
(2023) 03 KL CK 0283

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 4867, 6422 & 7618 Of 2023

M.T. Ahammed Ali

APPELLANT

Vs

Ministry of Micro, Small and Medium Enterprises (MSME)

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Citation : (2023) 03 KL CK 0283

Hon'ble Judges : Shaji P. Chaly, J

Bench : Single Bench

Advocate : Babu Joseph Kuruvathazha, Sunil.J, P.M.Johny, Rajeev Jyothish Goerge, Sunil J

Final Decision : Disposed Of

Judgement

Shaji P.Chaly, J

1. The captioned writ petitions are materially connected in respect of the tender awarded to the petitioners by the Kerala Water Authority, which directed the petitioners to furnish Additional Performance Guarantee; 50% of which was directed to be furnished by way of Treasury fixed Deposit.

2. The claim raised by the petitioners, who are Micro, Small and Medium Enterprises, are on the basis of the Notification dated 14.10.2011 issued by the Government of India, Ministry of Micro, Small and Medium Enterprises, whereby for procurement of goods and services, exemption is granted to such establishments from furnishing Security Deposit, Earnest Money Deposit, Additional Performance Guarantee etc. However, the State Government has issued a Notification, G.O.(P) No. 1/2021/FIN. dated 03.01.2021, whereby it is clarified that exemption regarding Earnest Money Deposit, Security Deposit, Performance Guarantee granted to the MSMEs as per earlier Government Order dated 07.11.2013 is not applicable for civil/electrical/infrastructure contracts. It is thus, challenging the legality and correctness of the said State Government Order, the writ petition is filed. Consequently, the petitioners seek exemption

from furnishing of Earnest Money Deposit/ Security Deposit/Performance Guarantee/Additional Performance guarantee etc.

3. A batch of writ petitions namely W.P.(C) No. Nos.14051 of 2022 and connected cases, were considered by this Court and was disposed of on 21.03.2023. The petitioners herein are also similarly situated as that of the petitioners in the second batch of writ petitions therein, and the question considered was the one that is raised in these writ petitions.

4. After considering the Notification issued by the Government of India, this Court has held that the Notification dated 14.10.2011 issued by the Government of India granting benefits to the MSMEs is only in respect of procurement of goods and services and the same would not apply to the civil contracts. Therefore, it was held that the State Government Order clarifying the issue is in order and therefore, the writ petitions were dismissed. However, taking note of the fact that interim orders were granted in the batch of writ petitions specified above directing the Kerala Water Authority to execute an agreement with the contractors who are similarly situated, on condition that a simple bond is furnished by the contractors undertaking to provide Additional Performance Guarantee and other securities in the event of this Court's ordered so at a later point of time; certain directions were also issued, which are as follows:

1. If the work in accordance with the agreement is completed by the contractors, no Additional Performance Guarantee shall be insisted upon.

2. If the work has progressed to a level exceeding 80%, the tendering authority is left with the liberty to take a decision as to whether any Additional Performance Guarantee is to be insisted upon, taking into account the efficiency, reputation, men and machinery engaged, and other positive factors of the respective contractors.

3. If the work has exceeded 30% of the total work, then the tendering authority is directed to secure Additional Performance Guarantee proportionate to the balance work.

4. In all other cases, the contractors/petitioners are directed to furnish an Additional Performance Guarantee to the tendering authority as specified in the tender documents within three weeks from the date of receipt of a copy of this judgment.

5. In cases where a Performance guarantee is furnished by the contractors in spite of its relaxation up to 31.03.2023, the said amounts can be adjusted against the Additional Performance guarantee required in the circumstances specified above.

6. In cases where 100% bank guarantee is furnished, instead of 50% by way of treasury fixed deposit, the same is permitted to be continued in the facts and circumstances, if the work has exceeded 30% of the total work.

7. If the tenders are invited on the basis of the Percentage Rate Contracts, then the contractors are liable to furnish the Additional Performance Guarantee on the basis of (X-10)% of the estimated PAC.

8. If the tenders are invited on the basis of Items Rates Contract, then the contractors are liable to furnish Additional Performance Guarantee for each item of work on the basis of (X-10)% of the estimated amount for each item of work.

9. I make it clear that the directions are issued as above taking into account the peculiar facts, features and circumstances involved in these cases consequent to the interim orders granted; and it shall not be treated as a precedent, except in regard to the writ petitions pending in the above context.

5. In that view of the matter, the reliefs sought for in these writ petitions to exempt the petitioners from furnishing Security, Earnest Money Deposit, Additional Performance Guarantee etc. are declined. However, if the petitioners are entitled to get the benefit of the directions contained above, the agreement authority may provide such benefits. In all other respects, the principles of law evolved by this Court in the batch of writ petitions specified above would apply to these case also.

These writ petitions are disposed of accordingly.