

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WA.No. 1297 of 2015 IN WP(C).28864/2014

AGAINST THE JUDGMENT IN WP(C) 28864/2014 DATED 05-02-2015

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APPELLANT/PETITIONER :

ROOPESH NARAYANAN AGED 40 YEARS
S/O.V.N.RAMA MURTHY, IX-D, CORNISH CASTLE
R.C.ROAD, NAGARM, AMSOM AND DESOM
KOZHIKODE TALUK AND DISTRICT.

BY ADVS.SRI.SANTHARAM.P
SMT.REKHA ARAVIND

RESPONDENTS/RESPONDENTS :

1. KERALA STATE CIVIL SUPPLIES CORPORATION (KSCSC)
REPRESENTED BY ITS MANAGING DIRECTOR, MAVELI BHAVAN
MAVELI ROAD, GANDHI NAGAR, KOCHI-682020.
2. MANAGER (PURCHASE) KSCSC,
MAVELI BHAVAN, MAVELI ROAD, GANDHI NAGAR
KOCHI-682020.

R1 & R2 BY ADV. SMT.MOLLY JACOB,SC,SUPPLYCO

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1297 OF 2015

Dated this the 25th day of September, 2015

JUDGMENT

Shaffique, J.

Petitioner in W.P.(C) No.28864 of 2014 has filed this appeal challenging the judgment dated 05.02.2015 by which the learned Single Judge has disposed of the writ petition without prejudice to the right of the petitioner to pursue other remedies. The writ petition was filed alleging that despite the fact that the petitioner had complied with the terms of the supply contract awarded by the respondent Corporation, the balance amount due to the petitioner was not being paid and the respondent Corporation has illegally retained large amounts which is outside the purview of the terms of contract.

2. The learned Single Judge after considering the issues raised opined that the issue raised in the writ petition cannot be adjudicated by the Court under Article 226 of the Constitution and the writ petition was disposed of as aforesaid.

3. Learned counsel for the appellant submits that the respondent Corporation cannot retain the amount due to

the petitioner over and above what could be deducted under the terms of the contract. On the other hand learned counsel appearing for the respondent Corporation submitted that the Corporation was forced to deduct certain amounts on account of breach of contract committed by the petitioner. Certain amounts had been deducted as per the terms and conditions of the contract and also as per the directions issued by the Board of Directors of the Corporation.

4. When the above matter came up for consideration we have directed the learned counsel for the Corporation to file a statement regarding the manner in which penalty had been computed and that too with reference to the terms of the contract. A statement has been filed as Annexure 1 in which it has been stated that the bank guarantee provided by the petitioner was forged and hence he was liable to be imposed penalty at Rs.1,000/- per day in accordance with Clause 3 of Ext.P11 terms and conditions which amounts to Rs.12,86,000/-. It is submitted that 7 purchase orders were issued to the

petitioner and he failed to supply the required quantity of items as per the purchase order for which also penalty has to be imposed. It was also stated that an amount of Rs.24,25,798/- was also released to the appellant as per the interim order passed by learned Single Judge.

5. Having regard to the factual issues involved in the matter, we do not think that this Court should enter into such disputes. However, we make it clear that the Corporation will be under obligation to pay the amounts legally due to the petitioner and they can deduct only such amounts which are permissible in terms of the contract. However, if the petitioner has any dispute regarding the quantum of penalty, it is always open for him to challenge such recovery in appropriate proceedings.

In the above circumstances we dispose of the appeal with the following directions:

1. The respondent Corporation shall pay to the petitioner all the amounts due to him after deducting any amount which could be deducted in terms of the contract towards the penalty for delay in submission of

Bank Guarantee, delay cut, non supply and short supply.

2. However, this direction will be subject to the petitioner's right to challenge the aforesaid recoveries before an appropriate civil court.

3. The amount, if any, computed in terms of direction No.1, shall be paid to the petitioner within a period of six weeks from the date of receipt of a copy of this judgment.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

WA No.1297 of 2015

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