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Adhilsha, vs State of Kerala,

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Court : Kerala

Decided On : Feb-16-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/4602/2024

Appellant : Adhilsha,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN FRIDAY, THE 16TH DAY OF FEBRUARY 2024 / 27TH MAGHA, 1945 WP(C) NO. 4602 OF 2024 PETITIONER: ADHILSHA, AGED 48 YEARS S/O. MUHAMMED ILLYAS,VILLIKKULATH VAYALIL VEEDU, ALAYAMON P.O.,ANCHAL, KOLLAM, PIN - 691306 BY ADVS. DEEPU THANKAN UMMUL FIDA LAKSHMI SREEDHAR LEKSHMI P. NAIR NAMITHA K.M. VINEETHA BOSE RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPT. OF LSGD, GOVT. SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695601 2 THE ALUVA MUNICIPALITY, REPRESENTED BY ITS SECRETARY, ALUVA P.O.,ERNAKULAM, PIN - 683101 3 FUN WORLD & RESORTS

INDIA PVT. LTD REGISTERED OFFICE AT PALACE GROUNDS (OPPOSITE TV TOWER, JC NAGAR, BANGALORE - 560006 REPRESENTED BY ITS MANAGING DIRECTOR ADDL.R4 4 FEDERAL BANK, ALUVA, REPRESENTED BY THE MANAGER [ADDL.R4 IMPLEADED SUO MOTU AS PER ORDER DATED BY ADVS.K.T.THOMAS T.M.RAMAN KARTHA NIKHIL BERNY MANJU R. KARTHA REVATHY M.A. GREESHMA T.G. SNEHA BRIGIT PRINCE M.S.KIRAN, SC, ADDL.R4 B.S.SYAMANTAK, GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

---------- W.P.(C)No. 4602 of 2024 ---------- Dated this the 16th day of February, 2024

JUDGMENT

The petitioner quoted an amount of Rs.1,16,08,174/- in response to Ext.P1 e-tender notice of the 2 nd respondent Municipality. The 3rd respondent only quoted an amount of Rs.47 lakhs. The difference between the petitioner's tender and that of the 3rd respondent is about 69 lakhs. It is a fact that there is some delay in depositing the quoted amount by the petitioner. But it is an admitted fact that as on 05.02.2024, the petitioner deposited an amount of Rs.1,16,08,174/- in the account of the 2nd respondent. But on 06.02.2024, the contract was allotted to the 3rd respondent. Whether this Court should interfere in such situation is the question to be decided in this case.

2. Petitioner is engaged in contract business and

he is running a firm 'Shas Entertainment' engaged in arranging and conducting exhibitions etc. The 2nd respondent invited Ext.P1 e-tender notice inviting tenders for conducting all India exhibitions at the Aluva Manappuram on 08.03.2024

onwards in connection with the celebrated Aluva Maha Sivarathri Maholsavam. The petitioner submitted tender with all required documents and by remitting Rs.3,50,000/- towards the EMD and Rs.5,000/- towards the tender fees through online. When the e-tender was opened on 11.01.2024, the petitioner has come out successful with the quote of Rs.1,16,08,174/-. The other tenders are one quoted by the 3rd respondent for Rs.47 lakhs and yet another quote was by another company named 'A to Z' for Rs.45 lakhs. The 3rd respondent was the successful tenderer during the last season and he quoted Rs.63 lakhs last year and now he came with a tender for Rs.47 lakhs only. The 2 nd respondent awarded the contract work to the petitioner by accepting his highest tender and issued Ext.P2 notice intimating that the petitioner has to pay the tender amount of Rs.1,16,08,174/- along with Rs.20,89,472/- towards GST and Rs.11,60,818/- towards performance guarantee. Either in Ext.P1 e-tender or in Ext.P2 there is no time limit prescribed for depositing the amount, is the contention of the petitioner. The petitioner remitted an amount of Rs.16,08,170/- out of the tender amount on 19.01.2024 as evident by Ext.P3. The petitioner also started the cleaning work towards the preparation of the ground for the conduct of the exhibition. Ext.P4 is the newspaper report which shows that the petitioner already started the work.

3. It is submitted that the petitioner has to face

threat from the men of the defeated tenderers for having obtained the contract work. It is also the case of the petitioner that the officials of the 2nd respondent has made him panic by giving severe pressure for effecting payments. In such circumstances, the petitioner submitted Ext.P5 representation to the 2 nd respondent stating that he shall pay an amount of Rs.50 lakhs on 01.02.2024 and the balance on 05.02.2024. Ext.P5 is the representation. But the petitioner was able to pay only an amount of Rs.35 lakhs on 01.02.2024 as evident by Ext.P6. Thereafter on 02.02.2024, the petitioner presented two cheques for Rs.40 lakhs and Rs.25 lakhs as evident by Ext.P7 in the bank account of the 2 nd respondent. Hence it is submitted that the balance towards the GST and other amount due was only Rs.32,50,290/-. But the petitioner came to see a news published in the Deepika daily on 04.02.2024 to the effect that the steering committee of the 2 nd respondent has taken a decision to avoid the petitioner and to engage the contract

work to the 3rd respondent. Ext.P8 is the newspaper report. The reason assigned for such a decision as found in the news item is that the petitioner has not paid the full amount even after giving extension of time for the said purpose two times and that the cheques vide Ext.P7 are not honoured. In the news item it is also stated that the steering committee of the 2 nd respondent has brought the representatives of the 3 rd

respondent and negotiated them for Rs.77 lakhs in order

to give the contract work for them. According to the petitioner, the loss to the Municipality due to the giving of the contract work for such a less amount of Rs.77 lakhs is about 40 lakhs. But the 2nd respondent is going to recover the same from the amount deposited by the petitioner. It is also submitted that the 2 nd respondent is showing a biased attitude towards the petitioner and taking steps to favour the Bangalore company Fun world. It is also submitted that, if the said company is given the contract work by avoiding the petitioner, the losers will be the 2nd respondent by way of a loss of Rs.40 lakhs and also the Government by way of reduction in GST. The petitioner also will be a heavy loser resulting in total breakdown of his contract business and his future itself. Hence the petitioner filed this Writ petition with following prayers:

1. To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to grant time up to 8.2.2024 for the petitioner for remitting the balance amount outstanding as per Exhibit-P2 notice.

2. To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to permit the petitioner to carry out the contract work covered by Exhibits-P1 & P2.

3. To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to stop all further proceedings to give the contract work to the 3rd respondent.

4. And to pass such other appropriate writs, orders or directions which this Honble Court deems fit and proper in the facts and circumstances of the case so as to

secure the ends of justice.

4. Heard the learned Senior counsel Adv. Joseph

Kodianthara as instructed by Adv.Deepu Thankan, appearing for the petitioner, the learned Standing counsel appearing for the 2nd respondent, the learned counsel appearing for the 3rd respondent, the learned counsel appearing for the additional 4th respondent and the learned Government Pleader appearing for the 1 st respondent.

5. The learned Senior counsel reiterated the

contention in the writ petition and submitted that the entire amount quoted by the petitioner is now with the 2 nd respondent's bank account. The Senior counsel also submitted that the petitioner is ready to pay the balance amount at any time. It is the submission of the Senior counsel that a close watch of the sequence of events in this case would show that the 2 nd and 3rd respondents are colluding each other to defeat the interest of the petitioner. The Senior counsel also submitted that the contract confirmed with the petitioner is cancelled even without giving a notice to the petitioner. The Senior counsel also submitted that the petitioner deposited two cheques for Rs.65 lakhs on 02.02.2024 which was on Friday and the cheques were honoured on Monday i.e., on 05.02.2024. After getting the entire amount quoted by the petitioner, Ext.P12 was issued by which the offer of the 3rd respondent is accepted. The writ petition was filed before this Court on 05.02.2024. When the writ petition was pending before this Court and when it was posted for instruction, the contract was allotted to the 3 rd respondent. Therefore, it is submitted that the collision between respondents 2 and 3 is clear.

6. The Standing Counsel for the 2nd respondent

Sri.K.T.Thomas argued the matter in detail. The Standing Counsel takes me through the statement and the counter affidavit filed by the 2nd respondent. The Standing Counsel takes me through Ext.P1 e-tender notice and submitted that it is the duty of the petitioner to deposit the entire amount with GST in advance before executing the agreement. The Standing Counsel takes me through Ext.P2 and

submitted that the petitioner was informed to deposit the amount as per Ext.P2. Even then the amount is not deposited. The Standing Counsel also takes me through Ext.R2(d), the decision of the 2 nd respondent Municipality. The Standing Counsel submitted that the Municipality has taken every endeavour to see that the contract is given to the petitioner because huge amount is quoted by the petitioner. The Standing Counsel takes me through Ext.R2(d) in which it is stated that the meeting of the Municipality held on 01.02.2024 decided to wait till 02.02.2024 and thereafter till 03.02.2024. The contract is allotted to the 3rd respondent only at 3 o clock on 03.02.2024, that also after verifying with the Bank whether the amount is credited in the account. The Standing Counsel also takes me through the account details produced by the petitioner himself and submitted that there is no sufficient amount in the account.

7. The 3rd respondent also supported the

contentions of the 2nd respondent. The counsel for the 3 rd respondent also takes me through the counter affidavit filed by him and submitted that he already started the work. The counsel takes me through paragraph 13 of the counter filed by the 3rd respondent and submitted that all arrangements are made by the 3rd respondent based on the contract and there will be huge loss caused to the 3 rd respondent if this Court interfere with the same.

8. This Court considered the contentions of the petitioner and the counsel for respondents 2 and 3. When this writ petition came up for consideration on 08.02.2024, this Court passed the following order:

Admit. The learned Government Pleader takes notice for the 1 st respondent. Adv. Sri. K.T.Thomas takes notice for the 2nd respondent. Issue notice by Special Messenger and by e-mail to the 3rd respondent. It is submitted by Sri.K.T.Thomas, the learned Standing Counsel for the 2nd respondent that the work has already been awarded to the 3rd respondent and an agreement has been executed today. It is made clear that award of the work as well as the execution of the agreement will be subject to the outcome of the order to be passed in the writ petition.

9. It is an admitted fact that the contract was

awarded to the petitioner based on his quote for Rs.1,16,08,174/-. It is also an admitted fact that, as per Ext.P2, the petitioner was directed to deposit the quoted amount with GST and performance guarantee amount. A perusal of Exts.P1 and P2 would not show that the date on which the amount is to be deposited by the successful bidder is not clearly mentioned. Ext.P2 is dated 18.01.2024. it is an admitted fact that that on 20.01.2024, the petitioner deposited an amount of Rs.16,08,170/-. It is also an admitted fact that on 01.02.2024, an amount of Rs.35 lakhs is paid by the petitioner. The petitioner also submitted Ext.P5 representation for giving time up to 05.02.2024. On 05.02.2024, the petitioner presented two cheques, as evident by Ext.P7, for an amount of Rs.40 lakhs and Rs.25 lakhs respectively. The additional 4th respondent submitted that the above cheques were received in the evening on 05.02.2024. Admittedly 02.02.2024 is a Friday. Rs.65 lakhs was credited in the account of the 2 nd respondent on 05.02.2024. But, on 03.02.2024, even after knowing that there are cheques presented by the petitioner, the Municipality decided to cancel the award in favour of the petitioner. It is important to note that the petitioner submitted Ext.P5 representation for giving time upto 05.02.2024. Even then, without giving an opportunity to the petitioner, the award is cancelled. I cannot understand the over enthusiasm of the Municipality to give the contract to the 3rd respondent. This writ petition was filed on 05.02.2024. Then on 06.02.2024, the contract is also executed with the 3 rd respondent for an amount of Rs.77 lakhs when the quote of the petitioner is Rs.1,16,08,174/-. Moreover, on 06.02.2024, the entire quoted amount of the petitioner is in the account of the 2nd respondent. In such circumstances, the acts of the 2 nd respondent is suspicious. I am of the considered opinion that the Municipality has not given a breathing time to the petitioner and the Municipality is in a hurry to confirm the contract with the 3rd respondent. Such an attitude of the Municipality cannot be accepted especially in the facts and circumstances of the case. The difference of the quote between the petitioner and the 3 rd respondent is about Rs.69 lakhs. Now the contract executed with the 3 rd respondent is for Rs.77 lakhs. At that stage also, the difference is about 39 lakhs. As I stated earlier, when the contract is executed with the 3 rd respondent, the entire amount quoted by the petitioner is in the Bank account of the 2nd respondent. The loss of the Municipality is about Rs.39 lakhs and there will be loss to the Government also as

far as tax is concerned. This is suspicious, according to me. I am of the considered opinion that this is a fit case in which this Court has to step in and set aside the contract executed by the 2nd respondent with the 3rd respondent. This is a strange case in which the Municipality is giving the contract to the 3 rd respondent suffering a loss of about Rs.39 lakhs in addition to the loss of tax to the Government. I am of the considered opinion that whether there is any corruption or misconduct committed by anybody in this matter is to be looked into by the 1st respondent Government. There is smell of corruption. But I leave it to the 1 st respondent to find out, whether the smell is genuine or not. The Senior Counsel submitted that the petitioner is ready to pay the balance amount today itself. The same is recorded. Therefore, this writ petition is allowed in the following manner :

1. Exts.P11 and P12 are quashed.

2. The 2nd respondent is directed to execute the contract with the petitioner on or before 20.02.2024, based on the tender submitted by him in response to Ext.P1 e-tender.

3. The 1st respondent will summon the

entire records in connection with the tender proceedings leads to Ext.P1 and find out whether there is any misconduct or malpractice from any of the officers or office bearers of the Municipality and if it is found so, appropriate steps including criminal prosecution should be taken against them. But I make it clear that, the 1st respondent should conduct the enquiry, untrammelled by any observation in this case. Registry will forward a copy of this judgment to the 1st respondent forthwith. Sd/- P.V.KUNHIKRISHNAN JV/DM JUDGE APPENDIX OF WP(C) 4602/2024 PETITIONER EXHIBITS EXHIBIT 1 THE TRUE COPY OF THE E-TENDER NOTICE ISSUED BY THE 2ND RESPONDENT DATED 27.12.2023 EXHIBIT-P2 THE TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 18.1.2024 EXHIBIT-P3 THE TRUE COPY OF THE REMITTANCE SLIP ISSUED FROM THE FEDERAL BANK, ALUVA BRANCH DATED 19.1.2024 EXHIBIT-P4 THE TRUE COPY OF THE NEWS ITEM WITH THE PHOTO PUBLISHED IN THE MALAYA MANORAMA DAILY NEWS PAPER DAILY DATED 23.1.2024 EXHIBIT-P5 THE TRUE COPY OF THE LETTER SUBMITTED

BY THE PETITIONER TO THE 2ND RESPONDENT DATED 1.2.2024 EXHIBIT-P6 THE TRUE COPY OF THE DOCUMENTS SHOWING THE REMITTANCE RS. 35 LAKHS ON 1.2.2024 EXHIBIT-P7 THE TRUE COPY OF THE DOCUMENTS IN

RESPECT OF THE SUBMISSION OF TWO CHEQUES OF RS. 40 LAKHS AND RS. 25 LAKHS OF THE YES BANK, VYTTILA BRANCH AT THE FEDERAL BANK TO THE ACCOUNT OF THE 2ND RESPONDENT TOWARDS REMITTANCE OF RS. 65 LAKHS EXHIBIT-P8 THE TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE DEEPIKA DAILY NEWS PAPER DATED 4.2.2024

EXHIBIT P9 A TRUE COPY OF THE BANK STATEMENT OF

ALUVA MUNICIPALITY DATED 03/02/2024

EXHIBIT P12 A TRUE COPY OF THE PROCEEDINGS THE

ISSUED BY THE ALUVA MUNICIPALITY TO THAT ASPECT RESPONDENT EXHIBITS EXHIBIT R3(A) TRUE COPY OF AGREEMENT DATED 8.2.2024 ENTERED INTO BETWEEN 3RD RESPONDENT AND ALUVA MUNICIPALITY EXHIBIT R3(B) TRUE COPY OF ORDER DATED 8.2.2024 OF THE SECRETARY, ALUVA MUNICIPALITY EXHIBIT R3(C) TRUE COPY OF THE CERTIFICATE NO. KEA/C.E.O/CIVIL/D.E-2017/2017-18/2937 DT. 5.3.2018 ISSUED BY THE CHIEF EXECUTIVE OFFICER, KARNATAKA EXHIBITION AUTHORITY EXHIBIT R3(D) TRUE COPY OF THE CERTIFICATE NO. KEA/C.E.O/CIVIL/D.E-2018/2019-20/290 DT. 26.6.2019 ISSUED BY THE CHIEF EXECUTIVE OFFICER, KARNATAKA EXHIBITION AUTHORITY

EXHIBIT R3(E) TRUE COPY OF THE CERTIFICATE NO.

EXHIBITION AUTHORITY EXHIBIT R3(F) TRUE COPY OF THE CERTIFICATE NO. KEA/C.E.O/ADMN-012022-23 DT. 23.1.2023 ISSUED BY THE CHIEF EXECUTIVE OFFICER, KARNATAKA EXHIBITION AUTHORITY

EXHIBIT R3(G) TRUE COPY OF THE CERTIFICATE NO.

EXHIBITION AUTHORITY EXHIBIT R3(H) TRUE COPY OF THE CERTIFICATE NO. KEA/C.E.O/GLOBAL TENDER/ 05/2023-24 DT. 20.1.2024 ISSUED BY THE CHIEF EXECUTIVE OFFICER, KARNATAKA EXHIBITION AUTHORITY EXHIBIT R3(J) TRUE COPY OF LETTER DATED 12.11.2019 ISSUED BY THE CHAIRMAN AND MANAGING DIRECTOR OF TAMIL NADU TOURISM DEVELOPMENT CORPORATION PERMITTING THE 3RD RESPONDENT TO ORGANIZE THE 46TH INDIA TOURIST AND INDUSTRIAL FAIR 2020 IN CHENNAI EXHIBIT R3(I) TRUE COPY OF LETTER DATED 29.11.2018 ISSUED BY THE CHAIRMAN AND MANAGING DIRECTOR OF TAMIL NADU TOURISM DEVELOPMENT CORPORATION PERMITTING THE 3RD RESPONDENT TO ORGANIZE THE 45TH INDIA TOURIST AND INDUSTRIAL FAIR 2019 IN CHENNAI

EXHIBIT R3(K) TRUE COPY OF CERTIFICATE DATED

EXHIBITION AUTHORITY, MYSORE REGARDING THE SUMMER CAMP EXHIBITION 2022 CONDUCTED BY THE 3RD RESPONDENT

EXHIBIT R3(L) TRUE COPY OF THE CERTIFICATE DATED 12.3.2019 RESPONDENT EXHIBITS EXHIBIT-R2(A) TRUE COPY OF TENDER NOTICE NO.R5- ALUVA MUNICIPALITY EXHIBIT-R2(B) TRUE COPY OF DECISION NO.1/1 DATED 17.01.2024 OF ALUVA MUNICIPAL COUNCIL EXHIBIT-R2(C) TRUE COPY OF NOTICE NO.R5-16092/23 DATED 18.01.2024 ISSUED BY SECRETARY, ALUVA MUNICIPALITY EXHIBIT-R2(D) TRUE COPY OF DECISION NO.1/1 DATED 01.02.2024 OF ALUVA MUNICIPAL COUNCIL EXHIBIT-R2(E) TRUE COPY OF THE PROCEEDINGS DATED 03.02.2024 OF STEERING COMMITTEE OF ALUVA MUNICIPALITY EXHIBIT-R2(F) TRUE COPY OF THE NOTICE NO.R5-16092/23 DATED 03.02.2024 ISSUED BY SECRETARY, ALUVA MUNICIPALITY TO PETITIONER EXHIBIT-R2(G) TRUE COPY OF THE EXTRACT OF EMAIL COMMUNICATION AND POSTAL RECEIPT EXHIBIT-R2(H) TRUE COPY OF THE EXTRACT OF BANK ACCOUNT OF ALUVA MUNICIPALITY WITH FEDERAL BANK, RS ROAD BRANCH, ALUVA EXHIBIT-R2(I) TRUE COPY OF DECISION NO.1/1 DATED 06.02.2024 OF ALUVA MUNICIPAL COUNCIL EXHIBIT-R2(J) TRUE COPY OF NOTICE NO.R5-16092/23 DATED 06.02.2024 ISSUED BY SECRETARY, ALUVA MUNICIPALITY

EXHIBIT-R2(L) TRUE COPY OF ORDER DATED 08.02.2024 ISSUED BY SECRETARY, ALUVA MUNICIPLAITY TO 3RD RESPONDENT EXHIBIT-R2(M) TRUE COPY OF INTERIM ORDER DATED 18.01.2024 IN W.P (C) NO.1587/2024 EXHIBIT-R2(K) TRUE COPY OF AGREEMENT DATED 08.02.2024 ENTERED BETWEEN ALUVA MUNICIPALITY AND 3RD RESPONDENT EXHIBIT R3(A) A TRUE COPY OF AGREEMENT DATED 8.2.2024 ENTERED INTO BETWEEN 3RD RESPONDENT AND THE ALUVA MUNICIPALITY EXHIBIT R3(B) A TRUE COPY OF THE ORDER DATED 8.2.2024 OF THE SECRETARY, ALUVA MUNICIPALITY EXHIBIT R3(C) A TRUE COPY OF THE CERTIFICATE NO.

KEA/C.E.O/CIVIL/D.E-2017/2017-18/2937 DT. 5.3.2018 ISSUED BY THE CHIEF EXECUTIVE OFFICER, KARNATAKA EXHIBITION AUTHORITY EXHIBIT R3(D) A TRUE COPY OF THE CERTIFICATE NO. KEA/C.E.O/CIVIL/D.E-2018/2019-20/290 DT. 26.6.2019 ISSUED BY THE CHIEF EXECUTIVE OFFICER, KARNATAKA EXHIBITION AUTHORITY

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EXHIBIT R3(K) A TRUE COPY OF THE CERTIFICATE DATED

EXHIBITION AUTHORITY, MYSORE REGARDING THE SUMMER CAMP EXHIBITION 2022 CONDUCTED BY THE 3RD RESPONDENT EXHIBIT R3(M) TRUE COPIES OF NEWS REPORT (PUBLISHED IN THE MALAYALA MANORAMA DAILY DT. AND PHOTOGRAPHS OF THE TEMPORARY AMUSEMENT PARK AND EXHIBITION CENTRE COMING UP IN THE ALUVA SHIVARATHRI MANAPPURAM

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