

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 21021 of 2015 (C)

PETITIONER(S):

**RAJAN M.P., AGED 49,
S/O. PARAMESWARAN, MARAYIKUNNEL, THIRUVALLOOR,
ALANGAD P.O, KARUMALLOOR, ALANGAD,
ERNAKULAM DISTRICT, PIN - 683 511.**

**BY ADVS.SRI.BENNY VARGHESE
SRI.PRAMOD KOCHUTHOMMEN.E.**

RESPONDENT(S):

- 1. KERALA TODDY WORKERS WELFARE FUND BOARD,
REPRESENTED BY ITS CHAIRMAN, ULLOOR,
THIRUVANANTHAPURAM, PIN 685 011.**
- 2. CHIEF WELFARE FUND INSPECTOR,
KERALA TODDY WORKERS WELFARE FUND BOARD, ULLOOR,
THIRUVANANTHAPURAM, PIN - 685 011.**
- 3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT ,
LABOUR DEPARTMENT, TRIVANDRUM - 695 001.**

**R3 BY SENIOR GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R1 & R2 BY ADV. SRI.K.D.BABU, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 21021 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: THE MEMBERSHIP CARD NO EKM 3829 ALLOTTED TO THE PETITIONER BY THE 1ST RESPONDENT.

EXHIBIT P2: THE COPY OF THE MINUTES OF THE BOARD MEETING NO 599 HELD ON 23-3-2015 OF THE 1ST RESPONDENT.

EXHIBIT P3: THE QUOTATION CALLED FOR BY THE CHIEF WELFARE FUND INSPECTOR, KERALA TODDY WORKERS WELFARE FUND BOARD CALLING FOR INSURANCE COMPANIES, INTIMATING THE LAST DATE FOR SUBMISSION OF QUOTATION IS ON 17-04-2015 AT 3 P.M.

EXHIBIT P4: THE COPY OF THE MINUTES OF THE BOARD MEETING NO 562 HELD ON 24-06-2015 OF THE 1ST RESPONDENT.

EXHIBIT P5: THE MINUTES OF THE BOARD MEETING NO.561 OF THE 1ST RESPONDENT BOARD DTD.29.5.2015.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF THE BOARD OF DIRECTORS MEETING HELD ON 25.6.2011 OF KERALA TODDY WORKERS' WELFARE FUND BOARD.

EXT.R2(b): TRUE COPY OF THE SANCTION ORDER DTD.30.4.2013 ISSUED BY THE LABOUR AND REHABILITATION (B) DEPARTMENT.

EXT.R2(c): TRUE COPY OF THE BOARD DECISION DTD.24.6.2015.

EXT.R2(d): TRUE COPY FO THE RETENDER ADVERTISEMENT DTD.8.7.2015.

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J

WPC No.21021 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

The petitioner approached this Court pointing out the inordinate delay on the part of the respondent Board in fixing an insurance company, is aggrieved by the re-tendering process which was going on at the time of filing of the writ petition.

2. The petitioner is a Toddy worker and a member of the first respondent Toddy Workers Welfare Fund Board vide Ext.P1 membership card. On 1.7.2013, the first respondent Board started a group personal accident policy for the benefit of its members. The said insurance policy is available till 30.6.2015. As per Ext.P3, the second respondent called for quotation from the insurance companies for renewal of the policy from 1.7.2015. The quotation was called for on the basis of Ext.P2 minutes dated 23.3.2015 of the board meeting of the first respondent Board. It is understood that based on Ext.P3

quotation, several insurance companies in the public sector filed quotations and the lowest tenderer was identified and called for negotiation. But the board meeting held on 24.6.2015 vide Ext.P4 minutes shows that such discussion was done by the Board. In spite of fixing an eligible insurance company on the basis of Ext.P3 quotation, the first respondent Board is making hasty arrangements to re-tender the insurance scheme to the prejudice of the petitioner. According to the petitioner, there is no insurance scheme available for coverage from accidents arising in the work site for the toddy workers who are members of the board from 1.7.2015.

3. In the counter affidavit, it was contended as follows by the Board:

No kind of insurance scheme was prevailing to the toddy workers till 25.6.2011. Before the introduction of the insurance scheme, a maximum amount of ₹50,000/- was allowed by the first and second respondents for accidental death/treatment occurred during the course of duty. The 509th Board of Directors meeting of the Kerala

