

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. 29780 of 2014 (V)

PETITIONER :

**P. PURANDARA BABU,
DIRECTOR, MIRA ADITI IMPEX PRIVATE LIMITED, 302
SESHA SAI RESIDENCY APARTMENTS, AIR BY PASS ROAD
TIRUPATI - 517 501, ANDHRA PRADESH.**

**BY SENIOR ADVOCATE SRI.K.RAMAKUMAR
BY ADVS.SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH
SRI.C.DINESH
SMT.AMMU CHARLES
SRI.G.RENJITH**

RESPONDENT(S) :

- 1. THE TRAVANCORE DEVASWOM BOARD,
NANTHANCOD, THIRUVANANTHAPURAM- 695003
REPRESENTED BY ITS SECRETARY**
- 2. THE DEVASWOM COMMISSIONER,
THE TRAVANCORE DEVASWOM BOARD, NANTHANCOD
THIRUVANANTHAPURAM – 695003.**
- 3. M/S. BINU & COMPANY,
PEZHUMTHURUTH, PERUMON P.O., KOLLAM - 691601
REPRESENTED BY ITS PROPRIETOR**

**R1 & R2 BY ADV. SRI.KRISHNA MENON, SC
R3 BY SENIOR ADVOCATE SRI.S.SREEKUMAR
BY ADVS. SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 08-08-2014 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE LETTER DATED 16-10-2014 ADDRESSED TO THE TRAVANCORE DEVASWOM BOARD BY THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE LETTER DATED 06-11-2014 OF THE 1ST RESPONDENT.
- EXHIBIT P4 COPY OF COMMUNICATION DT. 30.10.2013 SENT BY R1.
- EXHIBIT P5 COPY OF COMMUNICATION DT. 11.10.2012 SENT BY R1.
- EXHIBIT P6 COPY OF COMMUNICATION DT. 18.4.2011 SENT BY R1.
- EXHIBIT P7 COPY OF COMMUNICATION DT. 10.9.2010 SENT BY R1.
- EXHIBIT P8 COPY OF COMMUNICATION DT. 25.8.2009 SENT BY R1.
- EXHIBIT P9 COPY OF BANK GUARANTEE DT. 1.1.2014 SUBMITTED BY THE PETITIONER.
- EXHIBIT P10 COPY OF BANK GUARANTEE DT. 27.11.2012 SUBMITTED BY THE PETITIONER.
- EXHIBIT P11 COPY OF BANK GUARANTEE DT. 19.9.2011 SUBMITTED BY THE PETITIONER.
- EXHIBIT P12 COPY OF BANK GUARANTEE DT. 21.9.2010 SUBMITTED BY THE PETITIONER.
- EXHIBIT P13 COPY OF BANK GUARANTEE DT. 25.8.2009 SUBMITTED BY THE PETITIONER.
- EXHIBIT P14 COPY OF RECEIPT DT. 6.9.2014 ISSUED BY R1.

RESPONDENT(S)' EXHIBITS :

- EXT. R1(a) COPY OF THE DOCUMENTS ALONGWITH THE TENDER SUBMITTED BY THE PETITIONER TO PROVE HIS ELIGIBILITY.
- EXT. R1(b) COPY OF THE DOCUMENTS ALONGWITH THE TENDER SUBMITTED BY THE THIRD RESPONDENT TO PROVE ITS ELIGIBILITY.

(Contd...)

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- EXT. R3(a) COPY OF CIRCULAR NO. 4/3/07 DATED 3-3-2007 ISSUED BY CENTRAL VIGILANCE COMMISSION.**
- EXT. R3(b) COPY OF CIRCULAR NO. 1/1/10 DATED 20-1-2010 ISSUED BY CENTRAL VIGILANCE COMMISSION.**
- EXT. R3(c) COPY OF QUOTATION DATED 11-11-2014 ISSUED BY HOMEDIA IMPORT AND EXPORT CO. LTD.**
- EXT. R3(d) COPY OF PROFORMA INVOICE DATED 13-11-2014 ISSUED BY HOMEDIA IMPORT AND EXPORT CO. LTD.**
- EXT. R3(e) COPY OF LETTER DATED 22-9-2014 ISSUED BY DEVASWOM COMMISSIONER TO THE 3RD RESPONDENT.**
- EXT. R3(f) COPY OF REPLY IN WRITING DATED 4-11-2014 SUBMITTED BY 3RD RESPONDENT BEFORE THE 1ST RESPONDENT.**

//TRUE COPY//

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 29780 of 2014

Dated this the 3rd day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

“i. To call for the records leading upto Ext.P3 and quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction.

ii. To declare that the award of tender to the 3rd respondent is patently violative of Article 14, 19 and 21 of the Constitution of India in as much as he is wholly ineligible to submit a tender.

iii. To issue a writ of mandamus commanding respondents 1 and 2 to award the tender to the lowest eligible bidder namely the petitioner forthwith in terms of the stipulations contained in Ext.P1.”

The specific case projected in the writ petition is that, the petitioner stands qualified to participate in the bid; whereas the 3rd respondent is not satisfying the relevant requirements.

2. A detailed counter affidavit has been filed from the part of the respondents 1 and 2 and the petitioner has filed a reply affidavit as well. The third respondent has filed separate counter

affidavit as to the credentials of the said respondent.

3. The writ petition was admitted on 12.11.2014 also granting interim stay of further proceedings pursuant to Ext.P3 for a period of one week. Another interim order came to be passed on 14.11.2014 in the following terms:

“It is submitted that the entire requirement of Easy Open lid is around one Crore. Considering the commencement of Sabarimala season on 17.11.2014, in order to resolve the dispute, pleadings are necessary. Therefore, 3rd respondent is permitted to supply 50 lakhs of Easy open lids. The consideration of other supply will be based on the further orders of this Court. This order will not confer a right on the 3rd respondent to supply and it will not construed as finalisation of award made in favour of the 3rd respondent. It is only considering the need of pilgrims, this order is passed. Post on 19.11.2014.

4. As the 3rd respondent could not supply the requisite 'Easy Open Lids' the petitioner was permitted to supply the same as per interim order dated 24.11.2014. Subsequently, as per interim order dated 3.12.2014, based on the submission made by the learned Standing Counsel for the Travancore Devaswom Board, the Board was permitted to place order for 15 lakhs Easy Open Lids, however without prejudice to the rights of the petitioner and the 3rd respondent to supply the same as per the earlier direction of this Court.

5. Yet another interim order came to be passed on 18.12.2014 in the following terms:

"The petitioner and the third respondent is directed to execute an agreement for supply of Easy Open Lids within three days and also they shall ensure that supply of the same will be made within one week."

Subsequently, on 23.12.2014 a detailed order was passed as given below:

"The petitioner undertook that they will make available the entire balance quantity within a week. That submission is recorded.

2. The Board in the circumstances also made an alternative arrangement to airlift and bring the easy open lids. They are also permitted to make such measures to ensure sufficient quantity of easy open lids.

3. The third respondent submitted that they would make available 53 lakhs of easy open lids on or before 07/01/2015. This submission is also recorded.

4. It is made clear that in the event of either of the parties failing to bring sufficient quantity, it is open for the Board to make available necessary easy open lids. The cost and other loss caused to the Board will be decided later and any supply to be made by the petitioner or the third respondent will be subject to further decision to be taken regarding the cost and the damages suffered by the Board."

6. The factual position as on date was noted on 9.1.2015 in the following terms:

"The learned counsel for the 3rd respondent submits that the required quantity ordered by this Court as per interim

orders is being made available at 'Sannidhanam' today night itself or by tomorrow morning at any rate before 8'O clock.

The said submission is recorded.

List the matter for further consideration on 13.1.2015."

On 13.1.2015, the submission of the learned Standing Counsel for the Board, that the 3rd respondent had already complied with the direction given by this Court on 23.12.2014 by effecting the deficit supply was recorded.

7. In view of the subsequent turn of events after filing this writ petition, the deficit quantity of 'easy open lids' have been supplied by the petitioner and also the third respondent. Nothing further survives to be considered in this writ petition, but for the further steps, if any, with regard to the alleged loss, if at all caused to the respondent Board. It is open for the respondent Board to proceed with appropriate steps in accordance with law, based on the terms of the contract and such other relevant facts and figures.

This Court does not intend to express anything with regard to the merit involved and the matter is disposed of accordingly.

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