

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 29203 of 2014 (A)

PETITIONER:

SAJEEV S AGED 40 YEARS
GOVERNMENT CONTRACTOR, KOTTAYATHU VEEDU, CHERUKUNNAM
SIVAGIRI, VARKALA, THIRUVANANTHAPURAM

BY ADV. SRI.AJITH KRISHNAN

RESPONDENTS:

1. VARKALA MUNICIPALITY
REPRESENTED BY SECRETARY, VARKALA
THIRUVANANTHAPURAM 695 141
2. THE CHAIRMAN,
MUNICIPAL COUNCIL, VARKALA MUNICIPALITY, VARKALA
THIRUVANANTHAPURAM 695 141
3. THE MUNICIPAL ENGINEER,
VARKALA MUNICIPALITY, VARKALA
THIRUVANANTHAPURAM 695 141

R1-R3 BY ADV. SRI.M.R.RAJESH, SC, VARKALA MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29203 of 2014 (A)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE NOTICE 23/9/2014 ISSUED BY THE 1ST
RESPONDENT.

EXHIBIT P2 : TRUE COPY OF THE NOTICE DTD 27/102014 ISSUED BY THE 1ST
RESPONDENT.

EXHIBIT P3 : TRUE COPY OF DECISION DATED 20/10/2014 TAKEN BY THE 2ND
RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A. TO JUDGE

SJ

DAMA SESHADRI NAIDU, J.

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W.P.(C) No.29203 of 2014

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Dated this the 4th day of February, 2015

JUDGMENT

Briefly stated, in response to Ext.P4 tender notification, the petitioner, who is said to be a registered PWD contractor with requisite licence issued by the 1st respondent Municipality, applied for works in Sl.Nos.3,4,5 and 8. Eventually, though he emerged as having quoted the lowest rates for the said works, through Ext.P3 the respondent Municipality rejected the petitioner's bid.

2. The learned counsel for the petitioner has submitted that the petitioner having quoted the lowest rate initially, the Municipal Engineer, as could be seen from Ext.P4, has recommended that the tenders of the contractors who have quoted lowest rate shall be approved. Similarly, according to the learned counsel for the petitioner, even in Ext.P2 proceedings the same recommendation stood reiterated. Despite such clear recommendation on the part of the competent authority, contends the learned counsel for the petitioner, through Ext.P3

the respondent Municipality rejected the petitioner's bid on untenable grounds.

3. In elaboration of his submissions, the learned counsel contends that Ext.P4 tender notification does not contain any pre-conditions either with regard to the previous experience or with regard to the quoting rates below the estimated rates as disqualification. According to him, the authorities of the respondent Municipality with a mala fide intention have rejected the bid of the petitioner without any justification. As a result, he has approached this Court praying for a direction to respondents to accept his bid.

4. The learned Standing Counsel for the respondent Municipality has strenuously contended that the petitioner does not have any experience worth the name. He has submitted that the petitioner registered himself as a contractor only on 20.09.2014. In elaboration of his submissions, the learned Standing Counsel would contend that, there are two other persons who earlier were awarded the work by the Municipality, but they could not complete the work. It has led to certain

litigation. In the face of disqualification, those two persons have set up the writ petitioner as a mere proxy so that they could have the work allotment obliquely.

5. The learned Standing Counsel also submitted that the respondent Municipality has expressly reserved its right to reject the tender without assigning any reason whatsoever. In this regard, the learned counsel has drawn my attention to Rule 9 of Kerala Municipality (Execution of Public Works and Purchase of Materials) Rules. He has further submitted that, in 2012, in terms of Ext.R3(a), Municipality took a decision that only those contractors who satisfactorily completed at least three different works in three consecutive years under the Public Works Department or any other Local Authority can alone be qualified to participate in the tender process.

6. Summing up his submissions, the learned Standing Counsel submitted that, the respondent Municipality has decided not to accept the bids of the petitioner only in the interest of Municipality so that inexperienced persons would not meddle with the process of public works.

7. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents

8. Indeed, the petitioner does not seem to have any experience, nor can it be said that it is a pre-condition imposed in Ext.P4 tender notification. Accepting that Ext.R3(a) is a resolution said to have been passed by the respondent Municipality making it a pre-condition that any contractor to be eligible to participate in the tender process should have minimum experience, this Court still has to consider whether such condition has been incorporated in the tender notification. It is not in dispute that Ext.P4 tender notification is quite laconic, bereft of any details concerning experience. Thus it shall be concluded that notwithstanding Ext.R3(a) resolution, the respondent Municipality has chosen to waive the condition of experience so far as Ext.P4 notification is concerned.

9. Though the learned Standing Counsel has contended that the petitioner has been set up by certain other persons facing disqualifications, as a mere front, in the face of lack of any material on that ground, especially Ext.P3 having not

referred to the said aspect, this Court is not inclined to accept the said allegation as well.

10. Having accepted that no pre-condition has been attached in terms of further experience or any other eligibility criterion, after the tender process is concluded, especially in the case of the recommendation made by the Executive Engineer, the responsible Municipality as an after thought cannot invent any new reason to disqualify any person.

11. It is further to be seen that Ext.P3 is, in my considered view, very vague. To appreciate the said vagueness, it is profitable to extract the said portion of Ext.P3, which reads as follows:-

“The Contractor Sri.S.Sajeev who had quoted the lowest rate for the works under Sl.No.3,4 and 8, registered in the Municipality as a contractor only on 20.09.2014. Out of the 5 tender forms produced by him in the Municipality for the contract works, 2 are rejected by the Municipality for not enclosing necessary documents and for not complying the legal formalities and for 3 other tenders quoted the rate below the estimate rate. The Municipal Engineer has reported in the Council that he has no proper knowlede in the manner of participating in the tenders and he has no previous working experience whatsoever.”

12. The municipal authorities have simply stated that the petitioner has not enclosed necessary documents and further has not complied with legal formalities. I am afraid, what those necessary documents or for that matter what legal formalities have not been spelt out. Further three of the tenders quoted by the petitioner were said to have been rejected on the ground that he has quoted below estimate rate.

13. It has further been stated that Municipal Engineer has reported to the Counsel that the petitioner has no proper knowledge in the manner of participating in the tenders.

14. As has already stated, in Exts.P1 and P2 the Municipal Engineer has recommended that all works with lowest quotation should be accepted. Nevertheless, now the Municipality vaguely alleges that the petitioner does not have proper knowledge in the manner of participating in the tenders. In my considered view, decision of the respondent Municipality suffers from the vice of vagueness and is thus untenable.

15. In the facts and circumstances, I am of the considered opinion that, Ext.P3 is clearly unsustainable and is accordingly

set aside. Consequently, the respondent Municipality is directed to accept the bids of the petitioner in Sl.Nos.3,4,6 and 8.

With the above observations, the writ petition is disposed of.

DAMA SESHADRI NAIDU, JUDGE

sj