

Binu K Thomas vs State of Kerala

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : WP(C)/9023/2025

Appellant : Binu K Thomas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 PETITIONER: BINU K THOMAS AGED 43 YEARS S/O. K V THOMAS, KUZHIKKATTIL HOUSE, PADICAP P.O., IDUKKI, PIN - 685561 BY ADVS. DEEPA R MENON MATHEW A KUZHALANADAN KURIAKOSE VARGHESE V.SHYAMOHAN NABEEL B.A. NIKITHA MARTHA GIJU RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695001 2 KERALA HYDEL TOURISM CENTRE REPRESENTED BY ITS

DIRECTOR VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM, PIN - 695004 3 ANEESH P R AGED 45
YEARS FATHER'S NAME NOT KNOWN TO THE PETITIONER
PUTHUVAL HOUSE, PADNHARATHARA HOUSE, WAYANAD, PIN -
673575 4 C H ASHRAF AGED 50 YEARS FATHER'S NAME NOT
KNOWN TO THE PETITIONER CHITTETHUKUDY HOUSE, ADIMALI
P.O, IDUKKI, PIN -

BY ADVS. LATHA ANAND GIGIMON ISSAC Jijo Paul Kallookkaran
POOJA P.O.(K/001621/2021) JOSHY P.O.(K/71/2006)
C.SNEHA(K/000359/2022) TOBIAS TOGI MATHEW(K/867/2018)
S.VISHNU (ARIKKATTIL)(K/986/2012) THIS WRIT PETITION (CIVIL)
HAVING COME UP FOR ADMISSION ON 28.03.2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: Dated this the 28th
day of March, 2025

JUDGMENT

The petitioner is the Director of the Company named Periyar Water Sports (P) Ltd. The petitioner has been carrying out water sports activities at Munnar and Banasurasagar Dam with the 2nd respondent the Kerala Hydel Tourism Centre, on a revenue share basis for the last two years. Meanwhile, the 2nd respondent has published Ext.P4 tender notice, calling for eligible operators to conduct the water sports activities in the above two locations. The petitioner and the respondents 3 and 4 have submitted their bids. The petitioner is confident of being awarded with the contract. The tender proceedings has not been finalised. While so, the 2nd respondent has issued a notice to the petitioner to stop the operations and vacate from the two locations on or

before 28.02.2025. By Ext.P7 order, this Court has directed the parties to maintain status-quo till the tender is finalised. Later, the 2nd respondent issued Ext.P8 letter stating that the respondents 3 and 4 have been selected and the presentation round would be conducted on 06.01.2025. The respondents 3 and 4 are ineligible to participate in the tender because they have produced fabricated documents. The 3rd respondent runs a tea shop in the Sun-Moon Valley Boat Centre on a

contract basis with the 2nd respondent. He is in no way connected with

the company named Youngwind LLP. Similarly, the 2nd respondent has accepted the documents submitted by the 4th respondent without any application of mind. Ext.P8 document shows that a concern named New Periyar Water Sports has submitted the bid. However, the documents submitted along with the application are those of the petitioner's company. The 4th respondent is in no

way connected with the petitioners company. The petitioner has been conducting the operations to date.

Therefore, the 4th respondent is also ineligible to participate in the tender. The action of the 2nd respondent in accepting the bids of the respondents 3 and 4 is actuated with mala fides and arbitrariness. Hence, the 2nd respondent may be directed not to include respondents 3 and 4 in the tender, and declare that the petitioner is the successful bidder.

2. The 2nd respondent has filed a counter affidavit

stating that the petitioner has no locus standi to file the writ petition because he has not participated in the tender. The evaluation process has been clearly explained in clause 7 of Ext.P5. Marks have been awarded based on each category. The 2nd respondent has adopted a liberal approach and evaluated the bids. The petitioner and the respondents 3 and 4 have qualified to the next round. The 3rd respondent has produced an experience certificate issued by M/s.Youngwind LLP to prove his technical capability. In the previous tender floated in 2022, the petitioner company had participated in the tender and was awarded the current tender on the strength of an experience certificate issued by Basil Kuriakose. The

impugned tender is floated with the same conditions. Therefore, the document submitted by the 3rd respondent

is sufficient to prove his eligibility.

