

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 18TH DAY OF AUGUST 2020 / 27TH SRAVANA, 1942

WP(C).No.9968 OF 2020(U)

PETITIONER:

FAWAS ASHRAF
AGED 27 YEARS
S/O.ASHRAFF, PROPRIETOR, ELSTER ELECTRONICS,
PARK CENTER, KINFRA TECHNO INDUSTRIAL PARK,
KAKKANCHERY, MALAPPURAM DISTRICT-673635,
RESIDING AT ARAFA HOUSE, CHUNGAM, FEROKE.P.O,
KOZHIKODE DISTRICT-673631

BY ADVS.
SRI.K.SANEESH KUMAR
SMT.V.B.SANTHINI

RESPONDENTS:

- 1 KAVANNUR GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, KAVANUR.P.O,
MALAPPURAM DISTRICT-673639
- 2 SECRETARY
KAVANNUR GRAMA PANCHAYATH,
MALAPPURAM DISTRICT-673639
- 3 STATE OF KERALA,
REPRESENTED THROUGH ITS PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT, 4TH FLOOR,
SECRETARIAT ANNEX,
THIRUVANANTHAPURAM DISTRICT-695001
- 4 DIRECTOR OF PANCHAYATH,
PUBLIC OFFICE BUILDING, MUSEUM.P.O,
THIRUVANANTHAPURAM DISTRICT-695033

5 GREEN LEAF TECHNOLOGY
REPRESENTED THROUGH ITS PROPRIETOR
PRATHEEP SUNDARAN, KOTTAPPURAM POST,
SREEKRISHNAPURAM VIA, PALAKKAD DISTRICT-
679513

R1-2 BY ADV. SRI.K.RAKESH
R3-4 BY SR. GOVT. PLEADER SMT.K M RESHMI
R5 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 18.08.2020, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

J U D G M E N T

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Dated this the 18th day of August, 2020

The petitioner, who is engaged in the business in works contract, is before this Court seeking to quash Ext.P8 by which the 2nd respondent has awarded a works contract to the 5th respondent.

2. The petitioner is the Proprietor of Elster Electronics and is in the business of installations of street lights and connected electric amenities. The 2nd respondent-Secretary to Kavannur Grama Panchayat invited e-tenders for installation of 24W LED street lighting system as per Ext.P1. The last date for submission of tender was 27.02.2020. The tender was to be opened on 29.02.2020 at 3 p.m.

3. The petitioner participated in the tender and quoted a price of ₹1,579/-, as evidenced by Ext.P2.

According to the petitioner, there were only two tender participants. The petitioner submitted all the requisite documents in support of his tender. The bid results were not published. Later, the petitioner came to know that bid has been finalised on 09.03.2020 in favour of the 5th respondent and work order was issued on 20.03.2020. The 5th respondent had quoted ₹1,599/- which is higher than the quote submitted by the petitioner. The petitioner being the lowest tenderer, the work should have been allocated to him. Award of tender in favour of the 5th respondent is on extraneous considerations, contended the petitioner.

4. Respondents 1 and 2 opposed the writ petition filing counter affidavit. The 2nd respondent stated that in the tender document of the petitioner, certain columns were left unfilled, violating specific tender conditions. In the Bill of Quantity (BoQ) in Column No.8, the petitioner failed to quote GST percentage and tax amount. The petitioner's quote was without GST component even though the LED lamps are taxable with 6% CGST and SGST. Had the

petitioner included tax component, then the rate would definitely be higher. The 5th respondent had duly filled in all columns and specifically mentioned the GST component also.

5. The counter affidavit of respondents 1 and 2 goes to state that the petitioner did not upload relevant test report as mandated in Ext.P1. Samples of LED street lights were also not submitted as mandated in the tender notice. In the circumstances, the Grama Panchayat Procurement Committee decided to issue work to the successful bidder, namely the 5th respondent.

6. The 5th respondent filed counter affidavit. The 5th respondent stated that he is qualified in all respects to undertake the works. Pursuant to the award of contract, he executed agreement on 25.03.2020. Thereafter, LED street lights were supplied to respondents 1 and 2 on 26.03.2020 and 27.03.2020. The 5th respondent submitted tax invoice bill also for payment. Installation of LED street lights, however, could not be completed due to nationwide

lock down. The 5th respondent pointed out that the petitioner quoted ₹1,579/- both under the heads total amount “excluding taxes” and “including taxes”. Column Nos.8 and 9 in the tender document were left blank. In the circumstances, respondents 1 and 2 were justified in rejecting the tender of the petitioner and selecting the 5th respondent.

