

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WA.No. 773 of 2015 () IN WP(C).15939/2012

**AGAINST THE ORDER/JUDGMENT IN WP(C) 15939/2012 of HIGH COURT OF KERALA
DATED 04-12-2012**

APPELLANT(S)/RESPONDENTS 1,2 & 4 IN W.P(C):

- 1. ASSISTANT ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT
PANMANA GRAMA PANCHAYATH, PANMANA, KOLLAM**
- 2. EXECUTIVE ENGINEER
LOCAL SELF GOVERNMENT DIVISION, DISTRICT PANCHAYATH
KOLLAM**
- 3. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM**

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

RESPONDENT(S)/PETITIONER & RESPONDENTS 3 IN W.P(C):

- 1. M.ABDUL MAJEED KUNJU
S/O MUHAMMED KUNJU, PARAYANTAYYATHU VEEDU
PANMANA PUTHENCHANTHA P.O, . CHAVARA**
- 2. PANMANA GRAMA PANCHAYTH
PANMANA P.O, KOLLAM, REPRESENTED BY ITS SECRETARY**

**R1 BY ADV. SRI.V.JAYAPRADEEP
R1 BY ADV. SRI.SHANE WILFRED MORRIS
R1 BY ADV. SRI.V.JAYADHAR
R2 BY SRI.V.G.ARUN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. No. 773 of 2015

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Dated this, the 20th day of July, 2015

J U D G M E N T

Shaffique, J

This appeal is filed by the State and its authorities challenging judgment dated 4/12/2012 in WP(C) No.15939/2012. The writ petition was filed by the 1st respondent herein seeking for a direction to the appellant authorities to pay the amount for the work executed by him and as confirmed in Ext.P4 by the Executive Engineer, L.S.G.D. (Local Self Government Department) Division of the Panchayat. By Ext.P4, the said authority had come to a conclusion that there were some defects/lapses in the work while taking the initial levels and therefore it was not possible to find out the final levels to determine the exact measurements. Hence 18 pits were dug with the use of J.C.B and the average depth of the same has been recorded. On that basis, he had come to the conclusion that the extent of area of the ground being 8518 m³, the quantity of earth filled in the ground by the contractor is

2982 m³. On this basis, petitioner contended that he is entitled for value of the work done to the extent of the measurement as indicted in Ext.P4 and there is negligence on the part of the authorities in not paying the admitted liability. Hence, he has approached this Court seeking for the value of work done with interest @18% per annum.

2. Learned Single Judge by judgment dated 4/12/2012 allowed the writ petition and directed payment of the admitted amounts in terms of Ext.P4 within a period of two weeks from the date of receipt of a copy of the judgment.

3. Aggrieved by the same, Review Petition was filed by the appellants producing certain additional documents *inter alia* contending that there was dispute regarding the quantity of work done by the writ petitioner and therefore the judgment requires to be reviewed. It was contended that the initial levels were taken, and on that basis, it was understood that the petitioner had only filled earth up to around 700 m³ and on a final verification of the same, it was found that the total earth filled by the petitioner is only 1593 m³. Payment for the said value of the work has been

paid. It was therefore contended that since the quantum of work involved was disputed, learned Single Judge was not justified in directing payment on the basis of Ext.P4. It was also contended that Ext.P4 does not reflect the actual quantity of work done by the petitioner as the final measurements have to be reported to the Chief Technical Examiner, which has not been done in the matter. By way of an amendment, the appellants also challenged the order passed in the Review Petition.

4. Heard learned Government Pleader Sri.P.I.Davis appearing for appellants, Adv.Sri.V.Jayapradeep appearing for 1st respondent and Adv.Sri.V.G.Arun appearing for the 2nd respondent.

5. A perusal of the documents indicates that there was dispute between the parties with reference to the quantity of work done. Annexure A3 is letter dated 12/12/2011 issued by the Assistant Engineer, LSGD section to the petitioner, wherein, it was stated that "*as per the levels as on that date, he had filled only a quantity of 700 m³ of gravel*". Learned counsel for the petitioner however would submit that there is some overwriting in the

original letter of Annexure A3 as the quantity had been corrected.

6. Annexure A13 is a reply sent by the petitioner to the said authority indicating that the said computation of quantity was not correct whereas he had filled more than 2500 m³ of gravel and therefore, he was entitled for payment. The said letter is dated 21/12/2011. It seems that it is thereafter that Ext.P4 had been prepared by the Executive Engineer on 19/3/2012.

7. Learned Government Pleader also submits that initial levels were available and therefore it was not difficult to find out the final levels.

8. The facts being so, it is clear that there had been some dispute between the parties regarding the quantity of earth filled by the petitioner. Therefore, *prima facie*, it cannot be said that there was an admission of liability.

9. The law in this regard is well settled. By exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot decide disputes coming within the realm of private law of contract. Only if it is an admitted liability, directions in terms of the impugned judgment can be issued. In so far as the

liability is disputed, this Court cannot adjudicate on such disputed questions of fact and decide the actual quantity of work done by the petitioner nor can a direction be issued to effect payment. Under such circumstances, we are of the view that as matters stand now, the only relief that could be granted to the petitioner is to direct him to approach the competent authority for fixation of the actual quantity of work done by the petitioner.

10. It is brought to the notice of this Court that the Technical Committee as envisaged in the terms of contract between the parties is defunct now. All matters relating to any disputed questions of fact is being verified by the Chief Technical Examiner of LSGD.

11. Having regard to the aforesaid factual situation, we are of the view that the dispute involved in the present case also is a matter which is required to be considered and decided by the Chief Technical Examiner of LSGD.

In the result, this writ appeal is allowed. We set aside the judgment of the learned Single Judge in the writ petition as well as the order in review petition and direct the petitioner to submit a

W.A.No.773/2015

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representation to the Chief Technical Examiner, LSGD, Thiruvananthapuram and the said authority shall, after considering the merits of the contentions urged and after hearing both the parties, take appropriate decision in the matter within a period of two months from the date of receipt of the representation along with a copy of this judgment.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge