

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 24736 of 2015 (N)

PETITIONER(S):

KELANCHANDRA POLYMERS
CHINGAVANAM, KOTTAYAM - 686 531
REPRESENTED BY ITS MANAGING PARTNER
MR.TITTEN THOMAS.

BY ADVS.SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS

RESPONDENT(S):

1. AYMANAM GRAMA PANCHAYATH
AYMANAM P.O.
KOTTAYAM - 686 015
REPRESENTED BY ITS SECRETARY.
2. THE VILLAGE EXTENSION OFFICER
AYMANAM GRAMA PANCHAYATH
AYMANAM P.O
KOTTAYAM - 686 015.
3. PADANILATHU SANITARY CENTRE
ANCHERIL COMMERCIAL COMPLEX, SHASTRI ROAD
KOTTAYAM - 686 001.
4. GOVERNMENT OF KERALA
SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
REPRESENTED BY THE SECRETARY
LSG DEPARTMENT.

R1 BY ADV. SRI.S.HARIKRISHNAN
R BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE ADVERTISEMENT BEARING NUMBER A2-2082/15 DATED 4.7.2015 ISSUED BY THE IST RESPONDENT INVITING TENDERS
- EXT.P-2: TRUE COPY OF THE RECEIPTS ISSUED TO PETITIONER FOR PURCHASING THE TENDER FORMS AND DEPOSIT OF EARNEST MONEY.
- EXT.P-3: TRUE COPY OF THE TENDER FORM SUBMITTED BY THE PETITIONER
- EXT.P-4: TRUE COPY OF THE PETITIONER'S LETTER DATED 18.7.2015 SUBMITTED BEFORE THE IST RESPONDENT
- EXT.P-5: TRUE COPY OF THE KERALA PANCHAYATH RAJ (EXECUTION OF PUBLIC WORKS) RULES, 1997.
- EXT.P-6: TRUE COPY OF THE LEGAL NOTICE DATED 22.7.2015 ISSUED TO THE IST RESPONDENT PANCHAYATH BY THE PETITIONER THROUGH THEIR ADVOCATE
- EXT.P-7: TRUE COPY OF THE REPLY DATED 27.7.2015 ISSUED BY THE IST RESPONDENT TO EXHIBIT P6 NOTICE.
- EXT.P-8: TRUE COPY OF G.O.(P) No.03/2013/SPD DATED 21.6.2013 ISSUED REVISED STORES PURCHASE MANUAL 2013.

RESPONDENT(S)' EXHIBITS

- EXT.R1(a) TRUE COPY OF THE RESOLUTION DATED 10.6.2015 OF THE FIRST RESPONDENT VILLAGE PANCHAYAT.
- EXT.R1(b) TRUE COPY OF THE RELEVANT PAGES OF THE ORDER NO.490/2015/ DPC/DPO/KTM DT. 15.6.2015 OF THE DISTRICT PLANNING COMMITTEE, KOTTAYAM.
- EXT.R1(c) TRUE COPY OF THE ORDER DATED 12.5.2015 ISSUED BY THE GENERAL EXTENSION OFFICER, ETTUMANOOR BLOCK PANCHAYAT.
- EXT.R1(d) TRUE COPY OF THE RESOLUTION DT. 3.7.2015 OF THE VILLAGE PANCHAYAT.
- EXT.R1(e) TRUE COPY OF THE CORRECTION NOTICE DATED 14.7.2015 ISSUED BY THE FIRST RESPONDENT.
- EXT.R1(f) TRUE COPY OF THE MINUTES OF THE PROCUREMENT COMMITTEE MEETING HELD ON 14.7.2015.

: 2 :

- EXT.R1(g) TRUE COPY OF THE TENDER SUBMITTED BY THE THIRD RESPONDENT ENCLOSING THE DULY EXECUTED PRELIMINARY AGREEMENT AND EMD CASH RECEIPT.
- EXT.R1(h) TRUE COPY OF THE VILLAGE PANCHAYAT RESOLUTION DATED 15.7.2015.
- EXT.R1(i) TRUE COPY OF THE VILLAGE PANCHAYAT RESOLUTION DT. 3.8.2015.
- EXT.R1(j) TRUE COPY OF THE VILLAGE PANCHAYAT RESOLUTION DT. 11.8.2015
- EXT.R1(k) TRUE COPY OF THE RELEVANT PAGES OF THE KERALA PWD REVISED MANUAL 2012.
- EXT.R1(l) TRUE COPY OF THE MODEL TENDER FORM ALONG WITH CONDITIONS OF TENDER DISTRIBUTED TO INTENDING BIDDERS.

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.24736 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

The first respondent Panchayat invited tenders for the supply of water tanks from the eligible persons. Ext.P1 tender notification merely states that “all conditions relating to tender” would apply. the petitioner quoted at the rate of ₹ 1870/- per water tank. This is discernible from Ext.P3 tender form submitted by the petitioner.

2. There were three other tenderers for the supply of water tanks. The tender submitted by the third respondent was the second highest. The third respondent quoted at the rate of ₹ 1925/- per water tank. The other two tenders quoted at rates higher than the petitioner.

3. It appears that only the tender submitted by the third respondent was accepted. The tenders submitted by the other tenderers were rejected. The only reason stated is that the tender was not accompanied by a preliminary agreement in the proforma. Reliance is placed on Rule 10(3) of Ext.P5 rules in this regard.

4. Rule 11 of the same rules relied on by the Panchayat is to the following effect:-

11. Entrustment of works by negotiation:- (1) In case the rates in the tenders received on publication of the notice under Rule 9 seems not acceptable or if sufficient number of tenders are not received the work shall be retendered.

(2) If the rate in the tenders received on retender is seen not acceptable, negotiation shall be made by the consensus of the Panchayat with the contractor who has submitted the lowest rate of tender and subject to the provisions of sub-rule (14) of Rule 10, such offer shall be accepted.

(3) The Panchayat may, if it considers necessary, by negotiation entrust any work for execution, to a Government recognised, financially sound and experienced voluntary organisation or institution and the rates decided by the Panchayat on negotiation subject to the provisions of sub-rule (14) or Rule 10 shall be allowed to them.

5. Rule 11(1) is clear enough that the work shall be re-tendered if sufficient number of tenders are not received. In other words one valid tender

alone shall not be considered and accepted. Such a provision can be seen even in the PWD Manual. The Panchayat was bound to retender when only one valid tender was seen.

6. True it is that a negotiation is possible under Rule 11(2) of Ext.P5 rules. Such negotiation is possible only after a re-tender is conducted. The Panchayat in the instant case did not conduct any re-tender. The Panchayat now states that the rate has been lowered to ₹1865/- per water tank on negotiation with the third respondent.

7. When Rule 10 of Ext.P5 rules is put against the petitioner, then Rule 11 should also be made applicable. There has been an infraction of Rule 11 of Ext.P5 rules. It was unjust to reject Ext.P3 tender on the basis of an innocuous statement in Ext.P1 notification. The agreement of the nature insisted on is not part of the tender agreement. The same is evident from Clause 2007.2 of Ext.R1(k) PWD Manual.

8. The whole process of tender lacks transparency and smacks of mala fide. The best course open is to direct a re-tender by the first respondent

Panchayat [See Standard Metals v. Kerala Small Industries Development Corporation (2012 (2) KHC 157)].

9. I direct the first respondent to conduct a re-tender in regard to the supply of water tanks. I find that no formal order accepting the tender of the third respondent after negotiation is passed. This is in view of the interim order passed in this writ petition. The process of re-tender shall be completed within a period of two months.

The writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj/09.10.15