

9. The respondent has violated the procedure prescribed under S.345 Cr.P.C. When a particular mode is prescribed by the statute for the exercise of power, the authority shall exercise the power in accordance with law prescribed under that statute. If it is otherwise done the order is vitiated by procedural impropriety. The impugned order passed by the respondent suffers from several infirmities. The ingredients of the offence were not put to the petitioner. He was not given reasonable opportunity of being heard. The offence was not committed in the view or presence of the court, hence the court lacked jurisdiction to invoke S.345 Cr.P.C. The nature of interruption of proceeding is not mentioned in the order. The last but not the least infirmity is that a copy of the order was not given to the petitioner as soon as he was convicted by the court.

10. This Court is disturbed by the case and by the procedure or lack of procedure by which the Judge reached his conclusion. The Judge could have dealt with the matter by perhaps a reprimand or by a verbal rap over the knuckles instead of resorting to conviction and sentence without even properly caring to note and observe the relevant procedure. As the matter pertains to the administration of justice, I quash the order under Art.227 of the Constitution. The fine, if any, paid by the petitioner shall be returned to the petitioner within two weeks of the date of receipt of a copy of the judgment.

Original Petition is allowed.

S.M.

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1994 (2) KLT 466

Allowed

P.A. Mohammed, J.

Alias v. State of Kerala

*Constitution of India, Art.14 — Assessment of qualification by an expert committee on the basis of the pre-qualification test cannot be said to be arbitrary in nature.*

The assessment of the qualifications by an expert committee on the basis of the pre-qualification test cannot be said to be arbitrary in nature. It is an assessment of the process of selection by persons having high technical qualifications. Therefore, there is sufficient guarantee against arbitrariness and unreasonableness in the process of selection of persons qualified to submit tenders.

1990 (1) KLT SN 66

Followed

O.P.Nos. 5511 of 1994 & 4884 of 1994.

Decided on 13th July, 1994.

*Natural Justice* — Where rights of a person are adversely affected by an order to be made by an officer in a proceeding, such person is entitled to a pre-decisional notice irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature — Constitution of India, Art.226.

Where rights of a person are adversely and prejudicially affected by an order to be made by an officer in a proceeding, such person is entitled to a pre-decisional notice irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature. This is paramountly a requirement in the observance of principles of natural justice. Fairness must be shown to a person whose rights are going to be prejudicially affected in an administrative action like cancellation of a tender which was accepted and acted upon. This is of course a procedural requirement in a decision making process. When there is failure to conform to this procedural requirement the decision ipso facto extinguishes from the field. In that event the examination of correctness or reasonableness of a decision does not arise at all. As far as the present case is concerned, before taking decision to cancel the tender as per Ext.R1 and passing consequential orders for re-tender as per Ext.P11 admittedly no pre-decisional notice has been given to the petitioner, even though the petitioner has acted to his disadvantage by executing the agreement and making the deposit, and alerted the authorities about the prejudice that would be caused to him. (para.7)

(1990) 77 STC 1

*Relied on*

*Constitution of India, Art.226* — Doctrine of 'legitimate expectation' — Is confined to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken.

Legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. (para.8)

AIR 1994 SC 988; 1992 (4) SCC 477 &  
ILR 1993 (3) Ker. 43

*Relied on*

*T.R. Raman Pillai (Sr. Advocate),  
T.P.M. Ibrahim Khan, T.R. Ramachandran &  
Raju Joseph*

For Petitioner

*Govt. Pleader (Mary Benjamin),  
Rajan Joseph & K.G. Bhaskaran*

For Respondents

### JUDGMENT

The petitioner in O.P.No.5511 of 1994 is a registered A Class contractor hereinafter referred to as 'tenderer') and he has been undertaking several contracts