Toddy Workers' Welfare Fund Board held on 25.6.2011 had resolved to implement the accidental insurance scheme to the registered toddy workers after obtaining sanction from the Government. A true copy of the Board of Directors Meeting of the Kerala Toddy Workers' Welfare Fund Board held on 25.6.2011 is produced and marked as Ext.R2(a). Sanction was obtained by the Government vide G.O.(Rt) No.803/2013/LBR dated 30.4.2013 and the scheme has been implemented with effect from 30.6.2013 through the New India Assurance Co.Ltd. A true copy of the sanction order issued by the Labour and Rehabilitation (B) Department dated 30.4.2013 is produced and marked as Ext.R2(b). It is submitted by the respondents that the present insurance scheme has been introduced voluntarily by the respondent Board without recovering any amount from the toddy workers. The amount for the said purpose was collecting from the shop licensees by way of coconut/palm tree tax. Ext.P4 produced by the petitioner stating that the same is the copy of the minutes of Board meeting held on 24.6.2015 is not correct. It is actually an

Agenda of Board meeting. The extract copy of the Board decision dated 24.6.2015 is produced and marked as Ext.R2(c).

4. It is submitted by the second respondent that the scheme was introduced for 20229 registered members at the rate of ₹228/- per member for a period of one year with effect from 30.6.2013 to 29.6.2014 with New India Assurance Company. The scheme has been renewed after obtaining competitive tenders from insurance companies with effect from 30.6.2014 to 29.6.2015 with the lowest rate quoted company, i.e. New India Assurance Company with premium amount of ₹450/- per member which includes service tax also. To continue the policy from 29.6.2015, the Board had invited competitive tenders among which the lowest rate quoted for this purpose was ₹510/- + service tax, i.e. ₹581/- per worker.

5. Since the scope of the toddy industry is diminishing day by day due to various reasons, the resources from this industry has also been reduced to a substantial extent, affecting the financial stability of the

Board and the lowest amount quoted for the year 2015-2016 is considerably high to the Board. Hence, the Board had decided to negotiate with the insurance company for reduction of the rate. However, in the negotiation meeting held on 18.6.2015 with Sri.Kumara Swamy, the Regional Manager of the National Insurance Company had agreed to reduce the rate by ₹2/- only i.e. from ₹581/- to ₹579/-. Since the negotiated amount of ₹579/- is very high, considering the previous year's rate the 562th Board of Directors meeting held on 24.6.2015 had decided to go for re-tendering the insurance scheme. It is in good faith and public interest that the Board decided to re-tender the matter. The re-tender is scheduled on 21.7.2015. A true copy of the re-tender advertisement dated 8.7.2015 is produced and marked as Ext.R2(d).

6. Though this Court as per interim order dated 13.7.2015 had ordered to keep the re-tendering process for abeyance, subsequently by order dated 21st July 2015 it was modified and the respondents were permitted to open the re-tender. However, it was made clear that the

finalisation of the same would be subject to the final outcome of the writ petition.

7. I have heard the learned counsel for the petitioner and the learned standing counsel for the Board.

8. The petitioner would admit that on 1.7.2013, the first respondent Board has started an insurance scheme for the benefit of the toddy workers. It was pointed out by the petitioner that the work done by the toddy workers including climbing on trees and there is chances for accident due to accidental slips from the trees. In the writ petition, it was pointed out that there is every reason to believe that the eligible insurance company was not fixed so as to facilitate a back door entry to someone. It was further pointed out that the re-tendering process proposed to be initiated was without giving due regard to the tender process already initiated. The petitioner points out that the lowest quotation given by the company in the earlier tendering process is discarded without any valid and cogent reasons.

9. In answer to the said submission, the learned

standing counsel for the Board would submit that the decision of the Board to re-tender the insurance scheme has been appreciated by the petitioner since that was taken with a view to have a reduced premium amount for the group insurance policy.

10. During the course of the argument, the learned counsel for the petitioner invited my attention to the proceedings of the board dated 24.7.2015 issued after the opening of the re-tender. It shows that the United India Insurance Company Limited, Divisional Office, Ernakulam has quoted the lowest rate which is ₹445/- including service tax. However, the lowest tender before the re-tender was submitted by the National Insurance Company which was ₹579/-. Therefore, as per the re-tendering, the board would be gaining a sum of ₹27,10,686/- without any bargaining.

As the intention of the respondent Board for re-tendering was only to insure with the reduced premium amount for the group of insurance scheme, it cannot be branded as guided by any extraneous consideration. The

result of the re-tendering also would indicate the *bona fides* of the respondent Board. No *malafides* or legal infirmities can be attributed to the process of re-tender. Therefore, this Court is of the view that the matter need not be delayed by keeping this petition on file.

As the petitioner himself is aggrieved by the delay in fixing an insurer, this writ petition is dismissed permitting the respondent board to finalise the re-tender process to fix the company which quoted the lowest rate.

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

css/

true copy

P.S.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

WPC No.21021 of 2015

Dated this the 21st day of July, 2015

ORDER

Respondents 1 and 2 are permitted to open the re-tender. However, finalisation of the same shall be subject to the final outcome of the writ petition.

Post for disposal on 29.7.2015.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/