

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

W.P.(C).No.22146 of 2015 (P)

PETITIONER(S):-

STERLING LAB,
REPRESENTED BY ITS PROPRIETOR NITESH SURANA,
AGED 35 YEARS, S/O.JAIN SURANA,
104/105, MIDFORD HOUSE,
MIDFORD GARDENS, OFF M.G.ROAD,
BENGALURU - 560 001, KARNATAKA STATE.

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

RESPONDENT(S):-

1. STATE OF KERALA,
REP.BY THE DIRECTOR,
ANIMAL HUSBANDRY DEPARTMENT,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 033.
2. STATE BANK OF TRAVANCORE,
TREASURY BRANCH, THIRUVANANTHAPURAM, PIN - 695 001,
REP.BY BRANCH MANAGER.

R1 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.
R2 BY STANDING COUNSEL SRI.JAWAHAR JOSE.
R2 BY ADV. SRI.SATHISH NINAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- | | |
|-----------|--|
| EXT.P1 | E-TENDER NOTIFICATION DATED 09.06.2015 ISSUED BY THE 1ST RESPONDENT. |
| EXT.P2 | E-PROCUREMENT INSTRUCTION ISSUED BY THE 1ST RESPONDENT. |
| EXT.P3 | RTGS APPLICATION DATED 11-07-2015 OF THE PETITIONER. |
| EXT.P3(a) | GRPT ACCOUNT TRANSACTION SHEET DATED 11.07.2015. |
| EXT.P4 | COPY OF THE BANK STATEMENT OF THE PETITIONER. |
| EXT.P5 | DEMAND DRAFT DATED 15.07.2015 FOR RS.1,91,040/-. |
| EXT.P5(a) | REQUEST DATED 15.07.2015 MADE BY THE PETITIONER TO THE 1ST RESPONDENT. |
| EXT.P6 | CERTIFICATE BY THE PETITIONER'S BAANK DATED 17.07.2015 CONFIRMING THE REJECTION OF RTGS. |
| EXT.P6(a) | GRPT SCREEN SHOT AND TRANSACTION SHEET ISSUED BY THE PETITIONER'S BANK. |

RESPONDENT'S EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.22146 of 2015-P

Dated this the 24th day of July, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's tender, sent through *e-mail*, has not been accepted for reason only of the petitioner's Earnest Money Deposit [for brevity "EMD"] having not been received by the 2nd respondent-Bank, who is the account holder of the 1st respondent.

2. The petitioner had applied for a tender as per Exhibit P1. As per the tender notification, EMD was to be remitted to the State Bank of Travancore, Treasury Branch, Thiruvananthapuram [hereinafter referred to as "SBT"] by a form indicated at Exhibit P2. The petitioner is said to have made a remittance through the State Bank of Mysore, Bangalore Branch [hereinafter referred to as "SBM"]; but, however, the same has not been received by the SBT. The petitioner alleges that the SBM, who is his banker, has tried to send the EMD twice; but the same was returned as "account unavailable", as is indicated at Exhibit P6. Hence, the petitioner took a Demand Draft and forwarded it to the 1st respondent. The petitioner's case is that the petitioner's EMD should also be

accepted and the petitioner's tender opened, to consider the technical bid as also the financial bid.

3. The learned counsel for the 2nd respondent appears and submits that the 2nd respondent has not received the EMD as transferred by the SBM from the account of the petitioner. A reading of Exhibit P6 also would indicate that the SBM was not able to effectively transfer the EMD to the Bank as specified in Exhibit P2. It is not clear as to how the same occurred. It would be for reason of any defect of SBM or of the petitioner. In any event, the fact remains that the petitioner's transfer of EMD was not done within the time as specified in Exhibits P1 and P2 by the 2nd respondent. No fault can be found on the 1st and 2nd respondents. In such circumstance, this Court is not satisfied that the petitioner's tender is to be considered, especially since the petitioner should have been diligent to see that the EMD is transferred and the same is received, as specified in the tender.

The writ petition is dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]