFICATION DATED 26-4-2013
PUBLISHED IN MALAYALA MANORAMA DAILY DATED 28-4-2013.**
- ANNEXURE R1(b) COPY OF THE TENDER SUBMITTED BY THE PETITIONER.**
- ANNEXURE R1(c) COPY OF THE TENDER CONDITIONS OF THE 2ND
RESPONDENT.**

//TRUE COPY//

P.S. TO JUDGE

Mn

K. Vinod Chandran, J

W.P.(C).No.21682 of 2013-I

Dated this the 17th day of July, 2015

JUDGMENT

The petitioner is aggrieved by the decision of the respondents to re-tender a work at the expense of the petitioner. The work was earlier notified and award could not be made since the petitioner, the sole bidder, having not satisfied the tender conditions, by deposit of the balance amount within time.

2. The petitioner admittedly had bid with respect to item No.4 in Exhibit P1. The Earnest Money Deposit [for brevity "EMD"] of Rs.1,05,000/- was paid and the bid was made for Rs.45,00,000/-. The petitioner submits that, the same was an error committed by the person whom the petitioner had entrusted for filing of the tender. In fact the petitioner had intended only to bid at an amount of Rs.4,05,000/-. In any event, the petitioner submitted Exhibit P2 on 08.05.2013 before opening of tenders, pointing out the

said mistake and requesting that he may be allowed to withdraw from the tender. The tender opening date was also 08.05.2013.

3. The request was declined and tender opened and since the petitioner was the successful tenderer and he having not complied with the further condition of deposit of balance amount, the tender was cancelled and the cost of further notification was mulcted on the petitioner. The EMD was also forfeited. The petitioner submitted that it was only a mistake which resulted in such tender being filed for an astronomical amount, which the tender could not have, in any event, fetched. The petitioner also submits that even if the petitioner's tender is accepted, no award could be made, since the petitioner was the only tenderer and it had to be re-notified.

4. The 2nd respondent has filed a statement, in which it is stated that subsequently the re-tender was made and published on 20.08.2013. Though the re-tender was conducted on 02.09.2013, there were no bidders in that re-tender also. In such circumstance, there would be no

point in mulcting the petitioner with damages. However, the forfeiture of EMD shall remain as such.

The writ petition would stand partly allowed, declaring that the petitioner shall not be mulcted with any liability as to the damages. Parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]