

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 1248 of 2015 (E)

PETITIONER :

**BABY N.V.,
S/O.SIMON VARGHESE, AGED 62 YEARS,
GOVERNMENT CONTRACTOR,
PERICKAMATTATHIL HOUSE, EZHAKKARANAD SOUTH P.O.,
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT - 682 308.**

BY ADV. SRI.BOBMY MATHEW KOOTHATTUKULAM

RESPONDENT(S):

- 1. THE KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR, JALABHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM, PIN: 695 001.**
- 2. THE SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY, PUBLIC HEALTH (PH) CIRCLE,
MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN: 686 661.**

R1 & R2 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE FORMAL AGREEMENT IN STAMP PAPER DATED 27/10/2009.
- P2: TRUE COPY OF THE LETTER OF THE EXECUTIVE ENGINEER OF THE 2ND RESPONDENT DATED 29/3/2011.
- P3: TRUE COPY OF THE LETTER DATED 29/12/2012 OF THE EXECUTIVE ENGINEER OF THE 2ND RESPONDENT
- P4: TRUE COPY OF THE AGREEMENT SCHEDULE OF WORK
- P5: TRUE COPY OF THE JUDGMENT IN WPC NO.16656/2010 DATED 29/7/2010.
- P6: TRUE COPY OF THE ORDER DATED 8/1/2013 TERMINATING THE EXHIBIT P1 CONTRACT AGREEMENT
- P7: TRUE COPY OF THE JUDGMENT DATED 10/4/2013 IN WRIT PETITIOIN NO.8749/2013. (WITH COVERING LETTER)
- P8: TRUE COPY OF THE LETTER OF THE EXECUTIVE ENGINEER OF THE 2ND RESPONDENT DATED 8/5/2013.
- P9: TRUE COPY OF THE LETTER SUBMITTED BY THE PETITOINER DATED 17/5/2013.
- P10: TRUE COPY OF THE COVERING LETTER DATED 2/8/2013 SENT ALONG WITH A CHEQUE FOR RS.203363/- TO THE PETITIONER
- P11: TRUE COY OF THE LETTER DT. 3/9/2013 SUBMITTED BY THE PETITIONER
- P12: TRUE COPY OF THE COVERING LETTER DATED 25/10/2013 PROVIDING COPY OF THE DOCUMENTS UNDER THE RIGHT TO INFORMATION ACT.
- P13: TRUE COPY OF CB3 AND RELEVANT PAGES OF FINAL BILL
- P14: TRUE COPY OF THE LETTER DATED 30/10/2013 OF THE 2ND RESPONDENT.
- P15: TRUE COPY OF THE LETTER DATED 9/5/2011
- P16: COPY OF THE LETTER ACCEPTING THE ORDER FOR 8300 METERS OF PIPES DATED 10/12/2009
- P17: COPY OF THE LETTER OF THE 2ND RESPONDENT DATED 8/12/2009

WP(C).NO.1248/2015

P18: COPY OF THE LETTER DATED 03/4/2010

P19: COPY OF THE LETTER DATED 7/12/2013

P20: COPY OF THE LETTER DATED 7/3/2014.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.1248 of 2015

Dated this the 28th day of October, 2015

JUDGMENT

The petitioner has undertaken contractual work on behalf of the Kerala Water Authority. There was some dispute regarding non-performance of the contract. It appears that liquidated damage has been imposed on the petitioner. Thereafter, the Superintending Engineer as per Ext.P14 recommended as follows:

- i. As recommended vide ref 9th, by the present Executive Engineer, the deduction of Rs.9,56,098/- towards non-supply of specials may be limited to Rs.3,15,000/- (actual).
- ii. The unrealistic liquidated damage imposed by the EE may be waived and a usual fine for extension of time of completion as per order no KWA/HO/WS2/1226/99 dt. 17/09/2002 of the MD (part of signed agreement) may be imposed for the delay in supply of pipes, lapses from the contractor and inconvenience to department and withdrawal from the work.

2. This was after observing that there is no justification in deducting huge amount of Rs.29,94,135/- as liquidated damages

from the Contractor. The recommendation was forwarded to the Managing Director. The Managing Director as per Ext.P20 ordered as follows:

“Your attention is invited to the reference cited. You are requested to take necessary action immediately at your level since the Superintending Engineer is the competent authority. The action taken may be reported to this office without fail.”

3. Therefore, the Superintending Engineer has been directed to finalise the matter.

4. The learned counsel for the petitioner submits that since the Superintending Engineer has already recommended as per Ext.P14, there is no requirement of final decision in the matter and this Court may direct the Water Authority to take decision based on Ext.P14.

5. The learned standing counsel for the Water Authority opposes the prayer and submits that the recommendation has not attained finality and there are serious issues in the matter.

This Court is of the view that there should be finality in the matter, in view of Ext.P20 issued by the Managing Director, the

Superintending Engineer shall take appropriate decision in the matter after adverting to Ext.P14 recommendation. Appropriate decision shall be taken in this matter within one month. Based on the decision, the amount due to the petitioner, if any, shall be released to him without any delay. All the issues in this writ petition are left open. Needful shall be done after affording an opportunity of hearing to the petitioner.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln