

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

W.A.No. 308 of 2013 () IN WP(C).18145/2009

AGAINST THE JUDGMENT IN W.P.(C) 18145/2009 of HIGH COURT OF KERALA DATED 03-12-2012.

APPELLANT/PETITIONER:

K.P.CHANDRAN, AGED 54 YEARS,
S/O K.P.CHOYI, CONTRACTOR, MADATHIL HOUSE,
VATTOLI P.O., KAKKATTIL VIA, KOZHIKODE DISTRICT
PIN:673 513.

BY ADVS.SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETIL

RESPONDENT(S)/RESPONDENTS:

1. THE SECRETARY, TUNERI BLOCK PANCHAYATH,
KOZHIKODE DISTRICT, 673 503.
2. PROJECT OFFICER,
POVERTY ALLEVIATION UNIT, KOZHIKODE P.O.
3. COMMISSIONER,
RURAL DEVELOPMENT DEPARTMENT, THIRUVANANTHAPURAM.
4. SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM.
5. GENERAL MANAGER, NABARD, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.R.K.MURALEEDHARAN
R2-R4 BY SENIOR GOVERNMENT PLEADER, SRI. P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-08-2015, THE COURT
ON 08.09.2015 DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.No.308 of 2013

Dated this the 8th day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

This writ appeal is filed by the petitioner against the judgment dated 03.12.2012 in W.P.(C) No.18145 of 2009 by which the learned Single Judge dismissed the writ petition, holding that the subject matter of the dispute being a contractual matter, it may not be possible to direct payment of an amount, which is disputed by the Respondents.

2. Brief facts for the disposal of the writ appeal are as follows:

Appellant was awarded a contract based upon his tender and an agreement was entered into by the appellant with the 1st Respondent and the estimated cost of the work was Rs.44,66,000/-. The work was allotted by the 1st Respondent with the financial assistance of Respondent No.5. The quality and standard requirements were to be complied as per the directions of the LBS Centre for Science and Technology,

Thiruvananthapuram, who were the consultants for the work.

3. Appellant completed the work in accordance with the stipulations contained in Ext.P1 and as per the directions of the Engineers in charge of the work. But since there was some variations in quantities of work to be carried out, the departmental officers prepared a revised estimate incorporating the variations in quantities including the extra items required for the successful completion of the assigned project in order to benefit the people of the 1st Respondent Panchayat. The revised estimate was duly sanctioned by the Executive Engineer, the Convenor of the District Level Technical Committee, being the authorised person, as per Ext.P2. Thus, altogether, appellant had carried out the work costing Rs.47,09,966/-.

4. Thereafter, appellant submitted Ext.P3 final bill. But appellant was paid only the original estimated value of the work at Rs.44,66,000/- by the 1st Respondent, leaving a balance of Rs.2,43,966/-. Even though the appellant made his best efforts, the same was not paid. Appellant filed Ext.P4 representation dated 28.09.2006 before the President of the 1st Respondent and a copy of which was forwarded to the 1st

Respondent. But, in spite of the same, there was no positive action from the side of the 1st Respondent and consequently appellant again addressed the 1st Respondent by way of Ext.P5 representation. Even though 1st Respondent issued Ext.P6 reply conveying that the matter has been taken up with the 2nd Respondent Project Officer, no action was initiated to settle the claim of the appellant. Though appellant had again filed a representation dated 25.04.2009, evidenced by Ext.P7, his grievance was not settled by the 1st Respondent. It is thus aggrieved by the inaction on the part of the 1st Respondent to pay the balance amount stated *supra*, the writ petition was preferred by the appellant.

5. 1st Respondent filed a counter affidavit explaining the circumstances under which the contract was awarded. Even though the revised estimate was not disputed by the 1st Respondent, it was contended that the revised estimate had no administrative or technical sanction, and the norms of the 5th Respondent will not permit cost escalation proposals on the approved costs. It was further contended that since there was no sanction for payment of revised estimated amount, that was declined to the appellant. So, from the counter affidavit

filed by the 1st Respondent, it was clear that the work carried out by the appellant in accordance with the revised estimate was not disputed and the only dispute was that the revised estimate did not have administrative or technical sanction.

