

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 5990 of 2010 (W)

PETITIONER:

G. BHARATHAN, AGED 78 YEARS,
S/O. GANGADHARAN, SHEELA NIVAS, KADAKOM P.O.
CHIRAYNKEEZHU, THIRUVANANTHAPURAM.

BY ADVS. SRI. T. M. ABDUL LATHEEF
SRI. A. MOHAMED RASHEED

RESPONDENT(S):

1. KERALA WATER AUTHORITY
REPRESENTED BY ITS MANAGING DIRECTOR, JALA BHAVAN
VELLAYAMBALAM, THIRUVANANTHAPURAM-695 010.
2. THE SUPERINTENDING ENGINEER,
KERALA WATER AND WASTE AUTHORITY
PUBLIC HEALTH SOUTH CIRCLE
THIRUVANANTHAPURAM-695 001.
3. THE EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, WATER SUPPLY DIVISION
ATTINGAL -695 101.
4. THE ASSISTANT ENGINEER,
WATER SUPPLY SECTION-II, KERALA WATER AUTHORITY
ATTINGAL-695 101.

BY SRI. GEORGE MATHEW, SC, KERALA WATER AUTHORITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.5990/10

PETITIONER'S EXTS:

- EXT.P1: COPY OF LETTER NO.PHSC.D5-2092/84 DT.25.9.1984 OF THE 2ND RESPONDENT.
- EXT.P2: COPY OF LIST OF MATERIALS ENDORSED BY THE 4TH RESPONDENT.
- EXT.P3: COPY OF REMINDER NO.DB3-1270/94,95 DT.14.5.09 OF THE 3RD RESPONDENT.
- EXT.P4: COPY OF LETTER DT.20.5.09 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P5: COPY OF PETITION DT.12.2.2010 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

RESPONDENTS' EXTS:

- EXT.R1(A): COPY OF PAYMENT DETAILS WITH CASH VOUCHER BOOK.
- EXT.R1(B): COPY OF LIST OF BALANCE MATERIALS.
- EXT.R1(C): COPY OF LETTER NO.AB2/1270/94-95 DT.10.3.08 SENT BY THE 3RD RESPONDENT TO THE PETITIONER.

True copy

P.S.to Judge
dsn

ANIL K.NARENDRA, J

W.P.(C)No.5990 Of 2010

DATED THIS THE 29th DAY OF MAY, 2015

JUDGMENT

The petitioner who has undertaken certain contract works under the Rural Water Supply Scheme to Pulimath Koduvazhanoor Village has approached this Court in this Writ Petition seeking a writ of mandamus commanding the respondents to disburse the entire amount due to him in respect of the work carried out on the strength of Ext.P1 together with 18% interest.

2. Going by the averments in the Writ Petition, the petitioner had undertaken the work awarded as per Ext.P1 proceedings of the fourth respondent at 8.5% below the estimate rate and submitted part bills, followed by a final bill. According to the petitioner, the material supplied by the Kerala Water Authority were returned on completion of the work and in order to substantiate the same, he is relying on Ext.P2 list prepared by the fourth respondent. However, the third respondent sent a letter to the petitioner requesting him to return the balance materials to the Divisional Store, which was followed by Ext.P3 reminder dated

14.5.2009. On receipt of Ext.P3, the petitioner submitted Ext.P4 letter dated 20.5.2009 pointing out that, almost the entire materials were used for the work in question and some materials were also used for other works and the balance materials were returned to the Divisional Store, as evident from Ext.P2. Even after receipt of Ext.P4, the amount due to the petitioner was not disbursed. It was in such circumstances the petitioner has submitted Ext.P5 representation before the first respondent seeking interference and during the pendency of that representation he has approached this Court in this Writ Petition, seeking various reliefs.

3. A counter affidavit has been filed on behalf of the respondents in which it is contended that, the petitioner has already received a total amount of ₹22,76,901/- through nine part bills, as stated in Ext.R1(a). The final bill amounting to ₹17,345/- alone is pending payment and the reason for not making that payment is that, the petitioner is yet to return huge quantities of materials worth ₹17,92,700/-. Ext.R1(b) produced along with the counter affidavit is the list of such materials worth

₹17,92,700/-, which the petitioner is yet to return. A reading of the counter affidavit filed on behalf of the respondents would also indicate that a Vigilance enquiry is also going on in relation to certain irregularities alleged in the execution of the work in question.

As evident from the materials on record, there is serious dispute as to the entitlement of the petitioner for the balance amount of the contract he had already undertaken. Going by the specific stand in the counter affidavit filed by the respondents, a sum of ₹17,345/- alone is pending payment in respect of the work undertaken by the petitioner, whereas, he is yet to return huge quantities of materials worth ₹17,92,700/- to the Water Authority. In such a factual scenario, this Court will not be justified in directing the respondents to pay the balance amount payable for the work undertaken by the petitioner in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India.

In such circumstances, the present Writ Petition fails and the same is dismissed. But it is made clear that the dismissal of

this Writ Petition will not stand in the way of the petitioner taking recourse to any other remedy available under law.

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn