

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

WP (C) .No.13885 OF 2020 (I)

PETITIONER:

THE CENTRE FOR ENVIRONMENT AND DEVELOPMENT,
THOZHUVANCODE,
VATTIYOORKAVU.P.O,
THIRUVANANTHAPURAM-695 013,
REPRESENTED BY ITS EXECUTIVE DIRECTOR,
DR.BABU AMBAT,
RESIDING AT CGRA-20,
SOUPARNIKA,
CONTINENTAL GARDEN,
VATTIYOORKAVU.P.O,
THIRUVANANTHAPURAM-695013.

BY ADVS.
SRI.RINNY STEPHEN CHAMAPARAMPIL
SMT.ASHA ELIZABETH MATHEW

RESPONDENTS:

- 1 THE STATE OF KERALA,
REP.BY ITS SECRETARY,
WATER RESOURCES DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 KERALA RURAL WATER SUPPLY AND
SANITATION AGENCY (KRWSA),
REP.BY ITS EXECUTIVE DIRECTOR,
PTC TOWERS,
3RD FLOOR, S.S.KOVIL ROAD,
THAMPANOOR,
THIRUVANANTHAPURAM-695001.
- 3 KERALA SUCHITWA MISSION,
REP.BY ITS EXECUTIVE DIRECTOR,
SWARAJ BHAVAN, NANHENCODE,
THIRUVANANTHAPURAM-695003.

ADDL. 4 THE INSTITUTION OF ENGINEERS (INDIA),
 REPRESENTED BY ITS SECRETARY AND
 DIRECTOR GENERAL,
 8 GOKHALE ROAD,
 KOLKKATTA - 700 020.

(ADDITIONAL R4 IS IMPLEADED AS PER ORDER DATED
26.02.2021 IN I.A.No. 6/2021)

R2 BY ADV. SRI.D.KISHORE
GOVERNMENT PLEADER - SMT. RASHMI K.M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26.02.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

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Dated this the 26th day of February, 2021

The 1st respondent selected the petitioner as the Consultant for 'Technical Support to KRWSA and Suchitwa Mission, on Sanitation' funded by the World Bank and executed Ext.P1 Agreement with the petitioner. Certain disputes relating to Bills arose between the petitioner and the 2nd respondent-Suchitwa Mission. The petitioner approached this Court filing W.P.(C) No.12203/2019 and pursuant to the judgment of this Court, the 2nd respondent passed Ext.P11 order holding that no amount is due to the petitioner. It is challenging Ext.P11 order that the petitioner has filed this writ petition.

2. Pending this writ petition, the petitioner sought to resolve the issue through arbitration. As per Clause 45.1 of the Special Conditions of Ext.p1 Agreement, the petitioner made a request to the Institution of Engineers for nomination

of Arbitrators. By letter dated 22.10.2020, the Institution of Engineers (India) provided a panel of 5 Arbitrators to the petitioner with copy to the 2nd respondent requesting to select one of the Arbitrators. The petitioner struck off the names of 2 Arbitrators and forwarded the same to the Institution of Engineers.

3. However, the 2nd respondent did not respond to the communication. The 2nd respondent took a stand that since the writ petition is pending, the process of appointing Arbitrator cannot be processed with till a decision is taken in the writ petition.

4. As no communication was received from the 2nd respondent selecting an Arbitrator from the panel, the Institution of Engineers (India) issued Ext.P21 letter dated 03.02.2021 nominating Mr. Ranveer Singh Chauhan, FIE as the Sole Arbitrator and the petitioner was required to contact the said Mr. Chauhan for further proceedings. A copy of Ext.P21 was marked to the 2nd respondent also.

5. When this writ petition came up for hearing today, the learned counsel for the 2nd respondent submitted that the 2nd respondent does not have any objection in solving the issues through arbitration and the 2nd respondent did not respond to the letters of the Institution of Engineers (India) for the reason that a writ petition on the issue is pending before this Court.

