

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 31310 of 2014 (K)

PETITIONER :

**COASTAL FURNITURE INDUSTRIES,
KADALUNDI, KOZHIKODE-673 302,
REPRESENTED BY P.SAPITHA, PROPRIETOR.**

**BY ADVS.SRI.BABU VARGHESE (SR.)
SRI.V.NARAYANA SWAMI**

RESPONDENTS :

- 1. THE DISTRICT PANCHAYATH
KOZHIKODE, REPRESENTED BY THE SECRETARY, PIN-673 001.**
- 2. THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
STORE PURCHASE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE - 673 001.**
- 4. THE KERALA STATE INDUSTRIAL ENTERPRISES,
REPRESENTED BY THE MANAGING DIRECTOR,
ST.JOSEPH'S PRESS BUILDINGS, COTTON HILL, THYCAUD P.O.
THIRUVANANTHAPURAM-695 014.**
- 5. THE KERALA ARTISANS' DEVELOPMENT CORPORATION LIMITED(KADCO)
REPRESENTED BY THE MANAGING DIRECTOR,
GOVERNMENT LAW COLLEGE P.O.,
THIRUVANANTHAPURAM-695 035.**

**R1 BY SRI.S.SREEKUMAR SENIOR ADVOCATE
BY ADVS. SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA**

R2 & R3 BY GOVERNMENT PLEADER SRI. RAFAEEK V.K.

R5 BY ADV. SRI.S.K.SAJU

R BY SRI.M.GOPIKRISHNAN NAMBIAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 :** COPY OF THE ACKNOWLEDGMENT FORM NO.19348 DTD 29.6.2007 ISSUED BY THE INDUSTRIES DEPARTMENT.
- P2 :** COPY OF THE CERTIFICATE OF RENEWAL OF REGISTRATION ISSUED BY THE STORE PURCHASE DEPARTMENT ON 17.9.2014.
- P3 :** COPY OF THE ISO CERTIFICATE OF REGISTRATION.
- P4 :** COPY OF CERTIFICATE OF REGISTRATION UNDER VAT RULES 2005.
- P5 :** COPY OF LETTER DTD.15.5.2013 ISSUED BY THE 4TH RESPONDENT.
- P6 :** COPY OF THE LETTER DTD.30.1.2012 ISSUED BY NIE, KOZHIKODE.
- P6(A) :** COPY OF THE CERTIFICATE DTD.3.2.2012 ISSUED BY THE ITI, KOZHIKODE.
- P6(B) :** COPY OF THE LETTER DTD.7.10.2013 ISSUED BY THE THUNCHATHEZHUTHACHAN, MALAYALAM UNIVERSITY.
- P6(C) :** COPY OF THE LETTER DTD.11.10.2013 ISSUED BY THE INSTITUTE OF HOTEL MANAGEMENT AND CATERING TECHNOLOGY.
- P7 :** COPY OF QUOTATION NOTICE NO.P6/600/14 DTD.17.10.2014 WHICH APPEARED IN THE DESHABHIMANI DAILY DTD.20.10.2014.
- P8 :** COPY OF THE TENDER NOTIFICATION PUBLISHED BY THE 1ST RESPONDENT IN 2013.
- P9 :** COPY OF THE TENDER NOTIFICATION PUBLISHED BY THE FIRST RESPONDENT WHICH APPEARED IN DESHABHIMANI DAILY ON 12.11.2014.
- P10 :** COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.
- P10(A) :** COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER FOR LOCAL ADMINISTRATION.
- P10(B) :** COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER FOR FINANCE.
- P10(C) :** COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- P10(D) :** COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE PRINCIPAL SECRETARY, LOCAL ADMINISTRATION DEPARTMENT.
- P11 :** COPY OF THE PURCHASE ORDER DTD.22.5.2013 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

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**P12 : COPY OF THE COMPARATIVE STATEMENT OF QUOTATIONS RECEIVED IN
RESPONSE TO EXT.P7 QUOTATION NOTICE.**

