

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Con.Case(C).No. 1193 of 2015 (S)

WP(C) 29416/2014, DATED 10-02-2015

PETITIONER:

**KERALA RATION WHOLESALE DISTRIBUTORS FEDERATION,
DISTRICT COMMITTEE, KANNUR
REPRESENTED BY ITS SECRETARY, K.M.NARAYANAN,
S/O. AMBU GURUKKAL, AGED 74 YEARS,
RESIDING AT 'SOPANAM'. P.O.KANDOTH, VIA PAYYANNUR,
TALIPARAMBA, KANNUR DISTRICT.**

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENT:

**J.S.SYJU,
FATHER'S NAME NOT KNOWN, AGED 45 YEARS,
GENERAL MANAGER,
FOOD CORPORATION OF INDIA,
THIRUVANANTHAPURAM.**

BY ADV. SRI.T.PM.IBRAHIM KHAN, SC

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

Con.Case(C).No. 1193 of 2015 (S)

APPENDIX

PETITIONERS' ANNEXURES

**A1: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC.29416/14
DATED 10/2/15**

RESPONDENTS' ANNEXURES

**R2(A): COPY OF THE GUIDELINES ISSUED BY THE GOVERNMENT OF INDIA
COMMUNICATED VIDE LETTER NO.20-12/2002-FCI.II (DEPOTS) DATED 10/5/13**

**R2(B): COPY OF LETTER NO.S&S 3(1)/TPDS/2015-16/CAN DATED 26/8/15 OF AREA
MANAGER, FCI, KANNUR ACKNOWLEDGED BY DSO, KANNUR**

**R2(C): COPY OF DEMAND DRAFT BEARING NO.382963 DATED 26/8/15 FOR AN
AMOUNT OF RS.5,81,706/-**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.36821 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

The writ petitioner executed the work of supply and laying pipe line of the Kerala Water Authority. One of the stipulations in the agreement is that the contractor should guarantee for satisfactory performance of pipe line completed by them for a period of 18 months, after the completion and commissioning of the pipe line.

2. Petitioner completed the work in the month of September, 2013. Petitioner approached this Court on account of delay in releasing the security deposit and retention amount.

3. The learned Standing Counsel for the Water Authority opposed the prayer. The learned Standing Counsel submits that the petitioner is entitled for release of the security deposit and retention amount only after the commissioning of

the pipe line. Learned Standing Counsel further submits that the agreement is very clear that the amount can be released only after 18 months of the completion and commissioning of the pipe line. It is to be noted that as per the agreement, the entire security deposit, including the retention amount total up to 8% of the contract value will be retained with Kerala Water Authority till the end of the guarantee period and the balance amount will be paid on satisfactory completion and commissioning of the pipe line as per the existing rule. Petitioner completed the work almost four years back. As per the terms of agreement, the Contractor should guarantee for satisfactory performance of pipe line completed by them for a period of 18 months, after the completion and commissioning of the pipe line. The 18 months period in the agreement would assume significance in this context as far as the contractor is

concerned, for the release of the amount. The completion and commissioning of the pipe line would indicate that the Water Authority has to commission the pipe line as soon as its work was completed by the contractor. Otherwise, the period of 18 months would not have been prescribed in the agreement. Therefore, it is clear that the commissioning of the pipe line ought to have been happened immediately after the completion of the work. The Water Authority, for its own reasons, delayed the commissioning of the pipe line. That cannot be pointed out against the petitioner to deny the release of the petitioner's security deposit and retention amount. If the intention of the parties was only to release the security deposit and retention amount only after the commissioning of the pipe line, there is no necessity to provide 18 months period after the completion of the contract and it

ought to have been 18 months after the commissioning of the pipe line. Therefore, 18 months after the completion necessarily would take into account that the petitioner would be entitled for the release of the security deposit and retention amount.

In such circumstances, this Court is of the view that even after two years, the Water Authority could not commission the pipe line cannot be a reason to withhold the security deposit and retention amount. Thus, there shall be a direction to release the security deposit and retention amount within two months on executing a simple bond by the petitioner.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln