

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

**TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936**

**WP(C).No. 26481 of 2014 (I)**  
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**PETITIONER(S):**  
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**ROY MATHEW,  
GOVERNMENT CONTRACTOR, PAMPLANIYIL HOUSE  
BHARANANGANAM P.O., PALA VIA, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA  
SRI.P.T.ABHILASH**

**RESPONDENT(S):**  
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**1. GOVERNMENT OF KERALA  
REPRESENTED BY ITS SECRETARY  
DEPARTMENT OF RURAL DEVELOPMENT  
GOVERNMENT SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.**

**2. CHIEF ENGINEER,  
KERALA STATE RURAL ROADS DEVELOPMENT AGENCY  
TC 28/885, CSI BUILDING, PULIMOODU  
THIRUVANANTHAPURAM - 695 001.**

**\* ADDL.R3 TO R5 IMPEADED**

**3. GOVERNMENT OF INDIA  
REPRESENTED BY ITS SECRETARY  
MINISTRY OF RURAL DEVELOPMENT, LODHI ROAD  
NEW DELHI - 110 003.**

**4. NATIONAL RURAL DEVELOPMENT AGENCY (NRRDA)  
15 NBCC TOWERS, BHIKAJI CAMA PLACE  
NEW DELHI - 110 066, REPRESENTED BY ITS DIRECTOR.**

**5. KERALA STATE RURAL ROADS DEVELOPMENT AGENCY (KSRRDA),  
TC 28/885, CSI BUILDING, PULIMOODU  
THIRUVANANTHAPURAM, PIN - 695 001.**

**ADDL.R3 TO R5 ARE IMPEADED AS PER ORDER DATED 01.12.2014 IN  
IA 15014/14.**

**PJ**

**....2/-**

WP(C).No. 26481 of 2014 (I)

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\* ADDL.R6 IMPEADED

6. M/S. SOUTHERN TECH ENGINEERING CONTRACTORS  
VALLAMATTAM BUILDINGS, PANDAPPILLY PO.  
MUVATTUPUZHA - 686 672,  
REPRESENTED BY ITS MANAGING PARTNER  
SHRI.TOMY VALLAMATTAM.

ADDL.R6 IMPEADED AS PER ORDER DATED 01.12.2014 IN IA 16450/14.

R1 & 2 BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE  
R3-R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL  
R6 BY ADVS. SRI. MURALI PURUSHOTHMAN  
SRI.DEEPU LAL MOHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

PJ

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1: TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 17/9/2014 ISSUED BY THE EXECUTIVE ENGINEER, PROGRAMME IMPLEMENTATION UNIT, DISTRICT PANCHAYAT, PALAKKAD.**
- P1(A): TRUE COPY OF THE GUIDELINES FOR EVALUATION OF BIDS AND AWARD OF CONTRACT UNDER PRADHAN MANTRI GRAM SADAK YOJNA (PMGSY) MANUAL**
- P2: TRUE COPY OF G.O.(MS) NO.19/2008/PWD DATED 7/4/2008 ISSUED BY THE GOVERNMENT.**
- P3: TRUE COPY OF THE CIRCULAR NO.16846/E2/2012/PWD DATED 1/8/2012 ISSUED BY THE GOVERNMENT.**
- P4: TRUE COPY OF ARTICLE 2009.7 OF THE P.W.D MANUAL REVISED EDITION 2012.**
- P5: TRUE COPY OF THE RELEVANT PORTION OF THE E-TENDER NOTICE NO.02/CE-KSRRDA/2014-15/AB1-1604-KR1050 DATED 21/8/2014 ISSUED BY THE 2ND RESPONDENT.**
- P6: TRUE COPY OF THE RELEVANT PORTION OF THE E-TENDER NOTICE NO.04/CE-KSRRDA/2014-15/AB1-1604-KR1050 DATED 27/9/2014 ISSUED BY THE 2ND RESPONDENT.**
- P7: TRUE COPY OF THE ORDER DATED 7/10/2014 IN WPC NO.25356/2014 OF THIS HON'BLE COURT.**