6. Respondents 3 and 4 have also filed counter affidavit almost on similar lines filed by the 1st Respondent, and further contended that the Block Panchayat did not have any other source of funds to meet the cost of the additional work executed. It was also contended that the Block Panchayat has expressed its inability to meet the additional cost of the work done without its approval and since the technical officers have exceeded their authority without sanction and that action was being initiated against them also. From the counter affidavits of the 3rd and 4th Respondents also, it was found that the additional revised estimate and the work carried out by the appellant in accordance with the same were not disputed.

7. Appellant filed reply affidavits to the counter affidavits filed by the Respondents and reiterated his stand in accordance with the contentions raised in the writ petition. Apart from the same, appellant contended that the work as per

the revised estimate was carried out as per the directions of the Technical officers, which were also approved as per Ext.P2 and it was signed by the Assistant Engineer as well as the convenor of the Sub-Committee.

8. Heard the learned counsel for the appellant and the learned Senior Government Pleader. Perused the pleadings in the writ petition and the counter affidavits, reply affidavits and the documents produced along with the same.

9. Learned counsel for the appellant contended that since the factual situation with regard to the additional estimate of work prepared, the work carried out by the appellant and the amounts due thereunder were not disputed by the Respondents, 1st Respondent was bound to pay the balance amount due to the appellant. Learned counsel also contended that since the work was carried out with the concurrence of the 1st Respondent Panchayat, the Panchayat could not plead ignorance to the additional work carried out by the appellant, as per the directions of responsible authorities, and if it had any objection to the same, it had every authority to stop the work.

10. On the totality of the circumstances, we found that additional estimate of the work prepared by the appropriate statutory authority and the amount fixed thereupon was not in dispute. The sole dispute that we could gather from the counter affidavits was that administrative or financial sanction were not secured by the Technical officers from the concerned statutory authorities and therefore they were not liable to pay the balance amount to the appellant. According to us, since the revised estimate was not disputed and the appellant was directed by the Technical officers who were in charge of the work to carry out the work as per the revised estimate, the appellant was entitled to the amounts due thereunder. The learned Single Judge in the impugned judgment has also not found otherwise, but the claim of the appellant was declined for the reason that since the liability was disputed and the same being a contractual matter, the dispute cannot be resolved in a writ proceeding. But, so far as this finding of the learned Single Judge is concerned, from Exts.P2 and P3 as well as the counter affidavits what we could gather was, sole dispute was with regard to lack of sanctions from the departmental officers. Since there was no dispute with regard

to the balance amount remained to be paid as per the revised estimate, according to us, there was no justification or rationale for declining the consideration of the claim of the appellant in a writ proceeding.

11. Moreover, if at all there was any dispute, the same was between the technical officers of the Project and the Respondents, and therefore the appellant cannot be made a victim in the *inter se* dispute between the Respondents and other authorities. Appellant had carried out the work and reasonably believed that after carrying out the aforesaid work, he will be paid the amount agreed upon as per the additional estimated work. Further, none of the Respondents have a case that the appellant was told about the technical requirements for carrying out the revised estimate. So also, we found that even if the appellant should have filed a suit, at this distance of time, due to limitation, it may not be possible for the appellant to invoke his remedy in a Civil proceeding.

12. In view of Exts.P2, P3 and the counter affidavits filed by the 1st Respondent as well as the 3rd and 4th Respondents, we are of the considered opinion that there was no dispute at all with regard to the additional amount due to

the appellant on the basis of the revised estimate prepared by the Technical officers. In that view of the matter, appellant was entitled to get the additional amount of Rs.2,43,966/- from the 1st Respondent.

13. For these reasons, we set aside the judgment of the learned Single Judge and issue the following direction:

The 1st Respondent shall pay the amount due to the appellant within a period of two months from the date of receipt of a copy of this judgment, failing which the 1st Respondent will be liable to pay the said amount with 9% interest from the date of filing of the writ petition i.e. from 29.06.2009 onwards till the date of payment.

The writ appeal is allowed accordingly.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

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P.S. to Judge

St/-