6. The 2nd respondent further submitted that they have no objection in appointing Mr. Roy J. Vellanikaran suggested by the Institution of Engineers (India) as an Arbitrator. In fact, the 2nd respondent submitted that they have no complaint regarding Ranveer Chauhan acting as Arbitrator. But, his residence being at Dehradun, it will be more convenient and economic for the petitioner as well as the 2nd respondent, if Roy J. Vellanikaran, FIE, who is a resident of Kochi, is appointed as the Sole Arbitrator.

7. Having heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent, I find that suggestion made by the counsel for the 2nd respondent is just

and reasonable. The Institution of Engineers (India) is impleaded as additional 4th respondent. In the nature of the order proposed to be given in this writ petition, notice to the additional 4th respondent is dispensed with.

The writ petition is disposed of directing the Institution of Engineers (India) to consider the request made by the 2nd respondent for appointment of Roy J. Vellanikaran as the Sole Arbitrator. This Court finds that as the Arbitration proceedings have not actually started and since appointment of Mr. Roy J. Vellanikaran is acceptable and more convenient to both the parties, it will be just and proper if the Institution of Engineers (India) nominates Mr. Roy J. Vellanikaran as the Sole Arbitrator. A decision in this regard shall be taken by the Institution of Engineers (India) within a period of one month, positively. It is made clear that the Sole Arbitrator shall consider the issues arising for arbitration, untrammelled by any of the observations contained in Ext.P11.

Sd/-
N. NAGARESH, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1** A TRUE COPY OF THE RELEVANT PAGES OF AGREEMENT NO.1909/PROC/2015/KRWSA DATED 30/11/2015
- EXHIBIT P2** A TRUE COPY OF THE RELEVANT PAGES OF THE SUPPLEMENTARY AGREEMENT EXECUTED ON 18/02/2017
- EXHIBIT P3** TRUE COPY OF THE FINAL INVOICES SUBMITTED BY THE PETITIONER ON 28/12/2017
- EXHIBIT P4** TRUE COPY OF LETTER NO.CED/2253/2015 DATED 16/07/2018 ISSUED BY THE PETITIONER
- EXHIBIT P5** TRUE COPY OF LETTER NO.CED/2253/2015 DATED 05/10/2018 ISSUED BY THE PETITIONER
- EXHIBIT P6** TRUE COPY OF LEGAL NOTICE DATED 16/01/2019
- EXHIBIT P7** TRUE COPY OF THE POSTAL RECEIPT
- EXHIBIT P8** TRUE COPY OF LETTER DATED 14/02/2019 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P9** TRUE COPY OF LETTER DATED 26/02/2019 ISSUED BY THE PETITIONER
- EXHIBIT P10** A TRUE COPY OF THE JUGMENT DATED 13/08/2019 IN W.P(C)NO.12203/2019
- EXHIBIT P11** A TRUE COPY OF THE REJECTION LETTER DATED 27/9/2019 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P12	A TRUE COPY OF THE MINUTES OF THE MEETING CONVENED ON 3.12.2016 BY THE 2ND RESPONDENT
EXHIBIT P13	A TRUE COPY OF THE LETTER NO- 4369/TECH/2015 KRWSA DATED 9.2.2017 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P14	A TRUE COPY OF THE APPLICATION DATED 25/08/2020 SUBMITTD BY THE WRIT PETITIONER TO THE PRESIDENT, THE INSTITUTION OF ENGINEERS
EXHIBIT P15	A TRUE COPY OF LETTER DATED 22/10/2020 ISSUED BY THE INSTITUTION OF ENGINEERS TO THE WRIT PETITIONER
EXHIBIT P16	A TRUE COPY OF LETTER DATED 23/10/2020 ISSUED BY THE WRIT PETITIONER TO THE 2ND RESPONDENT IN W.P. (c)
EXHIBIT P17	A TRUE COPY OF LETTER DATED 19/11/2020 ISSUED BY THE 1ST RESPONDENT IN W.P. (C) TO THE WRIT PETITIONER
EXHIBIT P18	A TRUE COPY OF THE LETTER DATED 25/09/2020 ISSUED BY THE INSTITUTION OF ENGINEERS (INDIA) TO THE PETITIONER
EXHIBIT P19	A TRUE COPY OF THE DEMAND DRAFT DATED 06/10/2020 ISSUED BY THE PETITIONER TO THE INSTITUTION OF ENGINEERS (INDIA)
EXHIBIT P20	A TRUE COPY OF THE LETTER DATED 23/11/2020 ISSUED BY THE PETITIONER TO THE INSTITUTION OF ENGINEERS (INDIA)
EXHIBIT P21	A TRUE COPY OF THE LETTER DATED 03/02/2021 ISSUED BY THE INSTITUTION OF ENGINEERS (INDIA) TO THE PETITIONER
EXHIBIT P22	A TRUE COPY OF THE TERMS OF REFERENCE APPENDED TO EXHIBIT P1 AGREEMENT DATED 30/11/2015 EXECUTED BETWEEN THE PETITIONER AND THE 2ND RESPONDENT