**RESPONDENT(S)' EXHIBITS**  
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- R2(A): TRUE COPY OF THE GUIDELINES FOR EVALUATION OF BIDS AND AWARD OF CONTRACT**
- R6(A): THE PHOTOCOPY OF THE CIRCULAR DATED 15/1/13 ISSUED BY THE R4**
- R6(B): THE PHOTOCOPY OF THE CIRCULAR NO.2508/B2/2013/SPD DATED 28/10/13 ISSUED BY THE STORE PURCHASE DEPARTMENT OF THE R1**
- R6(C): THE PHOTOCOPY OF THE CIRCULAR NO.DB1/1559/2010/CE/LSGD DATED 15/11/14 ISSUED BY THE CHIEF ENGINEER, LOCAL SELF GOVERNMENT DEPARTMENT**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

**P.R. RAMACHANDRA MENON, J.**

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**W.P.(C) No.26481 OF 2014**  
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**Dated this the 3<sup>rd</sup> day of February, 2015**

**J U D G M E N T**

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Pursuant to Ext.P5 tender notification issued by the 2<sup>nd</sup> respondent in connection with PHGSY-2013-14 (Phase-VIII-Batch 2) Package No.KR-10-50 at Attappady Block of Palakkad District including maintenance for five years after construction, the petitioner submitted his bid also producing all the relevant materials. According to the petitioner, he was fully eligible to have submitted the tender and the same was liable to be accepted since he had quoted 2.2% below the estimate PAC. However, his tender was not accepted stating that it was a 'single tender' and hence the concerned respondent proceeded with further steps to have re-tender, which was notified accordingly as borne by Ext.P5. This made the petitioner to approach this Court by challenging the said proceedings, raising the relevant prayers and pleadings. The reliefs sought for in the Writ Petition are in the following terms:

- “i. Issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P6 proceeding of the 2<sup>nd</sup> respondent, to the extent involving the work contained in Ext.P5;
- ii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2<sup>nd</sup> respondent to open the price bid submitted by the petitioner, in pursuance to Ext.P5 tender notification, forthwith, and to award the said work to the petitioner, since the rate quoted by him is below the estimate PAC;
- iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents 2 to 4 to open the tender submitted by the petitioner in pursuance to Ext.P5 tender notification, and to take a policy decision, as to whether the rate quoted in the single bid was estimate PAC or below estimate PAC, sch tender would be accepted or not.
- iv) issue a writ of certiorari or any other appropriate writ, order or direction, quashing Clause 5.8(b) of Ext.P1(a), and direct the respondents 2 to 4 to open the single bid also, to know as to whether the rate quoted in the single bid was estimate PAC or below estimate PAC.

And

- v) issue such other writ, order or direction which may deem fit in the facts and circumstances of the case.”

2. During the pendency of the proceedings, the additional 6<sup>th</sup> respondent, who responded to Ext.P6 notification got impleaded by filing I.A.No. 16450/2014 and has filed a counter affidavit as well. The 2<sup>nd</sup> respondent has also filed a counter affidavit. The Writ Petition was caused to be amended by the petitioner by filing I.A.No.15014/2014 and it was accordingly, that the prayers as mentioned above came to be incorporated, as they now stand.

3. Heard the learned Government Pleader as well as the learned counsel appearing for the 6<sup>th</sup> respondent. The learned Government Pleader points out that the idea and understanding of the petitioner that 'single tender' could be considered in view of Ext.P1(a) guidelines, is not at all true and correct and that the full text of the same has been produced as Ext.R2(a). Paragraph 5.8 of the said guidelines reads as follows:

**“5.8. Single Bids/Tenders:** In order to promote full transparency, healthy competition and award of works at the most reasonable price, it is not desirable to have too many awards of works on Single Bid/Tender basis. Accordingly, in case of receipt of Single Bid/Tender in the first invitation of Bids, the following process shall be adopted:

- a) **Definition of Single Tender:** If, consequent to invitation of tenders/bids

for any package, only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found substantially responsive, such bids/tender shall be termed as single tender for the purposes of the PMGSY.

- b) **Opening of Single Bids/Tenders:** If in the first invitation/call, single tender/bid is received, the State Rural Roads Development Agency (SRRDA) or authority inviting the tenders/bids **shall not open the bid.** In such cases, the bids shall be re-invited. Modifications in the e-procurement software shall be made by the NIC to delete the bid (while maintaining the meta-data in the database) from the server after the date of opening bids and generate appropriate reports in this regard.
- c) **Second and Subsequent Invitation of Bids/Tenders:** Before issuing the second or subsequent invitations of bids, the SRRDAs are free to re-package the works or revise the estimated cost based on current market rates though no cost escalation would be borne by Government of India in such cases (In case of repackaging, the invitation of bids would be treated as fresh invitation/call). The State would be able to accept Single Tender in second or subsequent invitations/calls keeping in view of the Guidelines of CVC in this regard and the fact that the rates are reasonable and full justification is recorded. Such bids shall be accepted with the

approval of a Committee headed by CEO of SRRDA and comprising CE/E-in-C and Financial Controller as members (as per para 5.7 above)."

4. With reference to the above, it is asserted from the part of the Government and from the part of the 6<sup>th</sup> respondent, that the petitioner is not entitled to have any relief. It is also pointed out that the re-tender notification was issued as early as on 27.9.2014 intending to have the bid opened on 15.10.2014. Without participating in the said tender, the petitioner rushed to this Court by filing this Writ Petition and in view of the interim order passed by this Court, opening of the bid did not take place on 15.10.2014. According to the respondents, having not chosen to participate in the re-tender, the claim of the petitioner is not liable to be entertained.

5. After hearing both the sides, this Court finds that the version of the petitioner that he is entitled to participate in the tender and that the same is liable to be finalised in his favour despite being a 'single tender' is not liable to be entertained. In so far as the guidelines issued by the concerned authority are categorical, the 'single tender' can be considered for acceptance

only in the 2<sup>nd</sup> round of notification and not in the initial round. Even otherwise, considering the scope of such exercise, it has already been made clear by a Division Bench of this Court as per the judgment dated 29.10.2001 in W.A.No. 3332/2001 that 'single tender' is not liable to be accepted, in view of the involvement of public money. In the above circumstance, the said contention raised from the part of the petitioner is turned down.

6. With regard to the further course of events, particularly, as to the consequence of non-participation in the re-tender, this Court wanted to ascertain whether the tender submitted by the petitioner was returned. This was more in the circumstance, with respect to the mandate provided under clause 5.8.2(b). This Court also wanted to ascertain whether the tender submitted by the petitioner pursuant to Ext.P5 was rejected or returned and the EMD was caused to be reimbursed by sending it back, so as to make the petitioner aware of the fate of the proceedings and to raise sufficient funds by cancelling the DD and to effect further deposit by responding against Ext.P6 re-tender notice. The learned Government Pleader points out, on the basis of the instruction, that although rejection of the tender

submitted by the petitioner pursuant to Ext.P5 was recorded, it was not informed and the EMD was still to be returned. This being the position, this Court finds that a fair opportunity has to be given to the petitioner as well, to participate pursuant to Ext.6 re-tender. This is more so, since there is no case for the respondents that the petitioner was disqualified in any manner or that he was eligible to participate and further non-consideration of the bid was only for the sole reason that it happened to be a 'single tender'.

7. In the above circumstance, this Writ Petition is disposed of with liberty to the 2<sup>nd</sup> respondent to proceed with further steps pursuant to Ext.P6 re-tender notification by considering all valid tenders received along with the tender submitted by the petitioner pursuant to Ext.P5, on merit.

**SD/-**

**P.R. RAMACHANDRA MENON,  
JUDGE.**

ps/3/2/2015