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WP(C) NO. 9270 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

WP(C) NO. 9270 OF 2025

PETITIONER:

BIOHOMES PROJECTS PRIVATE LIMITED
AGED 13 YEARS
REPRESENTED BY THE MANAGING DIRECTOR ARUN M.G,
OPP. GOVT. VOCATIONAL HIGHER SECONDARY SCHOOL,
THATTAMALA, KOLLAM, PIN - 691020

BY ADVS.
RANJITH VARGHESE
RAHUL VARGHESE
SANTHA VARGHESE
GEO KENNEDY K.
RANJAN BABU JOSEPH
K.L.VARGHESE (SR.)

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SENIOR DIVISIONAL ENGINEER(CO-ORD),
SOUTHERN RAILWAY, DIVISIONAL OFFICE, WORKS BRANCH,
THIRUVANANTHAPURAM., PIN - 695014
- 2 THE GENERAL MANAGER
SOUTHERN RAILWAY, SOUTHERN RAILWAY HEADQUARTERS,
PARK TOWN, CHENNAI, PIN - 600003
- 3 K.K. ANTONY
KALARIKKAL, KADAKKARAPALLY P.O., CHERTHALA,
ALLEPPEY, PIN - 688529



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BY ADVS.
SHRIHARI RAO K
S.SHANAVAS KHAN
S.INDU(K/002856/1999)
KALA G.NAMBIAR(K/515/2006)

OTHER PRESENT:

DSGI SRI T C KRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**“C.R”****JUDGMENT**

Dated this the 27th day of March, 2025

The petitioner is an ‘A’ Class contractor company with ample experience in different types of construction work. The petitioner had submitted its bid in response to Ext.P2 tender invited by the 1st respondent for the construction of the Iravipuram – Raising and extension of Platform Nos. 1 & 2 and allied works. As per Ext. P3 tender document, the closing date of the tender was 18.11.2024 and the advertised value of the contract is Rs.1,99,81,135.46. Clause 10 of Ext.P2 stipulates the financial eligibility criteria. Subsequently, by Advance Correction Slip No.1, Clause 10.2 of Ext.P2 was corrected. As per the amended financial eligibility criteria, the average annual contractual turnover has to be calculated on the average of the total contractual



payments received in the previous three financial years, as per the audited balance sheet. In case the balance sheet is not prepared/audited, the audited balance sheet of the fourth previous year can be considered for calculating the average annual contractual turnover. Since the petitioner's audited balance sheet for the previous year was not approved in the Annual General Body meeting ('AGM', in short), they were not in a position to submit the said document. The petitioner's average annual turnover for the past three years, considering the fourth previous year audited balance sheet, is Rs.2,36,38,978/-. However, respondents 1 and 2 have failed to consider the petitioner's 4th previous year's audited balance sheet. Despite the petitioner satisfying the financial eligibility, the respondents 1 and 2 are taking hasty steps to award the contract to the 3rd respondent.. The action of respondents 1 and 2 is tainted with *mala fides* and arbitrariness. Hence, the



writ petition.

2. The respondents 1 and 2 have filed a statement contending that, in response to the tender, they received five bids, including that of the petitioner. The petitioner has quoted the lowest price of Rs.2,35,15,437.04. However, upon evaluating the petitioner's financial eligibility, it was noticed that the petitioner had submitted the audited balance sheets for the financial years ('FY') 2020-21, 2021-22 and 2022-23. There was no mention of the audited balance sheet for the FY 2023-24 in the Annexure VI - B form. Accordingly, the Convenor of the Tender sent Annexure R1(a) letter to the Chartered Accountant who issued Ext.P4 certificate, to ascertain whether the auditing of the balance sheet for the FY 2023-24 was completed. By Annexure R1 (b) reply, the Chartered Accountant confirmed that the auditing of the petitioner's accounts for the above FY was completed on 02.11.2024. The



petitioner submitted the bid on 08.11.2024. Since the petitioner's balance sheet for the FY 2023-24 was not submitted with the tender, the Tender Committee resolved to only accept the petitioner's average annual contractual turnover for the FYs 2021-22 and 2022-23. The turnover for the two FYs is Rs.168,69,460.90, which is far below the required minimum average turnover stipulated in Ext.P3 advertised value. Hence, the petitioner has failed to satisfy the financial eligibility criteria. The writ petition is devoid of any merits and may be dismissed.

3. The petitioner has filed a reply affidavit stating that, as per Clause 10.2 of Ext.P2, in case the balance sheet of the previous year is yet to be prepared/audited, the audited balance sheet of the fourth previous year can be considered to calculate the average annual contractual turnover. The audited balance sheet of the petitioner was adopted in the AGM



of the shareholders only on 21.12.2024, but the tender was submitted on 18.11.2024. In the above circumstances, the audited balance sheet of the FY 2023-24 was not submitted. Nonetheless, if the fourth previous year's balance sheet is considered, the petitioner will be duly qualified. Ext.P4 certificate was produced in Annexure VI-B form along with the tender documents. Hence, the writ petition may be allowed.

4. Heard: Sri. K.L. Varghese, the learned Senior Counsel for the petitioner, Sri. K. Shrihari Rao, the learned Central Government Counsel for respondents 1 and 2, and Sri.Shanavas Khan, the learned counsel for the third respondent.

5. The dispute in the writ petition fundamentally concerns the interpretation of Clause 'A' of Advance Correction Slip Number 1 of Ext.P2. It is apposite to refer to the said clause, which reads as follows:

**“10.2 Financial Eligibility Criteria.**

The tenderer must have minimum average annual contractual turnover of V/N or ‘V’ whichever is less where V= Advertised value of the tender in crores of Rupees.

N= Number of years prescribed for completion of work for which bids have been invited.

The average annual contractual turnover shall be calculated as an average of “total contractual payments in the previous three financial years, as per the audited balance sheet. **However, in case balance sheet of the previous year is yet to be prepared/audited, the audited balance sheet of the fourth previous year shall be considered for calculating average annual contractual turnover.**

The tenderers shall submit requisite information as per Annexure-VIB, along with copies of Audited Balance Sheets duly certified by the Chartered Accountant/Certificate from Chartered Accountant duly supported by Audited Balance Sheet”

(emphasis supplied)

6. The above clause provides that the average annual contractual turnover is normally calculated on the total contractual payments received in the previous three financial years. Nevertheless, a specific exception is carved out for the non-submission of the last financial year’s balance sheet, if the same is not prepared/audited. In such an eventuality, the audited balance sheet of the fourth previous year can be



considered.

7. The petitioner's case is that, although their Chartered Accountant had prepared the balance sheet for the FY 2023-24 on 02.11.2024, the said audited balance sheet was considered and adopted in the AGM only on 21.12.2024. The tender was submitted on 18.11.2024. It was in the above context that the petitioner submitted Ext.P4 certificate in Annexure VI B form with the audited annual balance sheets for the FYs 2020-2021, 2021-2022 and 2022-23 to prove that the petitioner had an average annual contract turnover of Rs.2,36,38,978/- in the three years, thereby satisfying the financial eligibility criteria.

8. The learned Counsel for respondents 1 and 2 vehemently argued that, as there is an explicit condition in Ext.P2 that only the prepared/audited balance sheet of the previous year needs to be produced, the petitioner could have very well submitted the prepared



balance sheet for FY 2023-24, although it was not adopted by the AGM.

9. I find the above argument to be naïve and untenable because, under the Companies Act 2013, it is imperative that the shareholders of the company have to consider and adopt the audited balance sheet for it to be valid in the eyes of the law. Therefore, the non-submission of the audited balance sheet for the FY 2023-24 by the petitioner, which was not considered and adopted by the AGM, does not constitute a fatal shortcoming warranting the non-acceptance of the petitioner's fourth previous year's balance sheet, particularly in view of the unequivocal condition in Ext.P2 Advance Correction Slip No.1.

10. Conversely, for example, had the petitioner submitted the unapproved audited balance sheet of FY 2023-24 before it was adopted, and the AGM later pointed out certain corrections/modifications in the



balance sheet; the petitioner could potentially face allegations for furnishing false information. It is in the said background that the author of Ext.P2 tender has provided a leeway in the tender conditions, i.e., to submit the audited balance sheet of the fourth previous year in the case the just previous year's auditing is not complete.