EXHIBIT P23 A TRUE COPY OF THE FULL TEXT OF THE SUPPLEMENTARY AGREEMENT DATED 18/02/2017 EXECUTED BETWEEN THE PETITIONER AND THE 2ND RESPONDENT

EXHIBIT P24 A TRUE COPY OF LETTER NO. KRWSA/PMU/214/2019-TA-PROC DATED 18/02/2021 ISSUED BY THE EXECUTIVE DIRECTOR OF THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS:

EXHIBIT R2 (a) TRUE COPY OF THE AGREEMENT DATED 30-11-2015 EXECUTED BETWEEN THE PETITIONER AS WELL AS THE 2ND RESPONDENT.

EXHIBIT R2 (b) TRUE COPY OF THE MINUTES OF THE REVIEW MEETING HELD ON 1-06-2016.

EXHIBIT R2 (c) TRUE COPY OF THE LETTER NO. 4369/TECH/2015/KRWSA DATED 20-07-2016 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT R2 (d) TRUE COPY OF THE EXTRACT FROM THE MINUTES OF THE REVIEW MEETING HELD ON 21-1-2016.

EXHIBIT R2 (e) TRUE COPY OF THE MINUTE OF REVIEW MEETING HELD ON 18-02-2016.

EXHIBIT R2 (f) TRUE COPY OF THE LETTER DATED 30-06-2017 ISSUED TO 3RD RESPONDENT BY 2ND RESPONDENT.

EXHIBIT R2 (g) TRUE COPY OF THE LETTER DATED 23.08.2017 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT R2 (h) TRUE COPY OF THE LETTER DATED 7-09-2017 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT R2 (i) TRUE COPY OF THE LETTER DATED 25-04-2018 ISSUED BY 3RD RESPONDENT.

EXHIBIT R2 (j) TRUE COPY OF THE LETTER DATED 12-06-2018 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT R2 (k) TRUE COPY OF THE LETTER DATED 14-11-2018 ISSUED BY 3RD RESPONDENT.

EXHIBIT R2 (l) TRUE COPY OF THE LETTER DATED 22/7/2020 ISSUED BY THE PETITIONER.

EXHIBIT R2 (m) TRUE COPY OF THE REPLY TO EXHIBIT R2(l) ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

ANNEXURE-I TRUE COPY OF THE AGREEMENT DATED 30-11-2015 EXECUTED BETWEEN THE PETITIONER AS WELL AS THE 1ST RESPONDENT

ANNEXURE-II TRUE COPY OF THE LETTER DATED 22-07-2020 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER

ANNEXURE-III TRUE COPY OF THE REPLY TO ANNEXURE-II ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 13-08-2020