**P13: COPY OF THE RELEVANT PAGES OF THE GOVERNMENT ORDER NO.
G.O.(P) 259/2010/LSGGD DT 8TH NOVEMBER, 2010.**

RESPONDENT(S)' EXHIBITS :

**EXT.R5(A): COPY OF THE GOVERNMENT ORDER DT 10/10/2014 BEARING
NO.G.O.(RT)NO. 60/2014/SPD.**

**EXT.R5(B): COPY OF THE GOVERNMENT ORDER DT 11/11/2014 BEARING
NO. G.O.(RT) NO. 66/2014.SPD.**

**EXT.R5(C): COPY OF PROJECT FORMATION IN FORM NO. 3 OF THE GENERAL
SERVICE PROJECT, 12TH FIVE YEAR PLAN.**

**EXT.R5(D): COPY OF THE PROJECT FORMATION IN FORM NO. 3 OF THE
GENERAL SERVICE PROJECT, 12TH FIVE YEAR PLAN FOR PURCHASE
OF FURNITURE FOR ST STUDENTS.**

**EXT.R5(E): COPY OF THE PROJECT FORMATION IN FORM NO. E OF THE
GENERAL SERVICE PROJECT, 12TH FIVE YEAR PLAN FOR
RENOVATION OF LABORATORIES IN SCHOOL.**

**EXT.R5(F): COPY OF THE PRICE LIST APPROVED BY STORE PURCHASE
DEPARTMENT.**

**EXT.RF(G): COPY OF THE ORDER DT 8/11/2010 BEARING NO. G.O.(P) 259/2010
LSGD.**

//TRUE COPY//

P.S. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J

WPC No.31310 of 2014

Dated this the 20th day of March, 2015

JUDGMENT

The petitioner has approached this Court seeking the following reliefs:

- i) issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P7 quotation notice and all further proceedings pursuant thereto.
- ii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the first respondent to re-tender by inviting open competitive tenders.
- iii) declare that the action of the first respondent in negotiating only with the fifth respondent is illegal and against provisions in the "Store Purchase Manual 2013".
- iv) direct the first respondent to award the work order in respect of supply of desk, chair and dual desk to the petitioner through the fourth respondent in the event of this Court upholding the process pursuant to Ext.P7.
- v) Award costs to the petitioner.

2. The petitioner is the proprietor of the coastal furniture industries, Kadalundi, Kozhikkode which has

been in the field of manufacture and supply of wood and steel furniture items and other equipments for the past 25 years. The firm is registered with the Industries Department, Government of Kerala, Store Purchase Department of Government of Kerala. It has ISO certification and is registered under the Kerala Value Added Tax Rules 2005. It is registered with the Kerala State Industrial Enterprises as a vendor for wood/steel office furniture and equipments. The firm has been supplying quality wood and steel furniture items and other equipments to various departments of the Union and State Governments like Health Services, Police, education, local authorities and universities etc.

3. The grievance of the petitioner is that the first respondent issued Ext.P7 quotation notice confining the submission of quotations to firms/companies which had entered into rate contract/DGS & D rate contract with the Government for purchase of school furniture and other equipments worth about ₹2 crores to Government schools in Kozhikode District in total violation of the provisions

contained in the Store Purchase manual and resulting in non-transparency and loss of revenue to the Government. Even though the petitioner filed Ext.P10 request to the first respondent to cancel Ext.P7 quotation notice and invite fresh open competitive tenders, it has been of no avail. The petitioner has also submitted similar requests to the 2nd and 3rd respondents and the Ministers concerned, but nothing has come out. It is with this background the petitioner has come up before this Court.

4. In the counter affidavit filed by the first respondent, they have even challenged the *locus standi* of the petitioner. They contended that the 5th respondent is a public sector enterprise coming under the Government of Kerala under the Department of Industries and Commerce and they are satisfying the conditions stipulated in Ext.P7 advertisement. According to them, in the previous year 2013-2014, the 5th respondent had supplied various educational articles and other furniture having good quality and the same were supplied within the time limit for the students belonging to SC/ST and

Government schools. According to them, Ext.P7 quotation was invited in a legal manner with clear and transparent proceedings.

5. The 5th respondent submitted a separate counter affidavit. According to them, the project itself provides for purchase of furniture and other articles without tender and therefore, the procedures adopted are in accordance with law. Therefore, they prayed for a dismissal of the writ petition.

6. I have heard Mr.V.Narayana Swami, the learned counsel for the petitioner, Mr.S.Sreekumar, the learned senior counsel for the first respondent, Mr.S.K.Saju, the learned counsel for the 5th respondent and Mr.V.K.Rafeek, the learned Government Pleader in the matter.

7. The whole issue in this writ petition arises from the supply of contract to the 5th respondent by way of an approved plan by the District Planning Committee Kozhikode in Project Nos.840/15, 843/15 and 845/15 in Education sector. The amount covered by the project is Rs.1,90,00,000/-. The first respondent has formed a

procurement committee for purchasing furniture to schools in Kozhikode District from firms having Rate Contract Certificate from the State Government. A public announcement was made as evidenced by Ext.P7 Paper publication. In response, so many establishments came forward and submitted their quotations, out of which the 5th respondent's offer was the lowest and therefore, the 5th respondent was selected for supplying furniture as per the project. Open tender and Rate Contract are on different footing. It can be seen that the Government has given orders to the departments and Local Self Governments to purchase furniture made of wood from the 5th respondent as can be seen from Ext.R5(a) dated 10.10.2014. Steel furniture was also issued to the departments and local self governments by the department. This order was in continuation of earlier orders. The main allegation of the petitioner is that the procedures adopted are in clear violation of Store Purchase Manual.

8. It is crucial to note that the project itself provides

for purchase of furniture and other articles without tender. A true copy of the Project Formation in Form No.3 of the General Service Project, 12th Five Year Plan is produced as Ext.R5(c). It could be seen from Ext.R5(c) that the articles can be purchased from establishments like the 5th respondent. It is also crucial to note that the State Government through the Store Purchase Department has approved the rates offered by the 5th respondent for various furniture items. A true copy of the price list approved by the Purchase Department is produced as Ext.R5(f). Chapter-XIII of the Store Purchase Manual provides for other modes of purchase which enables the departments and Local Self Governments for purchase of articles without tender.

9. Besides the Government had issued Ext.R5(g) order dated 8.11.2010 which virtually replaced the provisions of Store Purchase Manual in the matter of implementing various schemes of projects by the Local Self Governments. By Ext.R5(g), it is made clear that a sizeable chunk of the State's funds is also being

transferred to the Local Governments for implementing various schemes and projects as per the guidelines formulated by Government from time to time and which involves purchase of goods and services and execution of the works by the Local Governments. At the time of issuing Ext.R5(g), the Kerala Stores Purchase Manual formed the basis for the Local Government's procurement system and management. The Store Purchase Rules are meant for a more centralised system. There was a growing realisation that those rules may not always fully suit the needs of the Local Governments while implementing various schemes and projects as envisaged by them. It was in these circumstances the Government have considered the need for separate guidelines for the procurement of goods and services in the Local Governments and accordingly, the guidelines for procurement of Goods and Services in Local Governments as appended to Ext.R5(g) were issued. Therefore, after Ext.R5(g) of Local Self Government Institutions in the State had to follow the guidelines in letter and spirit for

procurement of goods and services by them in respect of items covered by those guidelines.

10. The learned senior counsel would submit that Ext.P7 notification and the purchase order placed with the 5th respondent is in accordance with Ext.R5(g).

11. It was argued by the learned senior counsel for the petitioner that the petitioner is not qualified for participating in the quotation proceedings pursuant to Ext.P7 and has not submitted any tender. It was argued that the attempt of the petitioner is only to interfere with the proceedings and to get a back door entry in the matter of distribution of stores in pursuance of Ext.P7 quotation notice.

