

(2023) 02 KL CK 0104
In the High Court Of Kerala
Case No : Writ Petition (C) No.3766 of 2023

Sudheer N.A.

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2023) 02 KL CK 0104

Hon'ble Judges : Shaji P. Chaly, J

Bench : Single Bench

Advocate : Rajesh Vijayan, Sikha S.Nair, Molly Jacob

Final Decision : Disposed Of

Judgement

Shaji P.Chaly, J

1. This writ petition is filed by the petitioner seeking the following reliefs;

(i) Issue a writ or order declaring Clauses No.10(i)(b) and Item No.L in Clause 11 of Exhibit P4 tender notice is unconstitutional in nature and is a violation of fundamental rights guaranteed under Article 14, 19(1)(g) and 21 of the Constitution of India;

(ii) Issue a writ of certiorari calling for the records leading to Exhibit P7 and set aside the same;

(iii) Issue a writ of mandamus directing the respondents 2 to 4 to accept the tender which will be filed by the petitioner and to participate in the tender process for the Taluks mentioned in Exhibit P4 with a statutory affidavit which includes the fact of pendency of crime in which the petitioner's wife's brother, who is an accused.

2. Petitioner is a contractor, who is engaged in lifting, transportation, handling and delivery of ration articles from source godowns to destination godowns of the Kerala State Civil Supplies Corporation, the 2nd respondent herein. The issue

raised by the petitioner in this writ petition is the disqualification of the petitioner to participate in a tender invited by the Civil Supplies Corporation, on the ground that brother-in-law of the petitioner is involved in a crime and the said fact was suppressed by the petitioner in the previous tender. According to the petitioner, disqualifying the petitioner on account of the brother-in-law involved in a crime is unsustainable in law. Various other contentions are also raised.

3. However, today when the matter is taken up, learned Standing Counsel for the Civil Supplies Corporation, Smt. Molly Jacob submitted that the issue is raised by the petitioner in Ext.P6 representation/reply dated 01.02.2023 which is under the active consideration of the Chairman and Managing Director of the Kerala State Civil Supplies Corporation.

4. However, learned Counsel for the petitioner submitted that the last date of bid is on 10.02.2023 and unless the petitioner is permitted to submit the bid documents, petitioner would be seriously prejudiced.

5. I have heard learned Counsel for the petitioner Sri. Rajesh Vijayan and learned Standing Counsel for the Civil Supplies Corporation, Smt. Molly Jacob and perused the the pleadings materials on record. Since the subject issue is under the active consideration of the Chairman and Managing Director, it is only appropriate that the petitioner is permitted to submit the bid documents before the last date for submitting the bid that is 10.02.2023. Therefore, if any bid is submitted by the petitioner before the date and time prescribed by the respondents, it shall be received by competent among the respondents. By virtue of Ext.P8 Division Bench judgment in W.P.(C.) No.9902/2017, with respect to the consequences of not mentioning criminal background of any near relative, filing of an affidavit is insisted upon and therefore, the petitioner is granted the liberty to submit a suitable affidavit before the competent among the respondents, which shall also be received by the respondents along with the bid documents. I make it clear that, the acceptance of the tender and the affidavit, submitted by the petitioner as directed above, would depend upon the outcome of Ext.P6 representation/reply submitted by the petitioner. The question raised by the petitioner in the writ petition, as to whether a brother-in-law involved in a crime, can be treated as a close relative to disqualifying a person from participating in a tender is left open to be considered in an appropriately constituted proceeding.

The writ petition is disposed of accordingly.