

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 24068 of 2014 (S)

PETITIONER(S) :

ABDUL LATHEEF
S/O.PAREED, POOLAKKAL HOUSE, PONNANI NAGARAM P.O.
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY
FISHERIES AND PORT DEPARTMENT, SECRETARIAT
THIRUVNANTHAPURAM - 695 001.

2. THE CHIEF ENGINEER
HARBOR ENGINEERING DEPARTMENT, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM - 695 001.

3. ASSISTANT EXECUTIVE ENGINEER
HARBOR ENGINEERING SUB DIVISION, PONNANI - 679 583.

4. THE PORT CONSERVATOR
PORT OFFICE, PONNANI NAGARAM P.O., PONNANI
MALAPPURAM DISTRICT - 679 583.

5. SUBEESH
CHERIYAMANGATTA HOUSE, MEDICAL COLLEGE P.O.
KOZHIKODE DISTRICT - 673 008.

R1 -R 4 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
R5 BY ADV. SRI.V.SETHUNATH
R5 BY ADV. SRI.V.R.MANORANJAN (MUVATTUPUZHA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 24068 of 2014 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - THE TRUE COPY OF THE MARINE FISHERS IDENTITY CARD ISSUED BY THE GOVERNMENT OF INDIA TO THE PETITIONER.

P2 - THYE TRUE COPY OF THE RELEVANT PAGE OF THE PASS BOOK ISSUED BY THE KERALA FISHERMAN'S WELFARE BOARD TO THE PETITIONER WITH TRANSLATION.

P3 - THE TRUE COPY OF THE LETTER DT. 30.1.13 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT WITH TRANSLATION.

P4 - THE TRUE COPY OF THE LETTER DT. 23.2.13 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT WITH TRANSLATION.

P5 - THE TRUE COPIES OF THE COVEING LETTER AND RELEVANT PAGES OF THE MINUTES WITH TRANSLATION.

P6 - THE TRUE COPY OF THE TENDER NO. 698/11

P7 - THE TRUE COPY OF THE JUDGMENT IN WPC NO. 28302/13.

P8 - THE TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE 4TH AND 5TH RESPONDENT WITH TRANSLATION.

P9 - TRUE COPY OF ORDER DT. 02.6.14 ISSUED BY THE 4TH RESPONDENT WITH TRANSLATION.

RESPONDENT(S) ' EXHIBITS

EXHIBIT R4(a): COPY OF MINUTES OF THE MEETING HELD AT THE CHAMBERS OF THE TOURISM DIRECTOR, THIRUVANANTHAPURAM ON 10.7.2014.

EXHIBIT R5(a): COPY OF DECISION OF THE TENDER EVALUATING COMMITTEE DATED 10.10.2013.

EXHIBIT R5(b): COPY OF JUDGMENT OF THE DIVISION BENCH OF THIS COURT IN W.A.NO.1171/2013.

/true copy/

PS TO JUDGE

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.P.(C).No.24068 of 2014

Dated this the 21st July, 2015

JUDGMENT

Shaffique, J.

This Writ Petition has been filed in the form of public interest litigation in which the petitioner seeks the following reliefs:

- "i. Declare that the sale of sand dredged for the purpose of the strengthening and maintenance of the Ponnani Fishing Harbor pursuant to Exhibit P6 tender in public auction without utilising the dredged sand for the development and strengthening of the harbor improper and illegal.*
- ii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to carry out the strengthening and maintenance work of the Ponnani Fishing Harbor within a time frame fixed by this Hon'ble Court.*

- iii. *Call for the records leading to Exhibit P6 tender notification, P8 agreement and Exhibit P9 order awarding the tender to the 5th respondent pursuant to Exhibit P6 and quash the same by issuing a writ of certiorari or any other appropriate writ order or direction."*

2. The petitioner, claiming to be *pro bono publico*, has approached this Court alleging that the sand dredged under the Ponnani Fishing Harbor Project was not for sale, whereas it was required for strengthening the Ponnani Fishing Harbor. It is stated that around 60000 metric tonnes of sand has been obtained by way of dredging and public auction notice had been issued in terms of Exhibit P6 tender and auction was held on 10.10.2013 by which the fifth respondent was found to be the highest bidder. According to the petitioner, there is dispute between two departments with reference to auctioning of the sand. The Harbor Engineering Department insisted that the sand should be used for the purpose of filling up the area for strengthening the harbor, whereas the Port Conservator

had a different view to sell the sand by public auction. In that view, it is submitted by the petitioner that the matter relating to protection of the harbor, its operation, maintenance and management lies with the Harbor Engineering Department and the decision of the Harbor Engineering Department has to be taken into consideration. The Port Conservator has no right to auction the sand or to sell the same.

3. Counter affidavit has been filed by the fourth respondent inter alia stating that a joint meeting of the officials belonging to the Harbor Engineering Department and Port Conservator was held in the Chamber of the Tourism Director on 10.7.2014. It was noticed that the Chief Engineer of Harbor Engineering Department informed that a total volume of 40000 MT of sand was available and they had incurred expenditure of a total amount of ₹42 Lakhs towards dredging. They also expressed the need of filling the stretch of land in their possession. It was intimated that the sale of sand will

fetch revenue at the rate of ₹3000/- per tonne and it will be more desirable to sell the sand in open market through tendering, which was already carried out. The Managing Director, Kerala State Mechanical Dredging Corporation has assured that they can undertake the filling of the land under the possession of Harbor Engineering Department at the rate of ₹200/- per tonne. It is, therefore, stated that if the sand dredged is sold, the revenue that will be fetched would come to ₹17 Crore to the Government, whereas only ₹1 Crore is required for filling the fishing harbor land as per the proposal by the Kerala State Mechanical Dredging Corporation. Exhibit R4(a) is the minutes of the meeting, which was held on 10.7.2014.

4. The fifth respondent has also filed counter affidavit, inter alia stating that after participating in the tender and having found that he is the highest bidder, two Writ Petitions and one Writ Appeal were filed before this Court. Ultimately, it was found that there was no irregularity in the tendering process and that the fifth

respondent is the highest bidder. According to the fifth respondent, he had agreed for a rate of ₹3,159/- per metric tonne.

5. Having regard to the aforesaid factual situation, it is now pleaded that there has been a consensus between respondents 2 and 4 in the matter relating to sale of sand. The sale of sand has been effected by an auctioning process by which the fifth respondent is considered to be the highest bidder. It is also relevant to note that by virtue of this process, the Government may obtain revenue of about ₹17 Crores. In such circumstances, there is no reason why this Court should interfere with the procedure adopted by the respondents in the matter of sale of sand. Having regard to the fact that the issue between two departments had already been settled by way of Exhibit R2(a) decision, we do not think that any further direction is required to be passed in the Writ Petition.

6. Learned counsel for the petitioner, however, would submit that necessary steps should be taken for

strengthening and maintenance work of the Ponnani Fishing Harbor within a time frame to be fixed by this Court.

7. A decision having been taken as per Exhibit R4(a) itself, we do not think that any further direction is required in the matter. We expect that the department concerned shall take appropriate steps within a reasonable time. Recording the above submission and taking note of the aforesaid factual situation involved in the matter, the Writ Petition is closed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs22/7/15