

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WA.No. 2599 of 2007 (E)

AGAINST THE JUDGMENT IN WP(C) 24545/2005 DATED 26-06-2007
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APPELLANTS/RESPONDENTS :

1. STATE OF KERALA AND OTHERS
SECRETARY TO GOVERNMENT, FISHERIES DEPARTMENT
THIRUVANANTHAPURAM.
2. THE SUPERINTENDING ENGINEER,
HARBOUR ENGINEERING PROJECT CIRCLE, ASRAMON, KOLLAM-2.
3. EXECUTIVE ENGINEER,
NEENDAKARA FISHING HARBOUR DIVISION
HARBOUR ENGINEERING DEPARTMENT,
SAKTHIKULANGARA P.O., KOLLAM.
4. THE TAHSILDAR, KARUNAGAPPALLY.

BY SR. GOVERNMENT PLEADER, SRI.P.I. DAVIS

RESPONDENT/PETITIONER :

BABU P., S/O.PRABHAKARAN,
MULLAVEETIL, NEENDAKARA, KOLLAM - 691 582.

BY ADV. SRI.K.ABDUL JAWAD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 2599 of 2007 (E)

APPENDIX

APPELLANTS' EXHIBITS :

ANNEXURE A1 : TRUE COPY OF GOVT. LETTER NO.3186/B2/2003/F & PD
DATED 23.02.2004.

RESPONDENT'S EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2599 OF 2007

Dated this the 11th day of August, 2015

JUDGMENT

Shaffique, J.

The respondent State and its authorities are the appellants challenging the judgment dated 26.06.2007 passed in W.P.(C) No. 24545 of 2005.

2. The writ petition was filed by the respondent herein challenging the recovery proceedings initiated against him for an amount of Rs.1,82,880/-. Petitioner submitted that he was awarded the work of shore protection near the transformer shed at Neendakara Port. The agreement was entered into on 14.06.2000 and Rs.20,000/- was deposited as security amount. Petitioner could not start the work in time due to certain disturbances caused by the rival political group and due to nonco-operation of departmental officials. It is stated that he was attacked by certain miscreants in the rival group, when he started the work and thus he sustained injuries. Petitioner submits that he was not granted extension

of time in spite of his request and therefore he expressed his inability to complete work and requested to make alternative arrangements. Thereafter alternative arrangement has been made only after 1½ years by calling fresh tenders and the difference in the amount has been claimed by the Government from the petitioner.

3. Learned Single Judge after evaluating the respective contentions observed that though the appellants were entitled to recover the amount claimed, taking into consideration the factual situation involved in the matter, especially the injury sustained by him and his consequent hospitalisation, in the interest of justice Rs.20,000/- paid as security deposit and payment of a further amount of Rs.50,000/- during the pendency of the litigation would be sufficient compensation for breach of contract and disposed of the case accordingly.

4. It is argued by learned Senior Government Pleader on behalf of the appellants that once the learned Single Judge has found that the compensation is correctly assessed and the

appellants are entitled to assess and recover the compensation, there was no reason for reducing the compensation amount.

5. But it is relevant to note that the original work order was issued as per Ext.P1 agreement dated 14.06.2000. It was stated that the petitioner has never started any work on account of the obstruction being created by certain persons in the locality and that he was also attacked. The period of contract was three months from the date of execution of the agreement. It is apparent that no extension of time was granted. Under such circumstances the contract is automatically terminated on expiring three months, i.e. as on 14.09.2000. Thereafter re-tendering of the work has been completed only on 06.08.2001.

6. First of all, we do not think that learned Single Judge was justified in treating the entire difference in amount as the liquidated damages. Liquidated damages is always an amount agreed upon between the parties to be the maximum compensation payable for breach of contract. That is not the

situation here. Here the amount demanded is the difference in amount between the amount of contract with the petitioner and the next awardee of the work. Therefore the said amount is apparently not an item of liquidated damages.

7. However, the learned Single Judge was justified in treating that payment of Rs.70,000/- would be a reasonable compensation for the breach of contract. In such circumstances we do not think it necessary to interfere with the judgment of the learned Single Judge especially when the new contract was awarded after one year.

We do not find any good ground to interfere with the judgment of learned Single Judge. The Writ Appeal is hence dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**