

**(2008) 09 KL CK 0044**

**High Court Of Kerala**

**Case No:** Writ Petition (C) . No. 24728 of 2008 (R)

J and P Enterprises

APPELLANT

Vs

Kerala Feeds Limited and Padma  
Cargos

RESPONDENT

**Date of Decision:** Sept. 3, 2008

**Hon'ble Judges:** Antony Dominic, J

**Bench:** Single Bench

**Advocate:** P.R. Venketesh, for the Appellant; Vakkom N. Vijayan, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Antony Dominic, J.

The challenge in this writ petition is against the awarding of tender in pursuance to Ext.P1 tender notice published by the first respondent, inviting tenders for transport of cattle feed. Petitioner, the 2nd respondent and some others submitted bids. In so far as this writ petition is concerned, the bids of the petitioner and the second respondent were pre-qualified. It is stated that the price bids were thereafter considered and after negotiation the second respondent, being the lowest tenderer, was awarded the contract. It is challenging the award the writ petition is filed.

2. The contention that is now raised before me is that the second respondent was ineligible to have been pre- qualified in as much as he did not own "ten trucks(Backhole loaders/Tippers/JCBs/Hydraulic excavators are not permitted) of at least 9 MT capacity and registered on or after 10.6.1998 having valid goods carrier permit, in his own name as on 10.6.2008 and Kerala Registration for operating local trips in Kerala."(ref.Ext.P1)

3. Reference is also made to Clause 21(c) of Ext.P1 which reads as under.

Registration Certificates of the trucks owned by the bidder in their name between 10.06.1998 and 10.06.2008.

4. The counsel for the petitioner contends that, among the 12 trucks offered by the 2nd respondent, the trucks bearing registration numbers KL-04/J8350, KL-4/D4990, KL7/F9288 and KL-7/A5063 did not satisfy the tender conditions. According to the learned Counsel, the truck No. KL-4/J8350 did not have a valid permit. In so far as truck No. KL-4/D4990, the respondent also agrees that this truck was not taken into account and therefore I need not consider the argument in respect of that truck. In so far as truck No. KL-7/F9288, counsel for the petitioner submits that, though the truck ought to have been registered during the period 10.6.98 to 10.6.2008, the truck in question was registered on 17.5.1994. In so far as truck No. KL-7/A5063 is concerned, the argument is that it is registered on 14.11.1990. On this basis it is contended that these two trucks offered also did not satisfy the tender conditions and that therefore, the second respondent ought not have been pre-qualified.

5. A statement has been filed on behalf of the first respondent. According to the first respondent, the second respondent had offered 12 trucks. As already noticed, they had excluded truck No. KL-4/D4990 from consideration. In so far as truck No. KL04/J 8350 is concerned it is pointed out that the second respondent had renewed the permit on 8.8.2008 and that the same was made available to them. According to the 1st respondent, irrespective of these two trucks, the other two trucks KL7/F9288 and KL-7/A5063 satisfied the tender conditions.

The counsel for the first respondent submits that, the effect of tender conditions referred to above is that, the bidder should have in his name ten trucks registered during the period 10.6.98 to 10.6.2008. It is contended that as on 10.6.2008, if the tenderer was the registered owner of the truck, the tender condition is satisfied and that adopting this as the yardstick, the tender committee evaluated the tenders and pre-qualified the second respondent.

6. True as contended by the learned Counsel for the petitioner, I must accept the contention that there is much to be argued on both sides in regard to the interpretation of the above noted tender conditions, in as much as there is slight variation in the eligibility criteria, when it comes to Clause 21 of the tender conditions. But then the fact remains that the view taken by the tender committee is that the ownership of the truck as on 10.6.2008 is what is relevant and that is a possible view. If two views are possible, the view accepted in the order is one of it, it cannot be said that the decision taken is an arbitrary one, warranting interference by this Court.

7. That apart it is also pointed out that after the petitioner, the second respondent and others were pre- qualified, the price bids offered by them were opened and parties were called for negotiation and that the lowest tender offered by the second respondent was accepted. Petitioner has not succeeded in showing that public interest warrants interference of this Court. As held by this Court in Air India Ltd. Vs. Cochin Int. Airport Ltd. and Others, that again is one of the factors to be taken into

account in a matter of this nature.

8. Added to this is the fact that the petitioner has not succeeded in establishing that the decision of the tender committee resulting in the award of contract to the 2nd respondent is vitiated by malafides. Though some vague allegations in this behalf have been made, in the absence of any clear proof and as the persons against whom such allegations are raised are not impleaded as parties to this case, this Court cannot take cognizance of such vague allegations.

Writ Petition fails and is dismissed.