

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 27558 of 2015 (T)

PETITIONER(S):

**MRS. SUJA SUNIL, AGED 34 YEARS,
WIFE OF SRI.P.K.SUNIL, RESIDING AT
PARAMEL HOUSE, CHIRAKKAKODE
P.O. VALLANIKKARA, TRICHUR - 680 654.**

**BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.J.VIVEK GEORGE**

RESPONDENT(S):

- 1. THE DIVISIONAL RAILWAY MANAGER (COMMERCIAL),
PALGHAT DIVISION, SOUTHERN RAILWAY,
PALAKKAD - 678 002.**
- 2. THE SR. DIVISIONAL COMMERCIAL MANAGER,
PALGHAT DIVISION, SOUTHERN RAILWAY,
PALAKKAD - 678 002.**
- 3. SRI.RATHEESH KUMAR, S/O. SRI.BALAN
PARAKKAL HOUSE, POTTACHIRA,
NELLAYA P.O., OTTAPPALAM,
PALAKKAD - 679 335.**

**R1 & R2 BY ADV. SRI.C.S.DIAS, SC
R3 BY ADV. SRI.T.A.RAJAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY TENDER NOTICE BEARING NO.J/C.90/GENL/2015 DTD.24.6.2015
ISSUED BY THE 2ND RESPONDENT DTD.24.6.2015.**

**EXT.P3: TRUE COPY OF BID DOCUMENT ISSUED BY THE 2ND RESPONDENT
DTD.24.6.2015.**

**EXT.P4: TRUE COPY OF FIXED DEPOSIT RECEIPT BEARING NO.2922401001200/3
ISSUED BY CANARA BANK, MANNUTHY BRANCH DTD.27.7.2015.**

RESPONDENT(S)' EXHIBITS:

**EXT.R2(1): TRUE COPY OF THE TENDER NOTICE PUBLISHED ALONG WITH THE BID
NOTICE CONTAINING THE INSTRUCTIONS TO THE BIDDERS.**

**EXT.R2(2): TRUE COPY OF THE MINUTES OF THE TENDER COMMITTEE MEETING
FINALIZING THE CREDENTIAL BID HELD ON 26.8.2015.**

**EXT.R2(3): TRUE COPY OF THE MINUTES OF THE TENDER COMMITTEE MEETING
HELD ON 1.9.2015, FINALISING THE PRICE BID.**

EXT.R3(a): TRUE COPY OF THE BID NOTICE FOR CATERING SERVICES.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 27558 of 2015

Dated this the 5th day of October, 2015

J U D G M E N T

Petitioner has taken part in a tender process quoted by the Railway as per Ext.P1 for running a catering trolley (No.109) in the Shoranur Railway Station within Palakkad Division. Her tender has been rejected stating that this is not in conformity with the tender notice. Consequently, the third respondent, being the highest bidder, has been awarded with the tender.

2. As per the tender notice, along with the documents, demand draft/banker's cheque for ₹41,000/- in favour of Senior Divisional Manager, Southern Railway shall be remitted towards EMD. Petitioner, instead of demand draft/banker's cheque, has taken fixed deposit in the name of Senior Finance Manager. Taking note of the fact that this was in violation of the tender notification, petitioner's tender was rejected.

3. The tender process consists of two parts, first part is in relation to credential bid and second part, financial bid.

4. According to the petitioner, she is the highest financial bidder comparing to the third respondent. Petitioner submits that she has offered ₹13,58,750/- and the third respondent offered only ₹9,12,500/-. If this is correct, petitioner has to be considered as highest financial bidder subject to the satisfaction of her credentials.

5. Therefore, the question arises whether the rejection of the petitioner's bid is correct or not. The tender condition has to be followed strictly. There cannot be any violation. The purpose of insistence of demand draft/banker's cheque is to ensure that payment is effected in favour of the Senior Divisional Manager. The condition necessarily would indicate to ensure the payment. If there is a substantial compliance of the condition, that would suffice to satisfy the tender conditions. There cannot be any hard and fast rule in determining the compliance of terms and conditions of the tender.

What is to be considered is whether substantial compliance is a satisfaction, in otherwise by conformity with the objects of the tender conditions. By depositing fixed deposit, the petitioner satisfied substantial compliance, though not in conformity with the formality to which it was insisted. This Court is of the view that in such situation, the fixed deposit drawn in favour of the Senior Divisional Manager has to be accepted as it was substantial compliance of tender condition. Petitioner also relied on the decision of the Honourable Supreme Court reported in **M/s.Poddar Steel Corporation** v. **M/s.Ganesh Engineering Works and Others** [1991 KHC 974] . The Supreme Court considered the compliance of an auction notice. In the auction notice, the earnest money has to be deposited by cash or by demand draft drawn in State Bank and the highest tenderer in that case deposited earnest money by way of certified cheque of Union Bank. The Honourable Supreme Court held that even though there is a technical irregularity, the tender has to be accepted. So, following the

proposition in the above judgment, this Court is of the view that the tender ought to have been accepted.

6. However, the learned counsel for the Railway points out that the petitioner is not vigilant enough in following the tender process. It is submitted that it is only after coming to know that of financial bid, the petitioner has chosen to file this writ petition. Learned counsel questioned the approach of the petitioner in filing the writ petition when the financial bid itself was confirmed in favour of the third respondent. In answer to this, the learned counsel for the petitioner points out that she was not given any notice about rejection of tender. Learned counsel particularly points out that decision was taken by the tender committee only on 26.8.2015 and thereafter, immediately, has filed this writ petition challenging the action.

7. Learned counsel for the Railway relied on clause 2.7.1 of R2 (1) which reads as follows:-

*“2.7.1 Bidders interested my like to be present
at the Railway office at the closing time of bid*

submission and witness the Bid Opening immediately thereafter. Representatives of Bidders shall carry an authority letter from their firm. Bid shall be opened at IST 15:30 hours. Only the main envelope shall be opened and the Bid shall be checked for availability of Earnest Money and correctness of amount on Earnest Money.”

The above clause only indicate that the bidders, who are interested, are to be present at the Railway office at the closing time of bid submission and witness the Bid Opening immediately thereafter. It is not a mandatory provision that every bidder is to be present in the bid opening process. It is only to show the transparency of the process, the above provision was made. It does not indicate that bidders should be present to know about the outcome of the opening of the bid. Therefore, this Court is of the view that the above clause cannot be relied on to put constructive knowledge of the petitioner. It is true, the petitioner challenged the action only when she came to know about award of the contract in favour of the third respondent. According to the petitioner, she was put in notice only after 28.6.2015.

This Court is of the view that there is no laches on the part of the petitioner in approaching this Court in challenging the award of the contract as she has challenged the action within two weeks from the confirmation of the tender process in favour of the third respondent.

This Court passed an interim order on 11.9.2015 as follows:-

“If the third respondent has not yet commenced the operation of catering Trolley No.109 of Shornur Railway Station of Palakkad Division, there shall be an interim order as prayed for.”

It appears that it is admitted that the third respondent has not yet commenced the operation on account of the interdiction by this Court, though the agreement was executed. This Court is of the view that petitioner's tender shall be considered for credential verification and also for financial bid. It is only after verifying the petitioner's credentials and financial bid, further action shall be taken in this matter. The award of contract in favour of the third respondent would depend upon the result of the verification of the petitioner's credentials

in accordance with terms and conditions. It is made clear that if the petitioner is otherwise found eligible, instead of third respondent, the petitioner shall be given the award of contract.

This writ petition is disposed of as above.

sd/-
A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.27558 OF 2015

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