

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 31ST JULY 2008 / 9TH SRAVANA 1930

WP(C).No. 1943 of 2006(F)

PETITIONER:

C.ABOOBACKER, S/O.ABDULLA,
MARA HOUSE, SANTHOSH NAGAR, CHENGALA PO,
KASARAGOD DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DISTRICT COLLECTOR, KASARAGOD.
3. THE EXECUTIVE ENGINEER,
P.L.P.DIVISION NO.2. PUBLIC WORKS DEPARTMENT,
KANNOOR.
4. THE SPECIAL DEPUTY TAHSILDAR,
(RR), TALUK OFFICE, KASARAGOD.

G.P. SMT.SMITHA SUKUMARAN FOR R1 TO 4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/07/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF JUDGMENT IN O.S. NO.215/90 DT.12.3.93 OF COURT OF SUBORDINATE JUDGE OF THALASSERY.

P2: TRUE COPY OF DEMAND NOTICE DT.24.6.96 OF R4 TO THE PETITIONER.

P3: TRUE COPY OF DEMAND NOTICE DT.24.6.96 OF R4.

P4: TRUE COPY OF REPLY OF PETITIONER DT.3.7.96 ADDRESSED TO R2 AND R4.

P5: TRUE COPY OF JUDGMENT IN O.P. NO.11197/96 DT.13.11.2003 ISSUED BY THIS HON'BLE COURT.

P6: TRUE COPY OF ORDER DT.15.12.2005 OF R4.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....
W.P.(C) No.1943 of 2006
.....

Dated this the 31st day of July, 2008.

JUDGMENT

The petitioner is challenging revenue recovery proceedings for recovery of loss caused to the Government on account of breach of contract by the petitioner. Admittedly, petitioner was awarded a contract for construction of 9 spans of aquaduct-cum-road bridge for a total consideration of Rs.1,13,32,857/-. The agreement was executed on 1.9.1983 and the work ought to have been completed by 21.3.1986. At the request of petitioner, time for completion of work was extended by three years i.e. upto 31.3.1989. In the course of less than two and a half years i.e. from 26.3.1984 to 29.10.1988, the petitioner was paid Rs.79,40,761/-, the details of which are furnished in the counter affidavit. Admittedly, petitioner has completed construction of two spans as against 9 spans ;of the aquaduct covered by the contract. The petitioner's case is that the contract could not be completed on account of belated and inadequate payment. However, it is seen from the details furnished in the counter affidavit that though petitioner completed only little over 20% of the work, nearly 75% of the contract amount was paid. Obviously the departmental

officers colluded with the petitioner and made payments disproportionate to the progress of the work. Petitioner's case lacks any bonafides and the same is evident from details of payments received by him. In the normal course, this court should order a Vigilance enquiry against the Engineers concerned. However, I desist from doing it because the matter is 20 years old and many of the guilty officials would have retired from service. It is seen that petitioner's attempt to prove his case before the civil court miserably failed because the suit filed was dismissed vide Ext.P1 judgment. Petitioner has stated that counter claim filed by the respondents based on which impugned recovery is initiated was also dismissed by the trial court. However, it is seen from the judgment that dismissal of the counter claim is for non-payment of court fee and non-prosecution by the defendants. I do not think the dismissal of the counter claim for non-prosecution by the respondents will bar revenue recovery of the amount in accordance with the tender conditions. In this case the differential amount demanded is admittedly the amount paid by the Government to the next contractor who was engaged to execute the work after petitioner abandoned the work. Since liquidated damages is borne out by the term of the contract agreed by the petitioner,

petitioner cannot raise a contention to the contrary. The W.P. is accordingly dismissed directing respondents to proceed for recovery immediately.

C.N.RAMACHANDRAN NAIR
Judge

pms