

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).NO. 25199 OF 2011 (Y)

PETITIONER:

M.V.VISWANATHAN,
GOVT CONTRACTOR, MECHERIL HOUSE,
BINANIPURAM P.O., EDAYAR, ALUVA-683 502.

BY ADVS.SRI.K.L.VARGHESE (SR.)
SMT.SANTHA VARGHESE
SRI.RAHUL VARGHESE
SRI.RANJITH VARGHESE

RESPONDENTS:

1. KERALA WATER AUTHORITY,
REPRESENTED BY THE MANAGING DIRECTOR, JALA BHAVAN
THIRUVANANTHAPURAM 695 033.
2. THE SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY, P.H.CIRCLE , MALAPARAMBA,
KOZHIKODE 673 009.
3. THE EXECUTIVE ENGINEER
KERALA WATER AUTHORITY, P.H.DIVISION
MALAPPURAM 676 505.

R,R1-3 BY ADV. SRI.M.DINESH, SC, KWA
R1 TO 3 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER
AUTHORITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF WORK ORDER DT.30.10.2007 ISSUED BY 2ND RESPONDENT TO OTHE PETITIONER.
EXT.P2	TRUE COPY OF AGREEMENT DT.22.11.2007 EXECUTED BETWEEN THE PETITIONER AND 2ND RESPONDENT.
EXT.P3	TRUE COPY OF LETTER DT.31.03.2011 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
EXT.P4	TRUE COPY OF NOTICE DT.30.06.2011 ISSUED BY PETITIONERS ADVOCATES TO THE 2ND RESPONDENT.
EXT.P5	TRUE COPY OF REPLY NOTICE DT.27.7.2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS ADVOCATES.
ADDITIONAL EXT.P-6 (A)	TRUE COPY OF DETAILED BREAK-UP OF THE RATES QUOTED IN THE TENDER FURNISHED TO THE RESPONDENT AT THE TIME OF SUBMITTING THE BID AND DURING NEGOTIATIONS.
ADDITIONAL EXT.P-6 (B)	TRUE COPY OF DETAILED BREAK-UP OF THE PAYMENT TERMS AND NEGOTIATED RATES.
ADDITIONAL EXT.P-7	TRUE COPY OF LETTER DT. 02.01.08 ISSUED BY THE PETITIONER TO THE RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R1 (A)	TRUE COPY RELEVANT CONDITIONS NO. 8.16.1 IN EXT.P2 DATED 22.11.2007.
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//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.25199 of 2011

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Dated this the 30th day of October, 2015

J U D G M E N T

The petitioner is a 'A' class registered Contractor of the 1st respondent and he was awarded with the work of “NABARD Assisted Water Supply Scheme to Pandallur Village - Supplying, laying, testing and commissioning of 200mm cl and 150mm CI pipe Class LA (ISI/ISO) for distribution system for High Level Zone” by the 2nd respondent under Ext.P1 Work Order No. SE/KKD/D5-3468/04 dated 30.10.2007 and Ext.P2 agreement.

2. The work under Ext.P1 awarded to the petitioner was for an amount of Rs.1,95,64,000/- with a stipulation that the entire work had to be completed within 12 months from the date of Work Order. The Work Order having been issued on 30.10.2007, the period of completion was up to 29.10.2008. Admittedly, the petitioner has completed the work four days before 29.10.2008. It is his claim that he is

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entitled to get bonus of Rs.3,00,000/-.

3. Secondly, as per the stipulations in the agreement and the break up of release of payment, after trial run and commissioning, 5% of the contract value and another 5% after the maintenance for 1½ years, had to be released to the petitioner. The said period of 1½ years have elapsed by April, 2010. That apart, another 8% of the retention amount also had to be released on completion and commissioning of the line.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. According to the petitioner, the said amount has not been released so far and the final bill has not been settled even after the lapse of more than five years after the completion of the work. According to the petitioner, he had invested the amount in the work availing loan from his bankers he owes large amount to the bank and he is being charged with mounting interest since he is not able the

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settle the liability. The petitioner submits that according to him, an amount of Rs.47,00,000/- due to him under the final bill. It is also submitted that the respondents are not entitled to deduct Excise Duty from the petitioner as the same was not made a condition in the terms of contract and in all the earlier payments those liability was excluded from the petitioner. But, now for the final payment only respondents are claiming the amount towards Excise Duty from the petitioner.

6. The respondents filed a counter statement, admitting that the petitioner has completed the work four days before the date of completion i.e., 29.10.2008. According to the contentions in the counter affidavit the petitioner is not entitled to get bonus for the completion of work before four days only. It is also contended that as per the notice inviting tender conditions, for considering the bonus, the contractor has to complete the work at least 28 days before the agreed date of completion. As regards final

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bill and retention of security amount, it is contended that as per agreement condition No. 8.16.1, 5% of the total value of contract has to be with-held by the awarder for trial running and commissioning and another 5% for the maintenance for one year after commissioning and 8% of the retention amount can only be released as follows:

*3% on commencement of maintenance period,
1% on completion of six months of guarantee period,
2% on completion of 12 months of guarantee period,
2% on completion of full guarantee period (24 months).*

7. Considering the date of completion of work almost five years have been elapsed and it cannot be said that the guarantee period is not over. I find force in the argument of the petitioner that due to the delay caused by the callousness on the part of the respondents for settling the final bill and releasing of balance amount due to him he is confronting with great financial difficulty. Having regard to the long lapse of time after completion of the work, non-payment of final bill can never be justified. In the absence

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of arbitration clause in the agreement, the 1st respondent is liable to resolve the dispute if any, between the petitioner and the respondent at the earliest. However, it is ordered that the 1st respondent shall resolve the dispute and pass orders releasing any amount, if any, due to the petitioner within a period of two months from the date of production of a copy of this judgment.

This Writ Petition is disposed of accordingly.

Sd/-

K. HARILAL,
JUDGE

DST

//True copy//

P.A. To Judge