

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

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

WA.No. 729 of 2015 () IN WP(C).31751/2014

AGAINST THE JUDGMENT IN WP(C) 31751/2014 DATED 9.12.2014

APPELLANT(S)/RESPONDENTS IN WP[C] :-

1. EXECUTIVE ENGINEER
PWD, ROADS DIVISION, KALPATTA
WAYNAD DISTRICT - 673 122.
2. SUPERINTENDENT OF POLICE (VIGILANCE)
THONDAYAD, MAVOOR ROAD, KOZHIKODE-673 002.
3. DEPUTY SUPERINTENDENT OF POLICE (VIGILANCE)
P.O.MEENANGADY, WAYNAD DISTRICT - 673 591.
4. STATE OF KERALA
REPRESENTED BY SECRETARY, FINANCE (BUDGET WING)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

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

RESPONDENT(S)/PETITIONER IN WP[C] :-

V.UMMER HAJI
S/O.ASSOO HAJI, VAZHAKKANDI HOUSE, SULTHAN BATHERI.

BY ADV. SRI.K.V.PAVITHRAN
BY ADV. SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

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

W.A. No.729 of 2015

Dated this the 3rd day of September 2015

J U D G M E N T

Shaffique, J.

This appeal is filed by the respondents in the writ petition challenging the judgment dated 9.12.2014 in W.P.(C) No.31751 of 2014. While allowing the said writ petition, the learned Single Judge directed the appellants to disburse the amount due to the petitioner reckoning the seniority of the bills.

2. The writ petition was filed by the respondent herein seeking for payment of the final bill amount due to him on account of a work done by him. The amount was not paid by the appellants on the ground that a vigilance enquiry was pending and a direction was issued by the Vigilance Department not to effect payment until the matter is examined by the Chief Technical Examiner. The learned Single Judge, however, observed that enquiry of the vigilance did not stand in the way of releasing the amount due to the petitioner. If during the enquiry, it was found that the petitioner is guilty, it was

open for the authorities to proceed against the petitioner in accordance with law and accordingly, direction was issued to disburse the amount due to the petitioner reckoning the seniority of the bills.

3. The learned Senior Government Pleader while impugning the aforesaid judgment, submits that on account of the direction issued by the Vigilance Department, enquiry is to be conducted regarding the nature of work conducted by the petitioner. It is stated that the work was not substantially completed and there are several deficiencies in the work and the bill had been passed in collusion with the officers concerned. Hence, appropriate time is required for the purpose of verifying the correctness of the work done.

4. Heard the learned counsel for the writ petitioner as well. Learned counsel submits that there is no basis for withholding the amount as the Vigilance Department did not prove anything against the writ petitioner. It is also pointed out that the Government had obtained legal opinion to effect payment to the petitioner.

5. Be that as it may, the learned Senior Government Pleader submits that atleast four months' time will be required to complete the enquiry to enable the Department to take appropriate steps against the Contractor.

6. Having regard to the aforesaid factual situation, we are of the view that so far no steps had been taken by the Department against the Contractor for recovering any amount alleging that the work was not properly carried out. The work was completed on 29.3.2014 and the defect liability period is 1½ years. After the said period, there is no right on the part of the Government even for retention of the amount in terms of the contractual provisions. Taking into consideration the aforesaid factual situation, we are of the view that if at all the Government wants to initiate any proceedings against the petitioner, it has to be taken within a period of two months, failing which, the amount due to the petitioner has to be paid as directed by the learned Single Judge.

In the result, we dispose of the appeal directing the appellants to effect payment to the petitioner as directed by the

W.A. No.729 of 2015

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learned Single Judge within a period of two months from the date of receipt of a copy of this judgment, reserving the right of the appellants to take appropriate action in accordance with law.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//TRUE COPY//

P.A. TO JUDGE

Jvt