7. Learned counsel for the petitioner, Advocate Saneesh Kumar, argued that the petitioner has not disclosed tax burden since the petitioner has paid Composition levy under Section 10 of the GST Act. A dealer who has paid Composition levy does not have tax burden under GST. In view of Rule 138 of GST Rules, the petitioner need only to furnish information prior to commencement of movement of goods. No e-way bill is required for movement of goods if consignment value is ₹50,000/- or less. Under Rule 62 of the GST Rules also, the petitioner will not be eligible to avail input tax credit either. It was under such circumstances that the petitioner left the columns blank. The petitioner

produced Ext.P9 document to prove that he is paying self assessed tax.

8. As regards the contentions of respondents 1 and 2 to the effect that test report was not uploaded by the petitioner, the learned counsel for the petitioner argued that Ext.P7 test report was, in fact, uploaded by the petitioner. As regards the allegation against respondents 1 and 2 regarding incomplete filling up of the preliminary agreement, the counsel argued that Ext.P10 would show that the unfilled portion of the agreement is inconsequential. The 5th respondent had also left certain portion of the agreement unfilled.

9. The counsel for the petitioner further argued that the tender process was not in a transparent fashion and the 5th respondent was unnecessarily favoured by respondents 1 and 2. To establish such favouritism, the counsel for the petitioner pointed out that the tender conditions required minimum three years warranty for the work, whereas in the final agreement the period was reduced

to two years.

10. I have heard learned counsel for the petitioner, learned Standing Counsel for respondents 1 and 2, the learned counsel appearing for the 5th respondent and the learned Government Pleader appearing for respondents 3 and 4.

11. The prime reason for the respondents for not accepting the tender of the petitioner is that the petitioner did not quote tax amounts even though the conditions required disclosure of tax burden. The defence of the petitioner is that he is paying composite tax and therefore he need not pay GST. To establish this fact, the petitioner produced Ext.P9 statement for payment of self-assessed tax. Ext.P9 would show that the payment of self-assessed tax for the quarter January–March 2019-'20, has been filed. But, it was filed only on 16.07.2020, which is much after filing of the writ petition. There is nothing on record to show that the petitioner was composite dealer as on the date of filing of the tender application. As the petitioner left the columns relating

to tax element blank, respondents 1 and 2 could not assess the actual cost of the work in his bid. As the tender submitted by the petitioner was not complete in all respects, respondents 1 and 2 rejected the same. I do not find any illegality or arbitrariness on the part of respondents 1 and 2 in doing so.

12. Further, the case of respondents 1 and 2 is that the petitioner did not upload test report and did not supply samples. The petitioner states that samples were supplied along with the tender application and Ext.P7 test report was actually uploaded. The tender process started in the year 2020 and Ext.P7 test report allegedly submitted by the petitioner is of the year 2017. When respondents 1 and 2 demanded test report, the bidders are expected to provide test reports of recent origin. Uploading of a three year old test report will not serve the purpose. For this reason also, rejection of petitioner's bid is justified.

13. About the complaint of the petitioner that tender conditions required three years warranty from the

successful bidder and the 5th respondent has given only two years warranty, the learned counsel for the 5th respondent stated that instead of three year warranty, after the finalisation of the tender, the 5th respondent was required by respondents 1 and 2 to give two years guarantee. If respondents 1 and 2 chose to opt for two years guarantee after the finalisation of the tender and after negotiations, that cannot be a reason to presume favouritism. Ext.P8 order is therefore not liable to be interfered with.

The writ petition lacks merit and it is consequently dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/19/08/2020

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 A TRUE COPY OF THE TENDER NOTICE
DATED 5.2.2020 ISSUED BY THE 2ND
RESPONDENT

EXHIBIT P2 A TRUE COPY OF EVIDENCING THE
SUBMISSION OF THE TENDER DATED NIL
ALONG WITH THE QUOTE

EXHIBIT P3 A TRUE COPY OF THE ELECTRICAL
CONTRACTORS LICENSE ISSUED BY THE
KERALA STATE ELECTRICITY LICENSING
BOARD DATED 3.10.2018

EXHIBIT P4 A TRUE COPY OF THE LICENSE PRODUCED
BY THE 2ND TENDERER/5TH RESPONDENT
WHICH IS IN THE NAME OF THE THIRD
PARTY NAMELY RATHEESH.M., ISSUED BY
THE KERALA STATE ELECTRICITY BOARD
LICENSING AUTHORITY DATED 18.07.2016

EXHIBIT P5 PAN CARD ISSUED BY THE INCOME TAX
DEPARTMENT GOVERNMENT OF INDIA IN
FAVOUR OF THE PETITIONER

EXHIBIT P6 A TRUE COPY OF THE G.S.T REGISTRATION
CERTIFICATE ISSUED TO THE GOVERNMENT
OF INDIA DATED 28.06.2017 IN FAVOUR
OF THE PETITIONER

EXHIBIT P7 A TRUE COPY OF THE CERTIFICATE ISSUED
BY THE NATIONAL INSTITUTE OF
ELECTRONICS AND INFORMATION
TECHNOLOGY (NIELIT) DATED 24.03.2017

EXHIBIT P8 THE PHOTOCOPY OF THE WORK ORDER DATED
20.03.2020 ISSUED BY THE 2ND
RESPONDENT IN FAVOUR OF THE 5TH
RESPONDENT

- EXHIBIT P9 TRUE COPY OF THE RETURN FILED BY THE PETITIONER UNDER THE COMPOSITION SCHEME FOR THE QUARTER JAN-MARCH FOR THE FINANCIAL YEAR 2019-20.
- EXHIBIT P10 TRUE COPY OF THE PRELIMINARY AGREEMENT SUBMITTED BY THE PETITIONER DT 26.2.2020.
- EXHIBIT P11 TRUE COPY OF THE PRELIMINARY AGREEMENT SUBMITTED BY THE 5TH RESPONDENT WHICH IS DT 25.2.2020.
- EXHIBIT P12 TRUE COPY OF THE SCREENSHOT MESSAGES (SMS) SENT BY THE TENDERING AUTHORITY TO THE PETITIONER'S REGISTERED MOBILE DT 21.3.2020.

RESPONDENT'S EXHIBITS:

- EXHIBIT R5 (a) TRUE COPY OF THE WEBSITE EXTRACT OF E-TENDER OF CONTRACT NO.302/19-20 DATED NIL.
- EXHIBIT R5 (b) TRUE COPY OF THE RESOLUTION NO.3(2) DATED 09.03.2020 ADOPTED BY THE 1ST RESPONDENT.
- EXHIBIT R5 (c) TRUE COPY OF THE AGREEMENT DATED 25/3/20 EXECUTED BETWEEN THE 5TH RESPONDENT AND 2ND RESPONDENT.
- EXHIBIT R5 (d) TRUE COPY OF THE TAX INVOICE DATED 26/3/2020.
- EXHIBIT R5 (e) TRUE COPY OF THE TAX INVOICE DATED 27/3/2020.
- EXHIBIT R5 (f) TRUE COPY OF THE RELEVANT PAGES OF RATE OF GST ON GOODS DATED NIL.
- EXHIBIT R2 (a) : TRUE COPY OF THE B0Q (BILL OF QUANTITY) OF THE 5TH RESPONDENT,

- EXHIBIT R2 (b) : TRUE COPY OF THE PROCEEDINGS OF THE KAVANOOR GRAMA PANCHAYATH DATED 04/03/2020 PERTAINING TO THE E-TENDER.
- EXHIBIT R2 (c) : TRUE COPY OF THE TAX INVOICE BILLS PRODUCED BY THE CONTRACTOR DATED 26/03/2020.
- EXHIBIT R2 (d) : TRUE COPY OF THE TAX INVOICE BILLS PRODUCED BY THE CONTRACTOR DATED 27/03/2020.
- EXHIBIT R2 (e) : TRUE COPY OF THE TREASURY BILL DATED 31/03/2020 ISSUED FROM THE SUB TREASURY, AREACODE.
- EXHIBIT R2 (f) : TRUE COPY OF THE TREASURY BILL DATED 11/04/2020 ISSUED FROM THE SUB TREASURY, AREACODE.