11. In **Banshidhar Construction Private Limited v. Bharat Coking Coal Limited and others** [(2024) 10 SCC 273], the Hon'ble Supreme Court has held that, even though courts do not sit in appeal in the matter of award of contracts. It may merely review how the decision was taken. Yet, the decision of the government/instrumentalities must be free from arbitrariness and must not be affected by bias or actuated by *mala fides*.

12. Similarly, in **Michigan Rubber (India) Limited v. State of Karnataka and others** [(2012) 8 SCC 216], the



Hon'ble Supreme Court has observed that the basic requirement of Article 14 of the Constitution of India is fairness in action by the State. Non-arbitrariness is the essence and substance of the heartbeat of fair play. These actions are amenable to judicial review, only if the State is not acting whimsically for any ulterior purpose. Before interfering in a tender or contractual matter, the court should pose to itself whether the decision is arbitrary or irrational.

13. On a comprehensive consideration of the facts, materials on record and the rival submissions made across the Bar, this Court is resolutely of the view that the decision of respondents 1 and 2 to exclude the petitioner's audited balance sheet of the fourth previous year is irrational and arbitrary. The respondents 1 and 2 ought to have accepted Ext.P4 certificate in Annexure VI B form, which proves that the petitioner has an average annual contractual turnover of Rs.2,36,38,978/- for the



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last three years.

In light of the aforesaid circumstances, I allow the writ petition by declaring that the petitioner satisfies the financial eligibility criteria, and directing respondents 1 and 2 to accept the petitioner's tender and process it in accordance with the law.

SD/-

C.S.DIAS, JUDGE

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APPENDIX OF WP(C) 9270/2025

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF CERTIFICATE OF REGISTRATION ISSUED BY THE KERALA WATER AUTHORITY
Exhibit P2	TRUE COPY OF THE RELEVANT PORTIONS OF THE TENDER DOCUMENTS REQUIRED FOR THE PURPOSE OF THE INSTANT CASE INCLUDING CORRECTION SLIP NO. 1 UNDER SUBHEAD A
Exhibit P3	TRUE COPY OF THE TENDER DOCUMENT
Exhibit P4	TRUE COPY OF ANNUAL CONTRACTUAL TURNOVER DATA CERTIFICATE
Exhibit P5	TRUE COPY OF THE EXPERIENCE CERTIFICATE
Exhibit P6	TRUE COPY OF THE LETTER DT. 20.01.2025 SIGNED BY THE CHIEF ADMINISTRATIVE OFFICER OF IIITMK
Exhibit P7	TRUE COPY OF LETTER DT. 14.01.2025 ISSUED BY M/S N.S. PANICKER & CO
Exhibit P8	TRUE COPY OF LETTER DT. 24.02.2025 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT
Exhibit P9	TRUE COPY OF LEGAL OPINION DT. 22.02.2025 FROM THE COMPANY SECRETARY
Exhibit P10	TRUE COPY OF LETTER DT. 05.03.2025 ENCLOSING THE COMMUNICATION ISSUED BY THE RESPONDENT DT. 17.01.2025 AND RESPONSE BY THE PETITIONER DT. 17.01.2025
Exhibit P11	TRUE COPY OF BALANCE SHEET AS AT 31ST MARCH 2024 FORWARDED BY THE PETITIONER'S CHARTERED ACCOUNTANT FOR THE YEAR ENDING 31ST MARCH 2024, PROFIT AND LOSS



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STATEMENT AS ON 31ST MARCH 2024 SENT
ALONG WITH OTHER DETAILS

RESPONDENT ANNEXURES

ANNEXURE R1 (A) TRUE COPY OF THE LETTER DATED 08.01.2025
OF THE CONVENER OF THE TENDER COMMITTEE
ADDRESSED TO THE CHARTERED ACCOUNTANT OF
THE PETITIONER

ANNEXURE R1 (B) TRUE COPY OF THE LETTER DATED 14.1.2025
WITH SUPPORTING DOCUMENTS

ANNEXURE R1 (C) TRUE COPY OF CLAUSE 10.2 OF THE GENERAL
CONDITIONS OF CONTRACT 2022

PETITIONER EXHIBITS

ADDL. EXHIBIT P12 TRUE COPY OF THE UPLOADED UDIN DOCUMENT

ADDL. EXHIBIT P13 TRUE COPY OF THE TABULATION STATEMENT OF
FINANCIAL BIDS