

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 26727 of 2015 (M)

PETITIONER(S):

**C.O.T. HANEEFA, AGED 60 YEARS,
SON OF LATE SRI.T.MOOSA, SHAFIS, KAYATH ROAD,
HEAD P.O., TELECHERRY-670 101.**

**BY ADVS.SRI.SREELAL N.WARRIER
SMT.SADHANA KUMARI ESWARI**

RESPONDENT(S):

- 1. SOUTHERN RAILWAY,
(PALGHAT DIVISION),
REPRESENTED BY THE CHIEF MEDICAL SUPERINTENDENT,
SOUTHERN RAILWAY, DIVISIONAL OFFICE, PALGHAT-678 009.**
- 2. CHIEF MEDICAL SUPERINTENDENT,
SOUTHERN RAILWAY, PALGHAT-678 009.**
- 3. V.K.SYED ALAVI,
HAVING ADDRESS AT VATTAKANDATHIL, CHUNDAN PATTU (PO),
PATTAMBI (VIA), PALAKKAD-679 309.**

**R1 & R2 BY ADV. SRI.C.S.DIAS, SC
R3 BY ADVS. SRI.T.K.SAIDALIKUTTY
SRI.M.I.JOHNSON
SRI.T.K.MOIDEEN KUTTY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE PHOTOCOPY OF THE RELEVANT PAGE 1 OF THE SAID TENDER NOTICE DATED 21.05.2015 ISSUED BY THE 1ST AND 2ND RESPONDENTS, SHOWING RELEVANT DETAILS.

EXHIBIT-P2: TRUE PHOTOCOPIES OF THE SAID RELEVANT PAGES 5 & 6 OF THE PART B-REGULATIONS FOR TENDERS AND CONTRACTS AND INSTRUCTIONS TO THE TENDERERS AND CONDITIONS OF TENDER OF THE TENDER DOCUMENTS ISSUED BY THE 1ST AND 2ND RESPONDENTS.

EXHIBIT-P3: TRUE PHOTOCOPY OF THE LETTER OF ACCEPTANCE DATED 20.3.2013 ISSUED BY THE 1ST AND 2ND RESPONDENTS TO THE PETITIONERS.

EXHIBIT-P4: TRUE PHOTOCOPY OF THE RIDER AGREEMENT NO.01/TIR/2015 DATED 26.3.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P5: TRUE COPY OF THE RIDER AGREEMENT NO.02/TIR/2015 DATED 25.6.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P6: TRUE PHOTOCOPY OF THE SAID DEMAND DRAFT NO.044421 DATED 26.06.2015 FOR RS.3,300.00 TOWARDS COST OF TENDER ISSUED BY THE STATE BANK OF TRAVANCORE.

EXHIBIT-P7: TRUE PHOTOCOPY OF THE SAID DEMAND DRAFT NO.044422 DATED 26.06.2015 FOR RS.98,930.00 TOWARDS EARNEST MONEY DEPOSIT ISSUED BY THE STATE BANK OF TRAVANCORE.

EXHIBIT-P8: TRUE PHOTOCOPY OF THE STOP MEMO FOR CONSERVANCY CONTRACT DATED 1.9.2015 AND DELIVERED TO THE PETITIONER ON 3.9.2015.

EXHIBIT-P9: TRUE COMPUTER PRINTOUT OF SUDHIR CHANDRA COMMITTEE REPORT.

RESPONDENT(S)' EXHIBITS:

EXT.R2(1): TRUE COPY OF THE MINUTES OF THE TENDER COMMITTEE MEETING HELD ON 4.8.2015.

EXT.R2(2): TRUE COPY OF THE LETTERS OF THE AWARD WHICH WAS PRODUCED BY THE 3RD RESPONDENT ALONG WITH HIS TENDER DOCUMENT.

//TRUE COPY//

P.S.TO JUDGE

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 26727 of 2015

Dated this the 27th day of October, 2015

JUDGMENT

This writ petition is filed, challenging award of the contract for conservancy work at Tirur Railway Station.

2. The work has been awarded to the 3rd respondent. The petitioner challenges the award of contract to the 3rd respondent on the ground that the 3rd respondent has no past experience. The petitioner, particularly refers to clause 5.2 of the notification which reads as follows :

"5.2 For the works costing less than Rs.50 lakhs

The tenderers who have not carried out any work so far on the Railway should submit along with the tender credentials to establish:-

- I) Capacity to carryout the works satisfactorily.*
- II) Financial status supported by Bank reference and other documents.*
- III) Certificates duly attested and testimonials regarding contracting experience for the type of job for*

which tender is invited with list of works carried out in the past.