12. Pursuant to Ext.P7 advertisement, quotations were submitted by the following institutions quoting their rates for the purchase of furniture and other materials for the Government Schools under the first respondent District Panchayat:

1. KSIEL
2. Government Wood Workshop
3. SIDCO Sales Emporium
4. SIDCO Marketing Cell

5. Kerala Artisans Development Corporation Ltd.
6. Godrej
7. Swabhiman Social Service.

13. It appears from the counter filed by the first respondent that among the 7 institutions, the lowest quotations for more items was submitted by the 5th respondent. As per the circulars issued by the Central Vigilance Commission, negotiations could be carried out in pursuance of the opening of tenders/quotations and negotiation is permitted only with the lowest tenderer. The 5th respondent had submitted the lowest rates for more items in pursuance of Ext.P7 advertisement for the purchase of furniture and other materials for Government schools under the first respondent. Negotiations were carried out with the 5th respondent for the purchase of bench, desk, dual desk, steel almirah, steel racks, steel table with novo pan and plastic chair etc. As the 5th respondent was not ready to reduce the rate quoted for class tables, the Government Wood Workshop, Puthiyara which quoted the lowest amount for purchase of class tables decided to purchase class table from them. In

pursuance of the negotiations carried out with the 5th respondent, the rate quoted was again reduced and the present rate now accepted is as follows:

<i>Sl. No.</i>	<i>Participated firms</i>	<i>Bench</i>	<i>Desk</i>	<i>Dual Desk</i>	<i>Steel Almirah</i>	<i>Steel rack 4 panel</i>	<i>Steel rack 6 panel</i>	<i>Steel table with Novo pan top</i>	<i>Plastic chair</i>	<i>Class table</i>
1	KADCO	2930	3580	3800	6930	1784	3020	2738	560	3442 rate not deducted

14. The rate negotiated with the 5th respondent was approved in the proceedings of the Procurement committee held on 6.11.2014 and subsequently, the first respondent Panchayath by letter dated 20.11.2014 directed the Deputy Director of Education who is the implementing officer to take initiative for procuring the same without lapse of time. It is clear from the materials now placed on board that the procedure adopted by the first respondent was transparent and there was no scope for any kind of foul play.

15. It is also crucial to note that no other firms participated in the quotation in pursuance of Ext.P7 have any complaint regarding the procedure adopted for selection of the 5th respondent. The petitioner has no

right to complain against the selection procedure and the selection of the 5th respondent on behalf of the other participants of the proceedings.

16. The writ petition was filed on 22.11.2014 and was moved before this Court on 24.11.2014. Even before filing this writ petition, approval of quotation by the 5th respondent was taken on 6.11.2014 by the Procurement Committee of the first respondent and the first respondent on 20.11.2014 has directed the implementing officer for procuring the materials. The petitioner has no fundamental right to supply materials or goods to the Panchayat. Since his fundamental right has not been infringed, he has no *locus standi* to challenge Ext.P7.

17. The case of the petitioner is that the 4th respondent who participated in the limited quotations pursuant to Ext.P7 has submitted a quotation for supply of items based on the rate of contract with the petitioner. According to the petitioner, if orders had been placed by the first respondent with the 4th respondent for three items, the petitioner would have been benefited by the

same. But it is crucial to note that the 4th respondent has not even chosen to support the petitioner in this writ petition.

18. It was strenuously argued by Mr.Narayana Swami that instances are there where complaints arose about the quality of the furniture supplied by the 5th respondent in another district. However, this Court is of the view that this is not a valid reason to hold that the procedure adopted by the first respondent is regular. If orders are placed with the 5th respondent by the first respondent, it shall be open to the first respondent to impose conditions ensuring the quality of furniture supplied by the 5th respondent.

19. On a specific query put by me during the course of argument, it was argued by the learned counsel for the 5th respondent that they would ensure the quality of the furniture supplied. It was submitted by the learned counsel for the 5th respondent that they are ready to abide by any conditions imposed by the first respondent.

On a consideration of the entire materials now placed

on record, this Court is of the view that the petitioner is not entitled to get the reliefs as prayed for.

In the result, this writ petition fails and accordingly dismissed. It shall be open to the first respondent to impose any condition to ensure the quality of furniture supplied by the 5th respondent.

sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE