

(1994) 03 KL CK 0054
In the High Court Of Kerala
Case No : W.A. No. 359 of 1994

V.A. Muhammed

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-03-1994

Acts Referred:

Citation : (1994) 03 KL CK 0054

Hon'ble Judges : M. Jagannadha Rao, C.J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant;

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—This Writ Appeal is preferred against the judgment of the learned Single Judge in O.P. No. 16084 of 1993 dated 17th February 1994 dismissing the writ Petition. The Writ Petition is filed as public interest litigation seeking a declaration against the fourth Respondent that he is not eligible to submit his tender for the work of construction of building for Government Polytechnic at Palai.

2. Having regard to the value of the work, the Government initially was to keep the tenders open only to pre-qualified contractors. The learned Single Judge found that there were nine pre-qualified contractors who could have applied, but only two of them applied. The learned Single Judge also found that according to Ext. R-2(a) dated 7th July 1987, there should be a minimum of four pre-qualified contractors to ensure fair and reasonable competition or in the alternative open tender system could be resorted to. In the present case, inasmuch as only two pre-qualified contractors had submitted their tenders, the Government proceeded to opt for the alternative method of open tender system. The learned Single Judge therefore found that there was nothing arbitrary or unreasonable in the procedure followed by the Government. The Petitioner contended before the learned Single Judge that this procedure was being followed only to benefit the

fourth Respondent, who is the son of a retired Engineer. The learned Single Judge rejected the contention on the ground that the tenders are yet to be finalised on the basis of the open tender system and the Petitioner could not question the same at this juncture. Aggrieved by the same, this Writ Appeal has been preferred by the Petitioner.

3. We are in entire agreement with the learned Single Judge. The Government initially followed the normal procedure of restricting competition to pre-qualified contractors. But inasmuch as only two out of nine came forward with their tenders, and the rule required atleast a minimum of four pre-qualified contractors to offer tenders, the Government could not restrict the tenders to pre-qualified contractors and they followed the alternative method of open tender system, Ext. R-2(a) dated 7th July 1987 required atleast a minimum of four pre-qualified contractors to participate in a tender restricted to pre-qualified contractors. The Government cannot therefore be faulted for opting for the alternative method of open tender system. So far as the contention that the open tender system was followed to benefit the fourth Respondent is concerned, it is only the petitioner's imagination. The tenders are yet to be finalised, and it is only thereafter that the result will be announced.

4. A contention has been raised that the fourth Respondent is not an experienced contractor. We are of the view that the Petitioner has no credentials to decide the competence of any of the contractors, much less the fourth Respondent.

5. The Petitioner claims to be a citizen of India and a tax-payer. He does not have any knowledge of the Engineering work involved, nor is an expert in that field. He also does not have any knowledge of the performance of the fourth Respondent's works, if any, completed earlier for the Government. In this context, we are of the view that this Petitioner cannot, in public interest litigation, be permitted to raise disputes which are akin to disputes between the individual parties.

6. The Supreme Court has laid down clear guidelines in this regard. "Public Interest Litigation does not mean settling disputes between individual parties": *Ramsharan Autyanuprasi and another Vs. Union of India and others*, the individual who moves the Court for judicial redress must be acting bonafide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or some other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject the application at the threshold *S.P. Gupta Vs. President of India and Others*, per Bhagwati, J., (as he then was). More recently, in *State of Bihar v. Kamlesh Jain* 1998 Supp. (2) S.C.C. 300, the Supreme Court pointed out that the "judicial process should not be allowed to be used for the satisfaction of individual whims, pious though they may apparently look. Nobody can be allowed to get relief by "smartly" setting up a third party to obtain relief from a Court, which would be beneficial to him".

For the aforesaid reasons, this Writ Appeal is dismissed.