The New PeriyarW

submitted the bid on behalf of the firm. The 4th respondent and the petitioner are the Directors of M/s Periyar Water Sports (P) Ltd., the current contractor. It

was the 4th respondent who was making all communications for the company with the 2nd respondent and looking after to all the activities of the company. In the present bid, both the petitioner and the fourth respondent have claimed experience based on the current contract entered between the 2nd respondent and Periyar Water Sports (P) Ltd. In the said circumstances, the 2nd respondent had accepted the technical bids of all three parties. Therefore, the writ petition may be dismissed.

3. The third respondent has filed a counter affidavit

contending that he has obtained a consent letter from Youngwind LLP, who has agreed to collaborate with him to carry on his sports activities. The said course is sufficient to participate in the tender in view of clause 5.5 of Ext.P5. Therefore, the writ petition may be dismissed.

4. The 4th respondent has filed a counter affidavit

contending that the petitioner has suppressed the material facts in the writ petition. In fact, it is New Periyar Water Sports that has participated in the tender and not the 4th respondent, although he is a partner of the firm. The 4th respondent and the petitioner are Directors of Periyar Water Sports (P) Ltd. It is without any approval from the Board of Directors of the company that the petitioner has filed the present writ petition. The writ petition is liable to be dismissed on the sole ground. The 4th respondent's firm is eligible to participate in the tender due to the 4th respondent's experience as a

director in Periyar Water Sports (P) Ltd. The above course is permitted by Clause 5.5 of Ext.P5. Therefore, the writ petition may be dismissed.

5. The petitioner has filed reply affidavits refuting the contentions raised by the respondents 2 to 4.

6. Heard; the learned counsel for the petitioner, the learned Government Pleader, the learned Senior Counsel for the 2nd respondent and the respective learned counsel for the respondents 3 and 4.

7. Ext.P5 tender has been floated by the 2nd

respondent, inviting tenders for the selection of operators/agencies to operate water sports activities in the Kerala Hydel Tourism Centres for two years. The petitioner, New Periyar Water Sports and the third respondent have submitted their bids in response to Ext.P4 e-tender notice.

8. It is necessary to refer to relevant conditions in clause 5 of Ext.P5 tender, which reads as follows:

5. INSTRUCTIONS TO BIDDERS 5.1 Sealed Tenders are invited under Two-cover system from reputed Water sports operators/Individuals having support of professional staff with proven track record of operating Water sports and who/which fulfill the Technical and Financial capabilities as mentioned in this tender document. 5.2 Tender can be downloaded from www.etenders.kerala.gov.in. before the Bid Due Date. The bidders are requested to submit the Tender fee of Rs. 2000/- + GST shall be remitted online to the account number given in the remittance from provided by the e-procurement system for this particular tender only. Only NEFT/SBI internet Banking/RTGS/ are allowed as mode of payment. 5.3 The Bidder shall carefully go through the requirements and prepare the required documents to be uploaded. 5.4 Bids should be submitted on or before the Bid Due Date and should be in the prescribed BOQ forms/formats as mentioned in this Tender. Bids not in the prescribed forms/formats will be summarily rejected. 5.5 Bidders shall fulfill Financial Capability while Bidders are allowed to associate with individual/Organization/Agency for meeting the Technical Requirements. However the bidder shall mention such arrangements in the bid with the necessary consent letter from such associates with necessary documents. 5.6 Bids must be accompanied with the following

documents: (duly signed and scanned)

(i) Documentary proof, where applicable, as evidence of satisfaction of the Technical and

(ii) A copy of the Tender Downloaded by the Bidder with

each page manually signed by the Bidder or by an authorized signatory (in case of authorized signatory a certified true copy of the resolution authorizing the signatory to sign the Tender shall have to be enclosed);

(iii) Copies of all tax registrations; and

(iv) In case of individuals, a certified true copy (attested by

a notary) of identity proof. Acceptable identity proofs are Indian passports, Voter IDs and/or Ration Cards. (v)Details of previous experience. (vii)All other relevant documents as per clause 5.1. *** **

9. Clause 5.1, extracted above, permits water sports operators/individuals having the support of professional staff with a proven track record of operating

water sports and who fulfil the technical and financial bids to be eligible to submit the bids. Similarly, clause 5.5 permits the Bidders to associate with an individual/Organization/Agency to meet the technical requirements.

10. The New Periyar Water Sports had submitted its bid since its partner the 4th respondent is also the Director of Periyar Water Sports (P) Ltd, has gained

sufficient experience through the current contract. Similarly, the 3rd respondent has produced Ext.R3(a) consent letter from Youngwind LLP, who consented to give all support to the 3rd respondent to take up the work. Likewise, Periyar Water Sports (P) Ltd has participated in the bid on the basis on its current experience.

11. Therefore, as rightly contended by the 4 th

respondent, the petitioner does not have the locus standi to challenge the tender in his individual capacity because he has not individually participated in the tender.

Even otherwise, when the author of the tender has found respondents 3 and 4 to be suitably qualified on the basis of support letters and previous experience and 4th respondent's experience as the Director of Periyar Water

Sports (P) Ltd, a rank outsider cannot question the 2nd respondents wisdom in the matter.

12. After evaluating the technical bids of three

bidders, the second respondent has found all of them to be qualified as per clause 5 of Ext.P5. Accordingly, the second respondent has proceeded to the next rounds, and ultimately found, as per Ext.R2(J) score sheet, that New Periyar Water Sports is the successful bidder. The firm is not a party to the writ petition. Therefore, the writ petition has to fail on the said ground.

13. In Jagdish Mandal v. State of Orissa and others

[(2007) 14 SCC 517, the Honble Supreme Court has observed that evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to the award of the contract is bona fide and is in the public interest, courts will not, in exercising the power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out.

14. In Afcons Infrastructure Ltd v. Nagpur Metro Rail Corporation Ltd. And Another [(2016) 16 SCC

818], the Honble Supreme Court has held that the constitutional Courts must defer to the understanding that the employer of a project having authored the tender documents, is the best person to understand and appreciate the requirements and interpret the documents unless there is mala fides or perversity in the understanding or applying the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts, but that by itself is not a reason for interfering with the interpretation given.

15. Likewise, in *Silppi Constructions Contractors v.*

Union of India and another [(2020) 16 SCC 489], the Honble Supreme Court has observed that the authority which floats the contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then authors interpretation is to be accepted

16. In the case at hand, the author of the tender

states that in the 2022 tender, which had the same conditions, the 2nd respondent awarded the tender to Periyar Water Sports (P) Ltd on the strength of a support letter from a third party. In the present tender, the 2nd respondent has found that all three participants are qualified, and consequentially has proceeded to the subsequent rounds and found the financial bid offered by the New Periyar Water Sports to be the most competitive bid. Accordingly, the contract has been awarded to the said firm. It is not for this Court to sit in appeal over the said decision and take a divergent view. This Court does not find any element of mala fides or arbitrariness in the whole process.

On an overall evaluation of the pleadings and materials on record, this Court is of the view that the writ petition sans substance or merits and is only to be dismissed. Consequentially, I do so.

SD/- C.S.DIAS, JUDGE rmm/28/3/2025 APPENDIX OF WP(C) 9023/2025 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE LICENSE AGREEMENT BETWEEN THE PETITIONER AND 2ND RESPONDENT FOR ENTIRE LAND AROUND MALABAR CIRCUIT NUMBERED AS 17/KHTC/HQ/2022-2023 DATED 17.10.2022 Exhibit P2 TRUE COPY OF THE LICENSE AGREEMENT BETWEEN THE PETITIONER AND 2ND RESPONDENT FOR ENTIRE LAND AROUND MUNNAR CIRCUIT NUMBERED AS 10/KHTC/HQ/2022-2023 DATED 29.08.2022

