

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No.31262 of 2014 (G)

PETITIONER(S):

**ANIL.K.KURIAN, AGED 42 YEARS
S/O.N.O.KURUVILA, NECHIKKATTU HOUSE,
PARAMPUZHA P.O. KOTTAYAM-686004.**

**BY ADVS.SRI.REJI GEORGE
SRI.UMESH.N.PAI**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY
PUBLIC WORKS DEPARTMENT,
GOVERNMENT SECRETARIAT
TRIVANDRUM, PIN-695001.**
- 2. THE EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER,
PWD ROADS DIVISION
KOTTAYAM, PIN-686001.**
- 3. PIUS ANTONY,
MANNAL HOUSE, MATTAKARA P.O.,
KOTTAYAM, PIN-686564.**

R1 & R2 BY GOVERNMENT PLEADER SMT.ANITHA REVINDRAN (SR)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015,
ALONG WITH WPC NO.31263/2014 AND WPC NO.31268/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 31262 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF TENDER NOTICE ALONG WITH THE TENDER SCHEDULE OF TENDER NO.800/EERBKTm/2014/2015 PUBLISHED BY THE 2ND RESPONDENT IN THE WEBSITE [HTTP://WWW.KERALAPWD.GOV.IN](http://www.keralapwd.gov.in) ON 30.10.2014.**
- P2 : COPY OF THE SELECTION NOTICE NO.AB2(1)4051/14 DATED 18.11.2014.**
- P3 : COPY OF TENDER SCHEDULE OF TENDER NO.810/EE/14-15 PUBLISHED BY THE 2ND RESPONDENT INVITING TENDERS OF THE WORK O.R.2014-15 URGENT RECTIFICATION WORKS TO KM.4/250 (CHIRAPALAM) AND 7/00 KM. OF MANARCADU-KIDANGOOR ROAD.**

RESPONDENT(S)' EXHIBITS

- R2(a) : TRUE COPY OF THE TENDER NOTICE NO.07/E.t/2014-15 DATED 27.10.2014**

/TRUE COPY/

PA TO JUDGE

VS

K.HARILAL, J

**W.P.C.Nos.31262, 31263 and
31268 of 2014**

Dated this the 12th day of February, 2015

JUDGMENT

Since a common question arises from all these three writ petitions, they are heard together and disposed of accordingly. The petitioners in all these writ petitions are Government Contractors, registered A-Category (Class), who are entitled to submit tenders for all works as per the Rules for Registration of Contractors Executing Works in the Kerala PWD. They have separately registered for E-Tendering of the PWD works.

2. The second respondent published tender notice in the website <http://www.keralapwd.gov.in> of Public Works Department and invited tender Nos.800/EERBKTm/2014/2015, 799/EERBKTm/2014/2015, 801/EERBKTm/2014/2015. In response to the said notice, the petitioners submitted their tender on 7.11.2014 for the above said work at the reduced percentage rate of 2.70% below the estimate rate. The petitioners deposited

required amount as earnest money also. The bids were opened on 7.11.2014, and it was found that apart from the tender submitted by the petitioners, there was only one tender in each work, submitted by the third respondent and he had quoted reduced percentage rate of 0.1% below the estimate rate. In such circumstances, the petitioners were confident that the work could be awarded to them, since they had quoted 2.70% below the estimate rate. However, to their utter shock and surprise, the second respondent accepted the tender submitted by the third respondent in all the works, and issued Selection Notices which are marked as Ext.P2 in all the writ petitions. When the petitioners came to know about the illegal rejection of their tenders, they met the second respondent and enquired as to why their tender was not accepted, though they had quoted the lowest rate. The second respondent then informed the petitioners that, he had awarded the contract to the third respondent, since the third respondent has experience in execution of BM & BC work earlier. Though, the petitioners point out that,

they all are A-Class contractors who are eligible to do all civil works of the PWD and that regarding experience no pre-qualification was specified in Ext.P1 tender notice published in the website and that their tenders were 2.70% below the rate quoted by the third respondent, the second respondent was not willing to reconsider his decision. According to the petitioners, the second respondent, ought to have awarded the work to the petitioners as their tenders are the lowest tenders.

3. In the above circumstances, the petitioners approached this court seeking interference of this court under writ jurisdiction and sought for a writ of certiorari calling for the tender papers and to quash Ext.P2 Selection Notices and also for issuance of a writ of mandamus directing the second respondent to accept the tender submitted by the petitioners, and award the respective contracts works to them.

4. The second respondent filed a counter affidavit, denying the allegations raised against the second respondent in the writ petitions. It is contended

that, notices were published in the department website as well as in the Maadhyamum newspaper daily dated 3.10.2014 in terms with the norms prescribed by the PWD, in accordance with GORT1341/2013/PWD(H) department dated 15.10.2013. It is also admitted that, the petitioners have quoted their offer at 2.7% below the estimate rate, and the third respondent has quoted the offer at 0.10% below the estimate rate. But in the R2(A) notice inviting tender, it was clearly mentioned that only those contractors having experience in execution the BM & BC works need to submit the tender for the said work.

5. Indisputably, the petitioner has no previous experience in execution of BM & BC works and the third respondent has already executed the BM & BC works successfully. It was specifically mentioned in the website and notice in the Maadhyamum daily newspaper that experience in execution of the BM & BC works is an essential requirement for getting eligibility to submit tender. The work can be awarded to the eligible tenderer only. I cannot find fault with the respondent 1 and 2 in the

rejection of tenders submitted by the ineligible contractors, like petitioners. Hence there is no denial of opportunity which they are entitled to get. There is no malafides or arbitrariness in awarding the work to the third respondent. Thus there are no circumstances, warranting interference under Article 226 of the Constitution of India.

The writ petitions are accordingly dismissed.

Sd/-
K.HARILAL
JUDGE

/TRUE COPY/

PA TO JUDGE

VS