

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 31ST DAY OF JANUARY 2018 / 11TH MAGHA, 1939

WP(C).No. 660 of 2018

PETITIONER(S) :

K.ABOOBACKER
M/S. MANZIL CONSTRUCTIONS,
NESMA ARCADE, THARAYIL BYPASS,
PERINTHALMANNA (P.O), MALAPPURAM DT. PIN 679 322

BY ADVS.SRI.T.K.AJITH KUMAR
SRI.A.P.NIDHIN KUMAR

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPARTMENT OF PUBLIC WORKS, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN 695 001
2. THE SUPERINTENDING ENGINEER
OFFICE OF THE SUPERINTENDING ENGINEER,
MINOR IRRIGATION CENTRAL CIRCLE,
ERNAKULAM, KAKKANAD (P.O),ERNAKULAM DT 672 030
3. THE EXECUTIVE ENGINEER
PWD BUILDINGS DIVISION,
PALAKKAD, CIVIL STATION (PO),
PALAKKAD DT.,PIN 678 001

R1 TO R3 BY GOVERNMENT PLEADER SMT.VINITHA B

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-01-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE LETTER OF ACCEPTANCE DATED
26-12-2017 FOR THE CONSTRUCTION OF CHECK DAM
ACROSS BHAVANI RIVER AT RANGANATHAPURAM IN
PUTHUR GRAMA PANCHAYATH, ATTAPPADI IN
PALAKKAD DISTRICT

EXHIBIT P2 TRUE COPY OF THE CHECK LIST-GENERAL BILL FOR
THE WORK OF 'LAC ADS- CONSTRUCTION OF NEW
BUILDING FOR GOVT. HIGH SCHOOL, THENKARA.

EXHIBIT P3 TRUE COPY OF THE REPRESENTATION DATED 27-12-2017
SUBMITTED BY THE PETITIONER BEFORE THE 3RD
RESPONDENT

EXHIBIT P4 TRUE COPY OF THE LETTER DATED 27-12-2017 SENT BY
THE 1ST RESPONDENT TO THE 2ND RESPONDENT

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

dlk

SHAJI P. CHALY, J.

W.P.(C). No. 660 OF 2018

Dated this the 31st day of January, 2018

JUDGMENT

Petitioner is an approved PWD contractor working under the respondents. He is awarded with the work of construction of Check Dam across Bhavani river at Ranganathapuram, Puthur Grama Panchayath, Attappadi in Palakkad District, as per Ext.P1 letter of acceptance, dated 26.12.2017. Thereupon, petitioner has submitted Ext.P3 representation before the third respondent seeking to permit him to pledge his previous bill pending before the second respondent towards the deposit of performance security and additional performance guarantee directed to be deposited, as per Ext.P1 letter of acceptance. Although by Ext. P4 letter, the second respondent sought clarification and no objection from the

third respondent, no action is taken so far, which constrained the petitioner to approach this Court by filing this writ petition.

2. A statement is filed for and on behalf of the third respondent, wherein it is stated that the third respondent has not accorded sanction for pledging the pending bills in the department as security deposit and additional performance guarantee to the work of another department. The existing Government Orders and stipulations in the Kerala Public Works Department Manual, Revised Edition 2012, Part II regarding the Work, Methodology and Standard bid document does not contemplate pledging the pending bill as security deposit and additional performance guarantee to the work of yet another department.

3. I have heard learned counsel for the petitioner and learned Government Pleader and perused the pleadings and the documents on record.

4. The fact discussion made above would make it clear that the inhibition standing in the way of the third

respondent is consequent to the provisions contained under the Kerala Public Works Department Manual, 2012, whereby a bill belonging to another department of the State Government cannot be accepted as security against a contract by other department of the State Government. In my considered opinion, certain provisions of Kerala Public Works Department Manual are mandatory and certain provisions are procedural and directory. Therefore, in my considered opinion the issue with respect to the adjustment of bill is procedural in nature. Both departments are functioning under the State Government and thereupon, the petitioner is entitled to provide security of another department to satisfy the requirement in Ext.P1 letter of acceptance.

5. That being the situation, there will be a direction to the third respondent to adjust the previous bill of the petitioner, pending before the second respondent, against the security insisted upon in Ext. P1 letter of acceptance, and execute the agreement with the

petitioner, within two weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of, accordingly.

SHAJI P. CHALY
JUDGE

DCS