Exhibit P3 TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT NUMBERED KHTC/HQ/DB 12024-25 DATED 21.11.2024 Exhibit P4 TRUE COPY

OF THE TENDER NOTICE ISSUED BY THE 2ND RESPONDENT NUMBERED AS 18/KHTC/ HQ /2024-25 DATED 06.01.2025 Exhibit P5 TRUE COPY OF THE RELEVANT PAGES OF THE E-TENDER SUBMITTED BY THE PETITIONERS COMPANY DATED 20.01.2025 Exhibit P6 TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT NUMBERED KHTC/HQ/ DB1/2024-25 DATED 24.02.2025 Exhibit P7 TRUE COPY OF THE INTERIM ORDER IN WP(C) NO. 7919 OF 2025 DATED 28.02.2025 Exhibit P8 TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT NUMBERED AS KHTC/HQ/DB1/2024-25/51 DATED 28.02.2025 Exhibit P9 TRUE COPY OF THE RELEVANT PAGES OF

TENDER APPLICATION AND DOCUMENTS SUBMITTED BY 3RD RESPONDENT NUMBERED AS E TENDER NO 18/KHTC/HQ/2024-25 DATED 06.01.2025

Exhibit P10 TRUE COPY OF THE LIMITED LIABILITY PARTNERSHIP INFORMATION OF YOUNGWIND LLP ISSUED BY MINISTRY OF CORPORATE AFFAIRS DATED 24.02.2025 Exhibit P11 TRUE COPY OF THE RELEVANT PAGES OF E- TENDER SUBMITTED BY THE 4TH RESPONDENT DATED 28.01.2025 Exhibit P12 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 03.03.2025 RESPONDENT EXHIBITS Exhibit R 4 (1) true copy of the Bid Submission Conformation dated 28-01-2025, Exhibit R 4 (2) true copy of the registration certificate issued by the Registrar of Firms, dated 27-01-2025 Exhibit R 4 (4) true copy of the Company Information extracted from the website for the Ministry of Corporate Affairs, dated 04-03-2025 Exhibit R 4 (5) True copy of the certificate No. BSHTC/DB- Exhibit R 4 (6) True Copy of the certificate No.

KHTC/MNR/GNL/2024-25-25/837 dated 25-01- 2025, issued by the Senior Manager of the Kerala Hydel Tourism Centre, Munnar Circuit Exhibit R 4 (7) True copy of the certificate of experiences issued by the officer on Special Duty, Kerala Hydel Tourism Centre, Banasura Sagar Dam, Wayanad, dated 29-01-2025 Exhibit R 4 (8) true copy of the letter No 03/RTI/25/KMGM dated 10-02-2025, issued by the Public Information Officer Kothamangalam Police Station to one Sajeev MK is

along with its typed copy

Exhibit R 4 (3) True copy of Partnership deed Exhibit R2(d) True copy of the GST registration certificate dated 24/08/2022 Exhibit R2(e) True copy of the certificate of networth of Mr. Basil Kuriakose, along with the bid submission confirmation dated 12/07/2022 Exhibit R2(f) True copy of the communication dated behalf of M/s Periyar Water Sports Pvt Ltd Exhibit R2(g) True copy of the Minutes of the Meeting dated respondent Exhibit R2(i) True copy of the report dated 30.04.2024 by the Vigilance Department of the KSEB Exhibit R2(j) True copy of the final scoresheet Exhibit R2(a) True copy of the relevant page of the agreement dated 26/02/2020 between Assistant Executive Engineer , PVIP Subdivision and Mr. Basil Kuriakose Exhibit R2(b) True copy of the tender conditions pertaining to E-tender 15/KHTC/HQ/2022-23 dated 29.06.2022 Exhibit R2(c) True copy of the certificate of incorporation pertaining to the petitioner s company Exhibit R2(h) True copy of the complaint dated 12/02/2025 filed by one Ms Sajitha Thankappan Exhibit R3(a) True copy of the consent letter dated 18/1/2025 issued by Youngwind LLP partnership firm in favour of this respondent

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