

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 2061 of 2013 (G)

PETITIONER(S) :

N.R. SHAJI AGED 45 YEARS
R.S.P CONSTRUCTIONS KAKKANAD KOCHI 21
RESIDING AT NANIYATTIL HOUSE, OPP.CIIVL STATION, KAKKANAD

BY ADVS.SRI.K.J.ABRAHAM
SRI.C.AJITH KUMAR

RESPONDENT(S) :

1. CORPORATION OF KOCHI
REPRESENTED BY ITS SECRETARY PIN 682031

2. HEALTH OFFICER
CORPORATION OF KOCHI PIN 682 031

R1 & 2 BY ADV. SRI.MILLU DANDAPANI,SC,COCHIN CORPORATION
SRI.P.K.SOYUZ,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-
11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P (C) nO.2061/2013

APPENDIX

PETITIONERS EXHIBITS

P1-TRUE COPY OF THE TENDER NOTIFICATION NO.MOH5/3595/12 DATED 15.2.2012
ISSUED BY THE FIRST RESPONDENT

P2-TRUE COPY OF THE LETTER DATED 29.3.2012 ISSUED BY THE SECOND
RESPONDENT TO THE PETITIONER CALLING FOR NEGOTIATION IN RESPECT OF
TIPPER LORRY

P3-TRUE COPY OF THE LETTER DATED 31.3.2012 ISSUED BY THE SECOND
RESPONDENT TO THE PETITIONER CALLING FOR NEGOTIATION IN RESPECT OF JCB

P4-TRUE COPY OF THE WORK ORDER NO.MOH5/3592/2012 DATED 3.4.2012 OF THE
FIRST RESPONDENT

P5-TRUE COPY OF THE AGREEMENT DATED 3.4.2012 ENTERED INTO BETWEEN THE
PETITIONER AND THE FIRST RESPONDENT

P6-TRUE COPY OF THE ACCOUNT STATEMENT FOR THE PERIOD FROM 1.4.2012 TILL
9.1.2013

P7-TRUE COPY OF THE LETTER DATED 15.11.2012 ISSUED BY THE SECOND
RESPONDENT TO THE PETITIONER

P8-TRUE COPY OF THE REPLY DATED 21.11.2012 SENT BY THE PETITIONER TO
THE 2ND RESPONDENT

P9-TRUE COPY OF THE LETTER DATED 2.1.2013 ISSUED BY THE 2ND RESPONDENT
TO THE PETITIONER

RESPONDENTS EXHIBITS

NIL

TRUE COPY

SKS

P.A TO JUDGE

K.HARILAL, J.

W.P(C)NO. 2061 OF 2013

Dated this the 25th day of November, 2015

JUDGMENT

The petitioner is a contractor doing civil works. The first respondent invited tender for collection of waste and removal within the limits of Cochin Corporation. The petitioner participated in the tender and he was awarded with the said contract and thereafter he has completed the work on 31.3.2013 as required by the first respondent.

2. The grievance of the petitioner is that till 2012 all payments were received and thereafter the respondents did not pay the bills on the reason that the petitioner is liable to pay service tax for the work undertaken and already excess payment has been made to the petitioner. According to the petitioner, he is entitled to get a sum of ₹54,65,921(Rupees fifty four lakhs sixty five thousand nine hundred and twenty one only) and the said amount is being withheld on the reason that the petitioner is liable to pay service tax. Aggrieved by the said stand, the petitioner made Ext.P8 objection to the second respondent and the second respondent by Ext.P9 letter again insisted to pay service tax.

3. It is the case of the petitioner that he is not liable to pay service tax in terms of the contract. Thus, a dispute has arisen in respect of the liability to pay service tax, between the petitioner and the respondents and this dispute centres around the terms of contract between the petitioner and the respondents. I am of the view that the resolution of such a dispute is not permissible in exercise of jurisdiction under Article 226 of the Constitution of India.

4. In the above view of the matter, the petitioner is directed to make a representation raising all his contentions to the respondents and the respondents are directed that on receipt of the said representation, the same shall be considered and an order be passed, after affording an opportunity of being heard to the petitioner, within a period of one month from the date of receipt of the said representation. With this observation this writ petition is disposed of.

K.HARILAL, JUDGE

sks

