

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7174 OF 2022
(Arising out of SLP (C)No.8459/2011)

PERINTHALMANNA MUNICIPALITY & ANR.

APPELLANT(S)

VERSUS

C.UNNIKRISHNAN & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO.7175 OF 2022
(Arising out of SLP (C)No.9498/2011)

O R D E R

Leave granted.

1. The appellants are before this Court assailing the order dated 24.01.2011 passed by the High Court of Kerala at Ernakulam in W.P. (C) No.19310 of 2009. The appellant in civil appeal arising out of SLP(C)No.8459 of 2011 was the respondent No.2 in the said proceedings. The appellant in civil appeal arising out of SLP (C) No. 9498 of 2011 was the respondent No.4 in the said writ Petition.

2. The said appellants, the Perinthalmanna Municipality is the authority which had floated the project for construction of a building for fish market on BOT basis and Shri Palakkal Mustafa is the successful tenderer who had thereafter constructed the building expending about Rs.10

Crores. It is in that light the appellants are aggrieved by the order passed by the High Court whereby the decision of the Municipality to award the contract of construction of the fish market to the appellant Shri Palakkal Mustafa on BOT basis which was assailed therein had been declared as illegal.

3. The writ petition before the High Court was filed in public interest. The grievance putforth by the petitioner before the High Court is that the Rules 8 & 9 of the Kerala Municipality (Execution of Public Works and Purchase of Material) Rules, 1997 (For short`Rules`) was not followed inasmuch the advertisement in the Newspaper as contemplated therein had not been adhered to. In that regard it was contended on behalf of the petitioner before the High Court that the publication was required to be made in the leading national or international dailies.

4. The contention on behalf of the appellants herein is that the Rules as such had been complied inasmuch as the publication as required in the national and international dailies was based only on the scope and size of the project and that too when the project is funded by Municipality. In the instant case since the Municipality was not incurring any expenses and was on BOT basis the publication as made is justified and complies the requirement.

5. The learned senior counsel appearing on behalf of the appellants as well as the respondent have referred and taken us through the Rules. The fact that publication for any public work is required to be made is well established so as to encourage competition and transparency in award of work. However, in the instant case, in that regard what is necessary to also be taken note of is that at the first instance W.P.No.27639/2008 was filed by another writ petitioner claiming to be in public interest wherein also the grievance with regard to inappropriate publication of the work in the newspaper was raised. The said writ petition was disposed of vide order dated 20.11.2008 wherein, though a reference was made to the grievance, the suggestion offered by the respondents to issue fresh Notification inviting tenders was accepted and the petition was disposed of.

6. Since the Municipality had earlier published the Notification in four Newspapers, namely, "Madhyamam", "Dipika" and "Deshabhimani" and one English Newspaper "Business times", presently the advertisement was published in two Malayalam Dailies, namely, "Malyalam Manorama" and "Mathrubhumi" which have wide circulation in the State of Kerala. It is pursuant to such Notification, the appellant Shri Palakkal Mustafa had responded and in the said process, after consideration by the high level Committee on 28.04.2009 to approve fish market, the work was awarded to

him. Though the respondents herein who were the petitioners before the High Court in the present round have raised a grievance that proper publication of the work to be notified had not been made to enable wider participation, no person who had the capacity to put up such a project has made a grievance that there was no sufficient opportunity and therefore they were denied the benefit of taking up the project.

7. In that circumstance when the writ petitioner before the High Court was only a local resident and had raised the contention of procedural compliance and also since we notice that after the first round of the writ proceedings the publications were made subsequently in two more newspapers which have wide circulation and the work has already been undertaken, though the same was made subject to result of this appeal, we do not see reason to scuttle the project in a public interest petition which was raised before the High Court in the present manner. In any event, the fish market is to be operated by complying all legal requirement including environmental clearance.

8. Therefore, in that circumstance, a perusal of the impugned order dated 24.01.2011 if noted, would indicate that the High Court essentially keeping the earlier undertaking made by the Municipality to publish appropriate advertisement, has arrived at the conclusion that the awarding the work was not justified since the Rules had not been complied. However, we have noted the substantial

compliance in the present facts. In that circumstance, keeping in view the fact that the work has now been completed and the building is ready for utilization by the Municipality for shifting the fish market and to be operated by the contractor on BOT basis, we find that the order passed by the High court is liable to be set aside. The same is, accordingly set aside.

9. The appeals are, therefore, allowed.

.....J.
[A.S. BOPANNA]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
OCTOBER 11, 2022

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal(C)No.8459/2011
(Arising out of impugned final judgment and order dated 24-01-2011
in WPC No. 19310/2009 passed by the High Court of Kerala at
Ernakulam)

PERINTHALMANNA MUNICIPALITY & ANR.

Petitioner(s)

VERSUS

C.UNNIKRISHNAN & ORS.

Respondent(s)

(IA No. 101706/2017 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 9498/2011 (XI-A)

Date : 11-10-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Raghenth Basant, Adv.
Mr. Senthil Jagadeesan, AOR
Ms. Akhila Nambiar, Adv.
Mr. Ajay Krishna, Adv.
Ms. Roopali Lakhotia, Adv.
Mr. A. Raghunath, AOR

For Respondent(s) Mr. P.N. Ravindran, Sr. Adv.
Mr. K.P. Rajagopal, Adv.
Mr. Jaimon Andrews, Adv.
Mr. Naresh Kumar, AOR

Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Mrs. Ashly Harshad, Adv.
Mr. Senthil Jagadeesan, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of signed order.

Pending application (s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)