IV) The following documents should be submitted along with tender as per enclosed proforma.

a) List of personnel, organization available on hand and proposed to be engaged for the subject work.

b) List of plant and machinery available on hand (own) and proposed to be inducted (own and hired to be given separately) for the subject work.

c) List of works completed works in the last three financial years giving description of work, organization for whom executed, approximate value of contract at the time of award, date of award and date of scheduled completion of work, date of actual start, actual completion and final value of contract should be given.

d) List of works on hand indicating description of work, contract value, approximate value of balance work yet to be done and date of award

In case of items (c) and (d) above, supportive documents/ certificates from the organizations with whom they worked/ are working should be enclosed. The certificate issued minimum at the level of Sr.DEN/DEN for open line works, Dy.CE for construction organization and Executive Engineer in case of other departments will only be taken into consideration. For

other department works, equivalent graded officer's certificate is accepted.

Certificates from private individuals for whom such works are executed/being executed will not be accepted."

3. The petitioner also submits that the award of the work contract is also overlooking Ext.P9 recommendation of the Committee of Shri. B.S. Sudhir Chandra, approved by the Railway Board.

4. Ext.P1 tender notice is inviting tender for different works under the Railway. It classifies two kinds of eligibility for the works are above costing more than Rs.50 lakhs and other for works costing less than Rs.50 lakhs. Clause referred as above, is in relation to the work costing less than Rs.50 lakhs. The petitioner's case is that clause 5.2(III), stipulates that there should be an experience for the tenderer to qualify himself for taking part in the tender process. It is submitted that the 3rd respondent has no such experience.

5. Per contra, the learned Standing Counsel as well as the counsel for Awardee submit that stipulation in clause 5.2 would only apply to tenderers who have not

undertaken any works for and on behalf of Railway, since the 3rd respondent has undertaken many works on behalf of Railway that clause 5.2(III) would not have any application.

6. It is further submitted by learned Standing Counsel that recommendation is not part of the notification and therefore, the petitioner cannot submit that recommendation shall be followed. It is further submitted that recommendation would only apply in respect of the work, costing more than Rs.50 lakhs.

7. The question is whether there should be an experience of similar type of work by the tenderer. Clause 5.2 clearly indicates that the examination by the Tender Awarding Committee is only in relation to the credentials of the tenderer. Clause 5.2 classifies two types of work tenderers. (i) who has already undertaken the work in relation to the Railway and (ii) who is totally stranger to the Railway. In case of those who have undertaken the work for the Railway, the Railway needs to examine the credential with respect to past work. In relation to the tenderers who have not undertaken any

work, the tenderer has to produce the documents which are enumerated in clause 5.2(III) including experience certificate. It is to be noted that the object of clause 5.2 (III) is only to find out the credentials and not to establish the experience itself. Therefore, the 3rd respondent having undertaken the work on behalf of the Railway, the 3rd respondent need only to demonstrate the past work to the satisfaction of the Railway. He need not produce any testimonial regarding experience for the work as he is familiar to the Railway Authority. If the Railway Authority is satisfied with the credibility, taking note of his past experience, that cannot be called in question before this Court. This Court cannot substantiate the wisdom of Railway in assessing the credibility of the 3rd respondent. Therefore, this Court is of the view that clause 5.2(III) would not apply in this matter. Assuming that this would apply, the ultimate object of clause 5.2 is to establish the credibility, if the credibility can be found out from various documents that would be sufficient to establish, credibility before the Tendering Evaluation Committee, this Court need to interfere with such evaluation.

Therefore, this Court is of the view that the arguments based on clause 5.2 is unsustainable.

8. The question is whether the recommendation of Dr. B.S. Sudhir Chandra Committee would have an impact upon the award based on the tender, it is to be noted that nowhere in the tender conditions refer to the recommendation of Dr. Sudhir Chandra Committee. If the recommendation has to be acted upon necessarily, it would form of part of the tender documents. There is no challenge regarding the notification. Therefore, whether it may have overriding effect on the tender conditions cannot be decided unless there is a challenge regarding the tender notification. The petitioner, having taking part, pursuant to the tender notification cannot also challenge the selection on a norms, not forming part of the notification.

In that view of the matter, leaving open to the question whether Dr. Sudhir Chandra Committee would have an impact upon tender being floated by the Railway, the writ petition is dismissed. No costs.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE