

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C) .No. 30325 of 2014 (M)

PETITIONER(S) :

1. VASCO ENVIRONMENTAL INDIA (P) LTD.,
2ND FLOOR, F.S.R.TOWER, PONNURUNNI
VYTTILA, KOCHI-682 019,
REPRESENTED BY ITS MANAGING DIRECTOR MR.VISHWANATHAN ARANGATH.
2. VISHWANATHAN ARANGATH,
7, IMPERIAL GARDENS, EROOR,
THRIPPUNITHARA, KOCHI-682 306.

BY ADVS.SRI.E.K.NANDAKUMAR (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM

RESPONDENT (S) :

1. KERALA WATER AUTHORITY,
HEAD OFFICE, 'JALABHAVAN', VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 033,
REPRESENTED BY THE MANAGING DIRECTOR.
2. THE SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY,
OFFICE OF THE SUPERINTENDING ENGINEER,
PUBLIC HEALTH CIRCLE, COLLECTORATE, KOTTAYAM-686 001.

*ADDL. R3 IMPEADED

- R3. M/S.ABG ENGINEERING(INDIA) PVT. LTD.,
CORPORATE OFFICE : ST.MARY'S GROUP TOWERS,
THIRUVALLA - 689 107, PATHANAMTHITTA,
REPRESENTED BY ITS MANAGING DIRECTOR SHRI T.O.ALEYAS.

(*ADDL.R3 IS IMPEADED AS PER ORDER DATED 20.11.2014 IN IA 15675/14.)

RADDL.R3 BY ADV. SRI.JOSEPH KODIANTHARA (SR.)
RADDL.R3 BY ADV. SRI.V.ABRAHAM MARKOS
RADDL.R3 BY ADV. SRI.BINU MATHEW
RADDL.R3 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
RADDL.R3 BY ADV. SRI.ABRAHAM JOSEPH MARKOS
RADDL.R3 BY ADV. SRI.ISAAC THOMAS
RADDL.R3 BY ADV. SRI.NOBY THOMAS CYRIAC
R1 & 2 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

THIS W RIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1- TRUE COPY OF "ELECTRONIC TENDER NOTICE" PUBLISHED BY 2ND RESPONDENT DATED 9-1-2014 INVITING COMPETITIVE BIDS FOR TWO WORKS.
- EXHIBIT P2- TRUE COPY OF TENDER EXTENSION NOTICE PUBLISHED BY THE 2ND RESPONDENT DATED 27-9-2014.
- EXHIBIT P3- TRUE COPY OF VOLUME 1 OF THE TENDER DOCUMENTS FOR E-TENDER NO. 43/SE/PHCK/2-13-2014.
- EXHIBIT P4- TRUE COPY OF ACKNOWLEDGMENT OF TENDER SUBMISSION DATED 13-10-2014 ALONG WITH THE LIST OF DOCUMENTS SUBMITTED.
- EXHIBIT P5- TRUE COPY OF ADDENDUM TO E-TENDER NO. 43/SE/PHCK/2013-14 DATED 12/08/2014.
- EXHIBIT P6- TRUE COPY OF ADDENDUM NO. 2 TO E-TENDER NO. 43/SE/PHCK/2013-14 DATED 19-9-2014.
- EXHIBIT P7- TRUE COPY OF CERTIFICATE DATED 9-12-2010 BY HINDUSTAN DORR-OLIVER LIMITED REGARDING DAF SUPPLIED BY K-PACK FOR THE ETP PLANT CONSTRUCTED FOR INDIAN OIL CORPORATION LTD, HALDIA, ALONG WITH COMMISSIONING CERTIFICATE FROM INDIAN OIL CORPORATION LTD.
- EXHIBIT P8- TRUE COPY OF CERTIFICATE DATED 22-2-2011 FROM HINDUSTAN DORR-OLIVER LIMITED REGARDING DAF BY K-PACK FOR THE ETP PLANT AT BHARAT OMAN REFINARIES LTD., MADHYA PRADHESH.
- EXHIBIT P9- TRUE COPY OF LETTER OF INTERNET DATED 20-12-2013 FROM MEGHA ENGINEERING INFRASTRUCTURE LTD. TO K-PACK.
- EXHIBIT P10- TRUE COPY OF THE PURCHASE ORDER DATED 13-2-2014 FROM SIEMENS LTD. TO K-PACK.
- EXHIBIT P11- TRUE COPY OF THE PURCHASE ORDER DATED 8-3-2014 FROM AQUATECH SYSTEMS (ASIA) PVT. LTD. TO K-PACK.
- EXHIBIT P12- TRUE COPY OF LETTER OF INTENT DATED 14-7-2014 FROM LARSEN & TOUBRO LD. TO K-PACK.
- EXHIBIT P13- TRUE COPY OF EMAIL COMMUNICATION DATED 1-11-2014 RECEIVED BY THE PETITIONERS FROM THE E-TENDER PROPOSAL INFORMING OF THE DISQUALIFICATION.
- EXHIBIT P14- TRUE COPY OF LETTER DATED 1-11-2014 FROM THE JV TO THE 1ST RESPONDENT.
- EXHIBIT P15- TRUE COPY OF CERTIFICATE DATED 1-11-2014 ISSUED BY HINDUSTAN DORR-OLIVER LTD. ENCLOSING THE AMENDED CERTIFICATE DATED 9-12-2010.

EXHIBIT P16- TRUE COPY OF LETTER DATED 3-11-2014 FROM THE JV TO THE 1ST RESPONDENT (WITHOUT ENCLOSURES) .

EXHIBIT P17- TRUE COPY OF THE REFERENCE LIST ENCLOSED WITH EXHIBIT P16 LETTER.

EXHIBIT P18- TRUE COPY OF THE LETTER DATED 4-11-2014 FROM THE JV TO THE 2ND RESPONDENT (WITHOUT ENCLOSURES) .

EXHIBIT P19- TRUE COPY OF THE DETAILED REPRESENTATION DATED 7-11-2014 BEFORE THE 2ND RESPONDENT.

EXHIBIT P20- TRUE COPY OF THE UNSIGNED LETTER DATED 7-11-2014 FROM THE 2ND RESPONDENT TO THE 1ST PETITIONER.

EXHIBIT P21- TRUE COPY OF THE REPLY DATED 08-11-14 TO EXT. P20 LETTER BY JV.

EXHIBIT P22- TRUE COPY OF THE SIGNED LETTER DATED 7-11-2014, RECEIVED ON 10-11-2014 (WITHOUT ENCLOSURES) .

EXHIBIT P23- TRUE COPY OF THE EMAIL DATED 5-11-2014 AND ATTACHED LETTER DATED 5-11-2014 FROM THE 2ND RESPONDENT TO RAMKY.

EXHIBIT P24- TRUE COPY OF THE EMAIL DATED 29-10-2014 AND ATTACHED LETTER DATED 28-10-2014 FROM THE 2ND RESPONDENT TO RAMKY.

EXHIBIT P25- TRUE COPY OF THE OFFICE ORDER NO. 33/7/03 DATED 9-7-2003 OF THE CENTRAL VIGILANCE COMMISSION.

EXHIBIT P26- TRUE COPY OF JV'S LETTER DATED 28/11/2014 TO THE 2ND RESPONDENT, WITHOUT ENCLOSURES.

EXHIBIT P27- TRUE COPY OF LETTER DATED 08/12/2014 FROM 2ND RESPONDENT TO THE CHIEF ENGINEER (SR),KWA.

EXHIBIT P28- TRUE COPY OF CIRCULAR 98/ORD/1(VIII)DATED 29/04/2014 OF THE CENTRAL VIGILANCE COMMISSION.

RESPONDENT(S) ' EXHIBITS :

EXHIBIT R3(1) - TRUE COPY OF THE RISK COST TERMINATION OF THE ORDER DATED 04/10/2012.

EXHIBIT R1(A) - BID DETAILS DOWNLOADED ON 13/10/2014.

EXHIBIT R1(B) - TRUE COPY OF CERTIFICATE DATED 09/12/2010.

EXHIBIT R1(C) - TRUE COPY OF LETTER DATED 01/11/2014.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J

W.P(C) No. 30325 of 2014

Dated this the 31st day of July, 2015

J U D G M E N T

The petitioner challenges the award of the contract made by the 1st respondent to the additional 3rd respondent as per the tender notification at Ext.P1. The question is in fact, academic insofar as, the Kerala Water Authority has cancelled the award and has decided to go for a fresh tender. The petitioner is said to have entered into a joint venture with M/s. Ramky Infrastructure Limited and M/s.K-Pack Systems Pvt. Ltd to quote in pursuance to Ext.P1.

2. Ext.P1 invited bids for the work of design, construction, testing and commissioning of 50 MLD output capacity water treatment plant and allied works at Peroor Package-1 (common component of augmentation of UWSS to Kottayam Municipality, WSS to Vijayapuram, CWSS to Puthuppally and Meenadom, WSS to Vakathanam). The evaluation had to be

conducted at 2 stages being the technical bid which considers the pre-qualification of the technical experience and the financial bid. The petitioner admittedly did not cross the technical bid. The petitioner also has a case that the petitioner was never informed of the defect, if at all, at the pre-qualification stage and the defect found cannot at all be considered to be an essential condition of pre-qualification.

3. I have heard the learned Senior Counsel for the petitioners and the additional 3rd respondent as also the learned Standing Counsel for the respondents 1 and 2.

4. The short compass on which the controversy revolves around is the denial of pre-qualification of the petitioner. The work tendered is as stated above and the pre-qualification required experience in the design, construction testing and commissioning of 25.00 MLD capacity water treatment plant. The tenderer also had to have experience in design, and construction of

Dissolved Air Floatation type Clarifier (DAF) as is provided under sub-clause (8) of Ext.P3. The learned counsel for the petitioner specifically refers to Exts.P7 and P8 to contend that the joint venture partner K-Pack Systems Ltd. had such experience.

5. A perusal of Exts.P7 and P8 only reveals that the K-Pack Systems was certified as having supplied TPI and DAF. Ext.P7 in fact, specifically refers only to the supply and the company which has issued the certificate refers to the ETP plant constructed by them for their client IOCL, Halida. Ext.P8 also by the very same company refers again only to the supply. Hence it is very evident that the petitioner did not satisfy the pre-qualification stipulated by Ext.P1 tender notification which included construction, testing and commissioning.

6. The learned Senior Counsel for the petitioner would urge that the supply in fact would take in design, construction, testing and commissioning and any technically informed persons

would be aware of that . It is also submitted that later on, the company which issued Exts.P7 and P8 had issued certificates indicating very clearly the work carried on by the joint venture partner K-Pack Systems Pvt. Ltd.

7. The learned Senior Counsel for the petitioner also relies on Rashmi Metaliks Ltd. V Kolkatta Metropolitan Development Authority [(2013) 10 SCC 95] . Rashmi Metaliks was a case in which the furnishing of Income Tax return was found to be not an essential condition, since the pre-qualification did not contain any specification as to the gross income or net income. In such circumstance, the Hon'ble Supreme Court held that the defect in furnishing the income tax return not being an essential condition of pre-qualification ought to have been intimated to the tenderer before rejection. No reliance can be placed on the aforesaid judgment in the facts and circumstance of the instant case. Specifically what was required for pre-qualification was

experience in design, construction, testing and commissioning of Water Treatment Plants and design and construction of DAF type Clarifier. The same was an essential condition of pre-qualification.

8. In such circumstance the writ petition would stand dismissed for the additional reason that even the award to the additional 3rd respondent has now been cancelled. However, it is clarified that the petitioner, if so advised, could always apply under a fresh tender notification if advised and the decision herein shall not fetter the evaluation if the petitioner produces the necessary pre-qualification.

Writ petition would stand dismissed with the above observations.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge