

(2010) 12 KL CK 0152

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33910 of 2010 (K)

Venus Publishing, Travellers Shop

APPELLANT

Vs

The Commercial Manager

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Citation : (2010) 12 KL CK 0152

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Sasthamangalam S. Ajithkumar, for the Appellant; K.L. Narasimhan, SC, TVM Airport Aty, for the Respondent

Judgement

Antony Dominic, J.—The 1st Respondent invited tenders as per Ext. P1 for the auction to conduct the travelers' shop in the departure

check-in area of the domestic terminal (T1) at Thiruvananthapuram International Airport. The Petitioner made his tender, which was accepted by

Ext. P2. Thereafter, Ext. P3 agreement was also executed between the Petitioner and the Respondent. It is stated that in terms of the tender

conditions, a fixed deposit of Rs. 2,45,000/- was made, apart from furnishing bank guarantee for Rs. 24 lakhs. On the basis of all the above, a

shop room having 15 sq. mts. of area, was allotted to the Petitioner, where they started their shop from August 2009.

2. Apparently, based on certain complaints, that the Petitioner's firm was not in existence at the address as furnished by them, Ext. P5 show cause

notice was issued, to which Ext. P6 reply was given. This was followed by Ext. P7 from the Respondent and Ext. P8 reply was again furnished.

Thereafter, Ext. P9 order was issued, concluding that the Petitioner succeeded in the tender by furnishing false and incorrect documents and on

that basis, Ext. P3 agreement was terminated and the Petitioner was also debarred from participating in the tenders floated by the Respondent for a period of 3 years. It is challenging Ext. P9, this writ petition is filed.

3. The case set up by the Petitioner is that, soon after the tender was submitted by the Petitioner firm, they were issued Ext. P10, calling upon them to produce documents substantiating their credentials and that in response thereto, they submitted Ext. P11 certificate. It is stated that, on the basis of Ext. P11 certificate, the tender was accepted and the agreement was executed. Counsel submits that, in Ext. P9, not even a reference is made to Ext. P11. Further the learned Counsel also submits that, if the Petitioner was given an opportunity of hearing in the matter, it would have been possible for the Petitioner to produce further documents to satisfy their genuineness of their claim and that Ext. P9 order has been passed, without giving such an opportunity and therefore, the order passed is in violation of the principles of natural justice.

4. I heard the learned Counsel appearing for the Respondents also. The learned Counsel for the Respondent contented that, it was for the Petitioner to prove their credentials by producing acceptable documents issued by statutory authorities. It is stated that, despite having given adequate opportunities to the Petitioner, they did not produce any documents and therefore, the Respondent can not be faulted for the view it has taken in Ext. P9.

5. It is true that when tenders are invited the tenderers will have to comply with the conditions of the tender and if the conditions are not satisfied, the tender awarded can be reconsidered by the appropriate authorities and action can be taken as mentioned in the tender notice. Any such action, though permissible, has to be taken in a fair and reasonable manner and that too by giving an opportunity to the parties to 4 substantiate their contentions. Even thereafter, when orders are passed, such orders should reflect due application of mind and due considerations should be made to the contentions raised.

6. The specific case of the Petitioner is that, in the impugned order, not even a reference is made with respect to Ext. P11 certificate. Further in the facts of the case, I feel that, before orders were passed, notice should have been given to the Petitioner, so that they could have produced relevant

documents to substantiate their case.

7. Therefore, I am of the view that the Petitioner should be given an opportunity and the matter needs a reconsideration, with notice to the

Petitioner. In order to enable the Respondent to reconsider the matter, I set aside Ext. P9. It is directed that the Respondent shall issue notice to

the Petitioner, giving them an opportunity to make representation in the matter, including the production of additional materials if any. Once such an

opportunity is given to the Petitioner, the Respondent will pass fresh orders in the matter.

8. The Petitioner shall produce a copy of this judgment before the Respondent, along with copy of this writ petition, for compliance.

Writ petition is disposed of as above.