

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 21848 of 2015 (E)

PETITIONER(S):

**R.VISWANATHAN,
S/O.RAGHAVAN, VARUTHUNDIL VEEDU, NEELESWARAM P.O.,
KOTTARAKKARA, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT THIRUVANANTHAPURAM - 695 001.**
- 2. THE NEDUVATHOOR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
NEDUVATHOOR P.O., KOTTARAKKARA , KOLLAM - 691 506.**
- 3. THE ASSISTANT ENGINEER, NEDUVATHOOR GRAMA PANCHAYATH,
NEELESWARAM P.O., KOTTARAKKARA, KOLLAM - 691 505.**
- 4. THE EXECUTIVE ENGINEER, KOLLAM JILLA PANCHAYATH,
LOCAL SELF GOVERNMENT DEPARTMENT, THEVALLY P.O.,
KOLLAM - 691 009.**
- 5. THE ASSISTANT EXECUTIVE ENGINEER,
KOTTARAKKARA BLOCK PANCHAYATH,
E.T.C. P.O., KOTTARAKKARA, KOLLAM - 691 562.**
- 6. SRI.G.JAGANATHAN,
CONTRACTOR, THRISHNALAYAM, ANAKOTTOOR P.O.,
KOTTARAKKARA, KOLLAM, PIN - 691 505.**

R2 BY ADV. SRI.K.VANIL KUMAR

R1 BY SENIOR GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**P1- THE TRUE COPY OF THE NOTICE INVITING TENDER NO.138/16/AE/LSGD
DATED 19.6.15 ISSUED BY THE 3RD RESPONDENT.**

**P2- THE TRUE COPY OF THE B-CLAS REGISTRATION CERTIFICATE OF THE
PETITIONER.**

**P3- THE TRUE COPY OF THE DETAILS OF ACCOUNT NUMBER MAINTAINED IN SBT
KOTTARAKKARA MAIN BRANCH OF THE PETITIONER.**

**P4- THE TRUE COPY OF THE PERMANENT ACCOUNT NUMBER OF THE PETITIONER
IN THE INCOME TAX DEPARTMENT.**

**P5- THE TRUE COPY OF THE TENDER FEE AND EMD REMITTED BY THE PETITIONER
AND THE DOCUMENTS.**

**P6- THE TRUE COPY OF THE RATE QUOTED BY THE PETITIONER BEFORE THE
3RD RESPONDENT.**

P7- THE TRUE COPY OF TH AGREEMENT DATED 10.7.2015.

**P8- THE TRUE COPY OF THE INSTRUCTION OF EXT.P1 TENDER DOCUMENT AS
MENTION (NIT).**

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): A TRUE COPY OF THE REPORT OF THE 3RD RESPONDENT.

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.21848 of 2015

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Dated this the 19th day of August, 2015

JUDGMENT

The petitioner has approached this Court challenging the additional condition to send the documents to the third respondent as mentioned in the Notice Inviting Tender (NIT) by speed post in addition to the on line bids in Ext.P1 tender notification contrary to the PWD manual.

2. The petitioner is a B class contractor having Reg. No.18/BSC/2013 issued by the Assistant PWD Road Section, Kottarakkara. The third respondent invited Ext.P1 competitive on line bids from the registered bidders of State PWD and Irrigation Department through the Government Portal for construction of the panchayat office building for Neduvathoor Grama Panchayat first phase. The petitioner submitted e-tender along with Exts.P2 to P8 documents by quoting 8.1% below the estimated amount against tender form with the instructions of the tender document as mentioned in NIT to the third respondent. The petitioner alleges that it was accepted.

3. The petitioner further alleges that he has also forwarded the details to the third respondent by speed post within the time

mentioned in the tender notification. The sixth respondent submitted tender to the third respondent in respect of the bid by quoting 5.25% below the estimate rate. The incumbent holding the post of the third respondent was transferred. The Charge Officer opened the tender on 14.7.2015 and found that the tender submitted by the petitioner is lower than the tender submitted by the sixth respondent. However, the incumbent holding the charge of the third respondent colluded with the sixth respondent contrary to the PWD manual on hyper technical grounds and alleged that the petitioner failed to send Ext.P8 tender instructions along with the documents sent by speed post. The tender submitted by the petitioner is alleged to be defective and it is liable to be rejected.

4. The third respondent proceeded to finalise the tender in favour of the sixth respondent. Though the petitioner tried to convince the third respondent that there is no need to send Ext.P8 instruction along with the documents, the third respondent did not accept the request of the petitioner. The grievance of the petitioner is that now the respondents are taking steps to finalise the tender in favour of the sixth respondent ignoring the lowest tender quoted by the petitioner. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the second respondent, their main contention is that the petitioner has not submitted the documents as per Ext.P8 tender notification.

6. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent panchayat.

7. The learned counsel for the petitioner submitted that respondents 1 to 5 were arbitrarily incorporating additional conditions in Ext.P1 tender directing to produce documents as mentioned in NIT by speed post to the respondents for submission of e-tender. According to the learned counsel for the petitioner, the same is contrary to the PWD Manual. According to him, the respondents should have proceeded with the e-tender submitted by the petitioner taking into consideration of the amount quoted by the petitioner which is 8.1% below the estimated rate. According to the learned counsel for the petitioner, the rejection of the e-tender on hyper technical grounds unwarranted and arbitrary.

8. On a specific query put by me during the course of argument to the learned counsel for the respondent as to whether the petitioner was the lowest tenderer, the learned counsel answered in the affirmative. I see valid force in the submission of the learned for the petitioner that in the insistence of production of

documents mentioned in the NIT to be sent by speed post is quite unnecessary, the petitioner is entitled to get selection. As the petitioner is the lowest bidder, his bid ought not have been rejected on such technical grounds.

Therefore, the writ petition is allowed. Respondents 1 to 5 are directed to proceed with Ext.P1 tender submitted by the tenders, including the petitioner, ignoring the additional conditions in Ext.P1 to the extent it directs the production of documents as mentioned in NIT to be sent by speed post and finalise the tender proceedings within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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