

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 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WA.No. 1285 of 2015 IN WP(C).17025/2014

AGAINST THE JUDGMENT IN WP(C) 17025/2014 of HIGH COURT OF KERALA
DATED 17.3.2015

APPELLANT/3RD RESPONDENT IN THE WRIT PETITION:

THE DIRECTOR, CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION
FIRST FLOOR, CO-BANK TOWERS, VIKAS BHAVAN.P.O
THIRUVANANTHAPURAM-695033.

BY ADVS.SRI.E.K.MADHAVAN
SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON

RESPONDENTS/PETITIONER AND
RESPONDENTS 1,2 & 4 IN THE WRIT PETITION:

1. V K JOHNY, AGED 68 YEARS
S/O.LATE V.P.KURIAKOSE, MANAGING PARTNER
M/S.V.C.CONSTRUCTIONS, VANACHIRACKAL HOUSE
KANGARAPADY.P.O, KOCHI-682021.
2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
4. THE GENERAL MANAGER,
KERALA STATE CONSTRUCTION CORPORATION
DOOR NO.30/1521-A, M BAY UNDER THE BRIDGE
NORTHERN SIDE OF RAILWAY, COCHIN-682021.

R1 BY ADV. SMT.MARY BENJEMIN
R4 BY ADV. SRI.M.V.THAMBAN, S.C. KSCC LTD.
BY Sr.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 1285 of 2015 IN WP(C).17025/2014

APPENDIX

APPELLANT's EXHIBITS :

NIL

RESPONDENTS' EXHIBITS :

ANNEXURE R1(A): TRUE COPY OF THE GO(RT)NO.1163/2015/H&FWD DATED 7.4.2015.

ANNEXURE R1(B): TRUE COPY OF THE GO(Rt)NO.1188/2015/H&FWD DATED 13.4.2015

ANNEXURE R1(C): TRUE COPY OF THE LETTER NO.Acc2-1384/2014/CAPE/1314 DATED 24.4.2015 OF THE APPELLANT.

ANNEXURE R1(D): TRUE COPY OF THE LETTER DATED 25.4.2015 OF THE PRINCIPAL, GOVERNEMENT MEDICAL COLLEGE, ERNAKULAM

ANNEXURE R1(E): TRUE COPY OF THE LETTER DATED 3.6.2015 OF THE DEPARTMENT OF HEALTH AND FAMILY WELFARE.

//TRUE COPY//

P.A.TO JUDGE

ami/

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

W.A.No.1285 of 2015

Dated this the 12th day of October, 2015.

J U D G M E N T

SHAFFIQUE, J.

This appeal is filed against the judgment dated 17.3.2015 in W.P.(C)No.17025/14. The writ petition was filed by a Contractor inter alia contending that the amount legally due to the Contractor has not been paid, despite the fact that the entire work had been completed. The learned Single Judge, by the aforesaid judgment, directed the 2nd and 3rd respondents to release necessary funds towards the Contractual dues to the 4th respondent and the 4th respondent was directed to pay the entire amount to the writ petitioner.

2. This appeal is filed by the 3rd respondent in the writ petition contending that the institution, namely the Co-operative Medical College, the construction of its building being awarded to the 1st respondent herein, has been taken

over by the State Government and hence the obligation of paying the balance amount in the contract rests upon the State Government.

3. During the pendency of the writ petition, it was submitted by the learned counsel on either side that the balance amount as per the bill has already been paid to the Contractor which amounts to Rs.2,13,40,000/-.

4. The learned counsel for the 1st respondent however submits that the retention amount and the security deposit had not been returned so far by the 4th respondent, despite the fact that the period within which the retention amount has to be returned has expired. The learned Standing counsel for the Kerala State Construction Corporation also submits that the said amount has to be refunded, as the defect liability period is over.

5. Having regard to the fact that the issue regarding the claim for retention amount as well as the security deposit has arisen subsequent to the filing of the writ

petition, the same has to be considered by the 2nd and 3rd respondents in accordance with the terms of the Contract and necessary payments shall be effected within a period of 2 months from the date of receipt of copy of this judgment.

The writ appeal is disposed of accordingly.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE.

Sd/-
A.M.SHAFFIQUE,
JUDGE.

ami/

//True copy//

P.A.to Judge