

(1998) 07 KL CK 0063
In the High Court Of Kerala
Case No : O.P. No. 6500 of 1998

Krishnankutty

APPELLANT

Vs

Guruvayoor Devaswom

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Citation : (1999) 1 KLJ 700

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : A.K. Chinnan and K.K. Geetha, for the Appellant; K. Radhakrishnan and D. Somasundaram, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioner along with the 3rd respondent and others was a bidder pursuant to Ext. P4. That was a retender notification as there were no sufficient tenderers pursuant to Ext. P1 regarding the same work. The work is awarded to the 3rd respondent. The petitioner has approached this Court challenging the same and seeking a direction restraining the 1st respondent from entering into a contract with the 3rd respondent. Petitioner submits that the tender submitted by the 3rd respondent was defective on two reasons. (1) It was submitted later than the stipulated time and (2) he did not deposit the earnest money in the treasury of the 1st respondent but only furnished a demand draft. According to the petitioner, clauses 5 and 6 of Ext. P2 make it imperative that the tenderer should have deposited Rs. 10,000/- in the treasury of the 1st respondent and receipt also should have been produced along with the tender compulsorily. It is further submitted that the tender ought to have been submitted at the latest by 3 P.M on 26-2-1998. The petitioner's contention is answered by the 1st respondent stating that bank draft for Rs. 10,000/- along with the tender had been submitted by the 3rd respondent. Thus he has substantially complied with the requirement in clause 6 of Ext. P2. It is true that clause 6 in Ext. P2 makes it imperative that the challan receipt shall accompany

the tender and not that the deposit shall compulsorily be paid in the treasury. As the 3rd respondent had submitted the tender accompanied by a bank draft, substantial compliance is made by the 3rd respondent, and when his tender is lower than that of the petitioner his tender had been accepted and there is no arbitrariness or malafide as contended by the petitioner to favour the 3rd respondent. It is also an admitted case that the tender was submitted by the 3rd respondent at 3.20 p.m. though 3 p.m. was the outer limit within which tender has to be submitted. Tender had been opened immediately after the 3rd respondent submitted it. That delay of 20 minutes cannot be taken as fatal, in the matter of awarding the contract in favour of the 3rd respondent. Going by the decision of the Supreme Court reported in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, it can be taken as sufficient compliance. In the said case instead of earnest money deposit by cash or demand draft drawn in favour of the State Bank of Travancore, the defeated tenderer had remitted the earnest money in the form of a cheque of Union Bank of India. Accepting the case of the defeated tenderer the Supreme Court held that the cheque drawn must be treated as "sufficient for the purpose" of achieving the object of the condition. Following that decision I have to hold that the deposit of earnest money in bank and production of draft was sufficient compliance of the stipulation contained in Clause 6 of Ext. P2. Thus, in every respect there was sufficient compliance. In the aforesaid circumstances, the Original Petition fails. It is accordingly dismissed. No costs.