

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 1363 of 2015 (U)

PETITIONER :

**GEORGE C.A.,
S/O.ALPHONSE, AGED 64 YEARS
CHOOACKAL HOUSE, CHINNAKANAL P.O.
MUNNAR, IDUKKI DISTRICT.**

BY ADV. SRI.C.K.PAVITHRAN

RESPONDENT(S) :

- 1. THE SUPERINTENDING ENGINEER
P.W.D (ROADS & BRIDGES), CENTRAL SECTION, ALUVA.**
- 2. THE EXECUTIVE ENGINEER
ROADS DIVISION, MUVATTUPUZHA.**
- 3. THE ASSISTANT EXECUTIVE ENGINEER
P.W.D. ROADS SUB DIVISION, KOTHAMANGALAM.**
- 4. THE CHIEF ENGINEER
ROADS AND BRIDGES, THIRUVANANTHAPURAM.**
- 5. THE SECRETARY TO GOVERNMENT
PUBLIC WORKS DEPARTMENT
SECRETARIATE, THIRUVANANTHAPURAM.**
- 6. THE DIVISIONAL FOREST OFFICER
MUNNAR DIVISION, DEVIKULAM.**
- 7. THE ADDITIONAL PRINCIPAL CONSERVATOR OF FOREST (PROTECTION)
FOREST HEADQUARTERS, THIRUVANANTHAPURAM.**

R1 TO R7 BY SPL. GOVT. PLEADER SRI. M.P. MADHAVANKUTTY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 TRUE COPY OF AGREEMENT NO.36/SECCA/2013-14 DATED 7/6/2013
EXECUTED BETWEEN THE PETITIONER AND THE 1ST RESPONDENT.
- EXT.P2 TRUE COPY OF LETTER DATED 20/9/2013 ISSUED BY THE 3RD
RESPONDENT AND ADDRESSED TO THE DIVISIONAL FOREST
OFFICER, MUNNAR.
- EXT.P3. TRUE COPY OF THE MINUTES DATED 7/10/2014 ALONG WITH A
COVERING LETTER DATED 8/10/2014 ISSUED BY THE SECRETARY.
- EXT.P4. TRUE COPY OF THE LETTER NO.PRO(6)-28871/2014 DATED 8/10/2014.
- EXT.P5. TRUE COPY OF THE LETTER DATED 14/10/2014.
- EXT.P6. TRUE COPY OF THE LETTER DATED 27/10/2014 ISSUED BY THE 2ND
RESPONDENT ADDRESSED TO THE 6TH RESPONDENT.
- EXT.P7. TRUE COPY OF THE LETTER DATED 17/9/2014.
- EXT.P8. TRUE COPY OF THE LETTER DATED 10/11/2014.
- EXT.P9. TRUE COPY OF THE MATERIAL COLLECTION REPORT DATED
15/7/2014.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J.

W.P(C). No.1363 of 2015

Dated this the 5th day of August, 2015.

JUDGMENT

The petitioner before this Court contends that the petitioner is entitled to payment for the work completed and materials supplied and seeks for consideration of Ext.P7 before the Government or Ext.P8 before the Superintending Engineer, Public Works Department.

2. The learned Government Pleader appearing for the PWD in fact would submit that the the PWD has now applied for sanction from the Forest Department to carry on the balance metal work of the road with three meter width by the Contractor himself. However the Contractor is not ready for the same, obviously for reason of sheer passage of time; there would be escalation in the cost.

3. I have heard the learned Special Government Pleader (Forest) also, who submits that, the sanction awarded to the

PWD, as is revealed in Ext.P4, is for merely carrying on the surfacing work of the road without any widening or culvert construction.

4. The lack of co-ordination between two Government Departments has put the petitioner, a Government Contractor, in peril. The petitioner was awarded the work of improvement to Hill Highway-Elambalassery to Avarukutty [Portion from Mamalakandom to Avarukutty Ch.0/000 to 9/880] by the Public Works Department. Even according to the Counter Affidavit of the Public Works Department dated 07.03.2015, there were 42 culverts proposed in the estimate; from 6th Mile to Avarukutty. Out of which, 32 numbers of culverts were fully constructed and 4 numbers partially completed. At that point, the officials of the Forest Department intervened and also demolished the culverts constructed, which according to them, was against sanction accorded to the PWD. The Forest Department also submits that, the sanction granted was only for surfacing the road and not for any construction widening the roads nor building culverts.

5. The work was stopped by the demolition carried by the Forest Department on 28.09.2014. The petitioner, caught

between the two Departments, was not paid the amounts for the completed work and for the materials stored in the area. The work also is pending completion.

In such circumstances, Ext.P8 shall be considered and the measurement taken of the work already completed and the petitioner shall be paid the amounts for the work completed and the materials stored in the area, after due notice to the petitioner. It is made clear that the demolition made by the Forest Department or the stoppage of the work shall not deter the first respondent from considering such payments, since the petitioner is declared to have not committed any default in so far as the work is concerned, nor was it abandoned by the petitioner, on his own volition. The stoppage of the work was caused only due to the intervention of the Forest Department, for which the petitioner is not responsible, since the petitioner admittedly had carried on the work as per the plan and estimate given by the PWD. Ext.P8 shall be considered and payments made at any rate within a period of three months from the date of receipt of a certified copy of this judgment. The petitioner also shall not be liable for any penalty, for reason only of retendering, since the

petitioner was not responsible for stoppage of work or for refusal to take it up after considerable passage of time; which refusal is also for reason of the escalation in cost.

The writ petition is disposed of. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

sp