

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WA.No. 1933 of 2013 () IN RP.1159/2012

**AGAINST THE ORDER/JUDGMENT IN RP 1159/2012 of HIGH COURT OF KERALA
DATED 14-01-2013**

APPELLANT(S)/RESPONDENTS IN WPC :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
PUBLIC WORKS DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT, NATIONAL HIGHWAY
SOUTH CIRCLE, THIRUVANANTHAPURAM.**
- 3. THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT, NH DIVISION, KOLLAM.**

BY ADV. SR GOVERNMENT PLEADER SRI.M.K.ABOOBACKER

RESPONDENT(S)/PETITIONER IN WPC :

**R.C.SATHEESH BABU
GOVERNMENT CONTRACTOR, GEETHU NIVAS, PANANGADU
PUNALUR-691305.**

**R1 BY ADV. SRI.MURALI PURUSHOTHAMAN
R1 BY ADV. SRI.DEEPU LAL MOHAN**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WA NO.1933/13

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE R1(a) : THE PHOTOCOPY OF THE STATEMENT DT
19.10.13 FILED BY THE APPELLANTS IN WA NO.600/2013.

ANNEXURE R1(b) : THE PHOTOCOPY OF THE REPLY AFFIDAVIT
DT 22.11.13 FILED BY THE RESPONDENT TO THE STATEMENT
DATED 19.10.13 FILED BY THE APPELLANTS IN WA NO.600/13.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal No.1933 of 2013
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Dated this the 26th day of February, 2015

J U D G M E N T

Antony Dominic, J.

This writ appeal is filed by the respondents in WP(C) No.5567/07. The said writ petition was filed by the respondent herein, the contractor, who executed certain works on behalf of the appellants, seeking essentially disbursement of the bill amount in respect of the work NH-47 IRQP from km 470/300 to 474/700 by providing 40 mm BC using modified bitumen. By judgment dated 27th of February, 2012, the learned single Judge recorded the statement of the learned Government Pleader that the total bill amount was ₹28,39,000/- and that out of which ₹8,79,000/- was paid to the respondent on 21/3/2007. In respect of the balance amount, according to the submission made by the learned Government Pleader, sanction of the Government for revised estimate was awaited. Therefore, the learned single Judge ordered that the appellants will see that the balance amount due to the respondent will be paid, at any rate, within three months of receipt of a copy of the judgment.

2. Subsequently, the appellants sought review of the judgment by filing RP No.1159/12 along with C.M.Appln.No.334/12 seeking condonation of delay of 235 days in filing the review petition. That was considered and by order dated 14th of January, 2013, the learned single Judge dismissed the same holding that in the judgment, the submissions made by the learned Government Pleader were only recorded and that direction was issued on that basis. It is aggrieved by the judgment of the learned single Judge and the dismissal of RP No.1159/12, this appeal is filed.

3. We heard the learned Government Pleader appearing for the appellants and the learned counsel appearing for the respondent.

4. The fact that the respondent executed the work in question is undisputed. However, the grievance of the Government Pleader is two fold. One is that the directions contained in the judgment would require the appellants to pay the amount claimed by the respondent irrespective of whether the same is due or not. The second contention raised is that since the

respondent has produced only photocopies of the invoices of bitumen purchased from Bharath Petroleum Corporation Ltd., the appellants are not in a position to process the same.

5. In so far as the first grievance raised by the Government Pleader is concerned, judgment of the learned single Judge shows that in so far as the amounts claimed by the appellants, less the amount already paid, is concerned, the case of the appellants was that approval for the revised estimate was awaited. It was therefore that the learned single Judge ordered that the amount due will be paid within three months. This direction of the learned single Judge, in our view, does not deprive the appellants of their freedom to decide whether the claim made by the respondent is inadmissible for any reason. Therefore, if on examination of the claim made by the respondent on merits, if the appellants find that the amount or any portion thereof is not payable, they are free to come to that conclusion. If that be so, the complaint of the learned Government Pleader that the directions in the judgment obliges them to pay the entire amount

claimed by the respondent irrespective of the merits of his claim is erroneous.

6. As regards the complaint that copy of the invoices alone were produced and therefore, the appellants are not in a position to process the claim of the respondent is concerned, reading of the affidavit filed by the respondent in WA No.600/13, the appeal filed by the appellants earlier and which was withdrawn later, shows that, according to the respondent, he has already produced the original of the invoices. Although it is true that this assertion made by the respondent is disputed by the Government Pleader, if as stated by the respondent, he had already produced the originals, he cannot now be called upon to produce the same again. Even apart from that, going by the tender conditions, the respondent could purchase bitumen only from Bharath Petroleum Corporation Ltd., and the photocopies which are admittedly available with the appellants are the invoices issued by the Bharath Petroleum Corporation Ltd itself. Therefore, if at all the appellants want to verify the genuineness

of the claim made by the respondent of having purchased bitumen from Bharath Petroleum Corporation Ltd, it is always open to the appellants to verify the same with the Bharath Petroleum Corporation utilizing the photocopies, which admittedly are available with them. In such circumstances, we do not think that the second grievance raised, that the non availability of the original invoices disabled them from processing the claim of the respondent, has no substance.

7. At this point, Government Pleader contended that under different contracts, amounts are due to the Government from the respondent and that in terms of the provisions of the agreement between the parties, they are entitled to retain the same from the amount due under the present contract. Although this claim of the Government Pleader is disputed by the learned counsel appearing for the respondent, in our view, the entitlement of the Government would depend upon the terms of the contract between the parties and therefore, we only clarify that if according to the Government, the terms of the contract entitled

them to exercise lien of any amount, they will be free to do so in accordance with the provisions of the agreement and the statutes governing the same.

Appeal is disposed of as above.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge