

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 2394 of 2012 (Y)

PETITIONER(S) :

**P.RAMACHANDRAN,
SATHY NIVAS, PALLIKUNNU.P.O, KANNUR DISTRICT.**

**BY ADVS.SRI.V.P.REGHURAJ
SRI.V.SHYAM**

RESPONDENT(S) :

- 1. THE EXECUTIVE ENGINEER,
LSGD DIVISION, KANNUR - 670 001.**
- 2. THE ASSISTANT ENGINEER,
LSGD DIVISION, KANNUR - 670001.**
- 3. THE DISTRICT PANCHAYAT, KANNUR,
REPRESENTED BY ITS SECRETARY - 670 001.**
- 4. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695 001.**

**R1,R2 & R4 BY GOVERNMENT PLEADER SRI.ABDUL RAHMAN
R3 BY ADV. SRI.M.SASINDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT-P1: THE TRUE COPY OF THE LETTER NO. D1-526/10-11
DATED 03/08/2010 OF THE 1ST RESPONDENT.**
- EXHIBIT-P2: THE TRUE COPY OF THE ORDER NO. D1-256/10-11
DATED 21/08/2010 OF THE 1ST RESPONDENT.**
- EXHIBIT-P3: THE TRUE COPY OF THE AGREEMENT SCHEDULE EXECUTED BY
THE PETITIONER.**
- EXHIBIT-P4: THE TRUE COPY OF THE NEWS ITEM IN MATHRUBHUMI DAILY
DATED 22/11/2010.**
- EXHIBIT-P5: TRUE COPY OF THE NEWS ITEM IN MATHRUBHUMI DAILY
DATED 25/11/2010.**
- EXHIBIT-P6: THE TRUE COPY OF THE REPRESENTATION DATED NIL
SUBMITTED BY THE ACTION COMMITTEE BEFORE
THE 2ND RESPONDENT.**
- EXHIBIT-P7: THE TRUE COPY OF THE LETTER DATED 12/08/2011 SUBMITTED
BY THE PETITIONER TO THE 3RD RESPONDENT.**
- EXHIBIT-P8: THE TRUE COPY OF THE SAID LETTER NO. D4-526/11
DATED 01/10/2011 OF THE 1ST RESPONDENT.**
- EXHIBIT-P9: THE TRUE COPY OF THE REPLY NOTICE DATED 24/10/2011 SENT
BY THE PETITIONER.**
- EXHIBIT-P10: THE TRUE COPY OF THE ORDER NO. D4-526/11 DATED 04/11/2011
OF THE 1ST RESPONDENT.**
- EXHIBIT-P11: THE TRUE COPY OF THE TENDER NOTIFICATION NO.T.N/2011.D1
DATED 12/01/2012 AS PUBLISHED IN DESHABHIMANI DAILY
DATED 13/01/2012**
- EXHIBIT-P12: THE TRUE COPY OF THE TENDER SCHEDULE OF EXHIBIT-P11.**
- EXHIBIT-P13: THE TRUE COPY OF THE REPRESENTATION DATED 22/11/2011
SUBMITTED BY THE PETITIONER.**
- EXHIBIT-P14: TRUE COPY OF THE LETTER NO.D/526/2011 DATED 08.03.2011 OF
THE 1ST RESPONDENT.**
- EXHIBIT-P14 IN I.A.NO.7078: THE TRUE COPY OF THE LETTER
NO.A4/444/14 DATED 15.05.2015.**

WP(C).No. 2394 of 2012 (Y)

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R3(A): TRUE COPY OF THE SELECTION NOTICE DATED 03.08.2010
ISSUED BY THE FIRST RESPONDENT.**

**EXHIBIT R3(B): A TRUE COPY OF THE COMMUNICATION ISSUED BY
THE EXECUTIVE ENGINEER TO THE PETITIONER
DATED 08.03.2011.**

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.M.SHAFIQUE, J

W.P.C.No.2394 of 2012

Dated this the 9th day of November 2015

J U D G M E N T

Petitioner is a PWD contractor, who has approached this Court challenging Exts.P8 and P10, by which the 1st respondent took a decision to re-tender the work which was originally allotted in his favour. The facts involved in the writ petition would disclose that the work relating to the patch work of Puthiyaparamba - Poothapara road under the Peoples Planning Scheme of Kannur District Panchayat was originally awarded in favour of the petitioner. According to him, he had done a portion of the work, but on account of severe rain, the balance work could not be completed. The work order was cancelled at the risk and cost of the petitioner and it was decided to re-tender the work in terms of Ext.P8 dated 01/10/2011. According to the petitioner, he was not responsible for the delay in doing the work and therefore the termination order is bad in law. It is further contended that no steps could be taken to recover any loss from the petitioner and the cancellation of the work order at his risk and cost is not sustainable. Petitioner issued Ext.P9 reply dated 24/10/2011.

However, the respondents proceeded to re-tender the work at the risk and cost of the petitioner and the security deposit has been forfeited.

2. By Ext.P14 dated 15/05/2015, the Executive Engineer of the Panchayat has called upon the petitioner to pay an amount of Rs.1,64,083/-. Petitioner submits that the 2nd respondent had no right to make any such demand especially on account of the fact that he was not responsible for any delay in carrying out the work and that the termination of the work order was not legal and therefore he was not responsible for the payment of any loss alleged to have been suffered by the respondent authorities. It is also argued that the works which had been re-tendered in terms with Ext.P12 had no connection whatsoever with the loss suffered.

3. It is argued by the learned counsel for the 3rd respondent that the petitioner was granted sufficient time to carry out the work and time was extended by three months. Even within the said three months period, petitioner was unable to complete the work and ultimately since there was no action, the work was terminated and re-tendered to another person.

4. The short question to be considered in this writ petition is whether this Court can interfere with the action taken by the respondent authorities in the matter relating to an alleged breach of contract. The contract, apparently, is one coming within the realm of private law, rights and obligations of which cannot be considered by this Court in the present proceedings. This is an instance where the work has been awarded in favour of the petitioner, who alleges that the termination of work order is bad in law. The dispute on the rights and obligation of the parties arising out of the said contract cannot be resolved by this Court which involves disputed questions of fact. The only contention that is relevant to be considered is whether the respondent authorities are entitled to recover the amount without there being an adjudication of the dispute before a Court of law.

5. It is apparent from the records made available that the petitioner had raised disputes regarding termination of contract as well as his obligation to pay the differential amount, as damages in respect of the very same work which has been re-tendered. In other words, according to him, he is not liable to pay any damages to the respondents. As far as security deposit is

concerned, it is always open for the awarder of the work to forfeit the security deposit in the event it is found that the awardee has committed breach of contract. Whether security deposit is liable to be refunded or not is again a question of fact which requires adjudication before a Court of law. Same is the situation as far as demand made by the respondent authorities are concerned. When breach of contract is a disputed fact or the liability is disputed which requires adjudication before a Court of law, it is not possible for the respondent authorities to become an arbiter for their own cause and demand damages from the petitioner.

Under such circumstances, this writ petition is disposed of as follows:

That the claims, rights and obligations of the parties are to be decided by a Civil court in appropriate proceedings and no recovery can be made by the respondents, without any such adjudication.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

