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Court : Kerala

Decided On : Sep-18-2015

Judge : A. Muhamed Mustaque

Appeal No. : W.P.(C). No. 9564 of 2015

Appellant : Krishnakumar

Respondent : State of Kerala

Judgement :

1. This Writ Petition is filed by a contractor pursuant to Ext.P10 tender notification dated 1.10.2014.

2. As per Ext.P1 notification, a stipulation is made as follows:

Online Tenders/bids are to be accompanied with a preliminary agreement executed in Kerala stamp paper worth Rs.100/-. Tenders/bids received online without scanned copy of contractor s lincense, preliminary agreement e-payment form and filled tender documents will not be considered and shall be summarily rejected. Further details can be had from the NIT or Office of the Superintending Engineer.

3. The 4th respondent, to whom the work has been awarded, executed a preliminary agreement in a stamp paper worth Rs.100/-. This was ignoring the enhancement of stamp duty payable as per Ext.P2 Government Order and Ext.P3

proceedings of the Chief Engineer, PWD, wherein it is stipulated that preliminary agreement shall be executed in a stamp paper in revised rate. It appears that the 4th respondent was subsequently permitted to execute an agreement at revised rate.

4. The petitioner's case is that the 4th respondent ought to have been disqualified for non-compliance of the terms and conditions of the tender. It is further submitted that the petitioner alone has executed the agreement in the rate applicable as per Exts.P2 and P3.

5. The question is whether execution of preliminary agreement in a stamp paper as referred in Ext.P1 would result in non-adherence of the terms and conditions of the tender conditions. The tender conditions as substratum are in respect of execution of the work. No person can be allowed subsequently to vary any terms and conditions of the substratum after submission of the tender documents. The preliminary agreement is in fact only a reflection of the terms and conditions of agreement of the contracting parties. It is required to be reduced in a stamp paper because of the levy payable under the Stamp Act or under the relevant Government Order. It is nothing to do with the formation of the material terms and conditions of the tender conditions. Therefore, merely because a person has executed the agreement in an insufficient stamp paper would not vitiate the tender process in respect of bid offered by that tender notification.

6. Though the contract of work and execution of agreement in insufficient stamp paper are related, it has to be differently viewed for the purpose of adherence to the terms and conditions of the contract.

7. Therefore, this Court is of the view that execution of an agreement in an insufficient stamp paper would not vitiate process of selection of 4th respondent. Further it is to be noted that in the tender documents it is mentioned that preliminary agreement has to be executed in a stamp paper worth Rs.100/-. Therefore, the 4th respondent has in fact complied with the tender conditions. Therefore, I do not find any infirmity in the award of work granted to the 4th respondent. Accordingly the Writ Petition is dismissed. No costs.