

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 19489 of 2015 (I)

PETITIONER :

**M.P. GEORGE
S/O.LATE M.V. POULOSE, AGED 55 YEARS
RESIDING AT MALIAKKAL HOUSE
PACHALAM P.O., KOCHI 682 012.**

**BY ADVS.SRI.V.B.NARAYANAN
SRI.C.SIVADAS
SRI.M.P.HARIKUMARAN PILLAI**

RESPONDENT(S) :

- 1. TRAVANCORE DEVASWOM BOARD
REPRESENTED BY SECRETARY, NANTHENCODE
THIRUVANANTHAPURAM – 695 003.**
- 2. THE DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD, NANTHANCODE
THIRUVANANTHAPURAM - 695 003.**

R1 & R2 BY ADV. SRI.KRISHNA MENON, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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...2/-

WP(C).No. 19489 of 2015 (I)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: TRUE COPY OF THE JUDGMENT DATED 31.05.2013 IN WP(C).NO.18124/2012.**
- EXT. P2 (a): TRUE COPY OF THE TENDER NOTIFICATION DATED 25.10.2009.**
- EXT. P2 (b): TRUE COPY OF THE RETENDER NOTIFICATION DATED 03.11.2009.**
- EXT. P3: TRUE COPY OF THE REPRESENTATION DATED 14.11.2009 SUBMITTED BY THE PETITIONER.**
- EXT. P4: TRUE COPY OF THE TELEGRAM DATED 10.11.2009 SENT BY THE 2ND RESPONDENT.**
- EXT. P5: TRUE COPY OF THE JUDGMENT IN WP(C).NO.12471/2010 DATED 21.03.2011.**
- EXT. P6: TRUE COPY OF THE PROCEEDINGS NO.ROC 6223/09/SAB OF THE 1ST RESPONDENT DATED /10/2011.**
- EXT. P7: TRUE COPY OF THE COMPLAINT 19/2012 SUBMITTED BY THE PETITIONER TO DEVASWOM OMBUDSMAN.**
- EXT. P8: TRUE COPY OF THE ORDER IN COMPLAINT NO.19/2012 BY THE DEVASWOM OMBUDSMAN DATED 24.02.2012.**
- EXT. P9: TRUE COPY OF THE AUDIT REPORT OF THE LOCAL FUND AUDITOR.**
- EXT. P10: TRUE COPY OF THE INVITATION DATED 04.10.2013 SENT BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.19489 of 2015 - I

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Dated this the 30th day of July, 2015

J U D G M E N T

The petitioner in the above writ petition seeks refund of Earnest Money Deposit (EMD) deposited with the respondent Board, when the petitioner participated in a tender process held in the year 2009. The petitioner participated in a tender for collection of parking fees at Chalakkayam, Elavunkal and Plappally. Altogether 7 persons participated in the tender. Two were rejected at the threshold itself for non-satisfaction of EMD and the petitioner's was found to be the highest quote at Rs.1,77,44,447/-. The tenderers except the petitioners were found to have quoted below the minimum amount of Rs.1,74,00,000/-.

2. On the petitioner being found to be the only valid tender, the Board decided to call the others for a negotiation, which according to the petitioner was a malafide attempt. It is

also stated that the petitioner had not participated in the negotiations. Though it is stated by the petitioner that one other tenderer quoted above his tender in the negotiation, the said person had not come forward to take the work. Hence, even on the admission of the petitioner, the negotiation did not result in any other person coming forward with a better offer to accept the award. The petitioner remained the successful tenderer and the same was granted to him. On the ground of his having refused to participate in the negotiation, which is merely asserted without any substantiation, the petitioner refused to take up the work, on which the EMD was forfeited.

3. The petitioner was earlier before this Court in the year 2010 with a writ petition, which was considered by a Division Bench being a Devaswom Board matter as per the then roster. The Division Bench at that point itself found that with the materials on record, it is not possible to conclude that the tender process was terminated or not. The breach asserted and the challenge otherwise of the tenderer, was said to be incapable of

decision in a petition under Article 226 of the Constitution of India, since there were admittedly disputed questions of fact. The Bench specifically noticed that the issues could be resolved only in a civil suit after taking evidence and found that, if the breach is proved to have been committed, then there was no case for the petitioner to seek refund.

4. However, considering the fact that there was a representation before the Board, the same was directed to be disposed of. The petitioner had in the meanwhile moved the Ombudsman, which matter was pending at the time of the consideration of the representation. Hence the Secretary of the Board while disallowing the prayer of refund of EMD, however, felt that the issue could be resolved by the Ombudsman. The Ombudsman closed the complaint by Ext.P8 dated 24.02.2012. The petitioner contends that he was called for a hearing by Ext.P10 and nothing happened later. The petitioner again has approached this Court with the above writ petition to seek for a direction to dispose of Ext.3 representation, for which there was

already a direction in Ext.P5 judgment. The petitioner obviously has approached this Court at a belated stage, since a contempt at this point would not lie.

5. Further, it is to be noticed that the petitioner was once more before this Court with another writ petition numbered as W.P.(C) No.18121 of 2012, which was considered by a Division Bench at Ext.P1. There again, the prayer sought for was a disposal of a representation, in accordance with Ext.P5 judgment. Again this Court directed the disposal of the representation and the petitioner took no steps to see that the order is complied with. The petitioner cannot time and again for a mandamus for the very same matter, one after another.

6. The petitioner's representation was considered and disallowed by Ext.P6 at October 2011 on the ground that the matter was pending before the Ombudsman. The Ombudsman closed the petition before it by Ext.P8 dated 24.02.2012. The petitioner was here seeking a re-consideration, which was disposed of by Ext.P1 dated 31.05.2013. Two years have elapsed

without the petitioner taking any steps to see that the directions are complied with. The petitioner also could have approached the Civil Court within the limitation provided for seeking recovery of money, which was directed as early as in 2011 by Ext.P5 judgment. Nothing survives as of now and the petitioner is merely trying to rake up the issues, which are no more alive for reason only of sheer passage of time. The petitioner was directed to take recourse to civil remedies as early as in 2011, by Ext.P5. Even that would be barred by limitation now. The present writ petition under Article 226 cannot be a method to get over such limitation. The petitioner has not been diligent in prosecuting the matter.

For all the above reasons, this Court would decline the exercise of discretionary jurisdiction under Article 226. The writ petition hence would stand dismissed. No costs.

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