

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 3426 of 2015 (C)

PETITIONER :

**VIDHYADARAN G.,
GOVT. CONTRACTOR, KALPAKA, THOPPIL
BALARAMAPURAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.AJITH KRISHNAN

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
IRRIGATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM- 695001**
- 2. THE CHIEF ENGINEER
IRRIGATION DEPARTMENT, PUBLIC OFFICE
THIRUVANANTHAPURAM-33.**
- 3. THE SUPERINTENDING ENGINEER
IRRIGATION SOUTH CIRCLE, THIRUVANANTHAPURAM-33.**
- 4. THE EXECUTIVE ENGINEER
IRRIGATION DIVISION, THIRUVANANTHAPURAM -33.**
- 5. THE ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-01.**

R1 TO R5 BY GOVT. PLEADER SRI. K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

WP(C).No. 3426 of 2015 (C)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 - TRUE COPY OF THE SELECTION NOTICE AND ACCEPTED SCHEDULE
ISSUED BY THE 3RD RESPONDENT.**
- EXT.P2 - TRUE COPY OF THE REVISED WORK SCHEDULE.**
- EXT.P3- TRUE COPY OF THE BILL DATED 28-12-2013 SUBMITTED BY THE
PETITIONER WITH THE APPROVAL OF THE 3RD AND 4TH
RESPONDENT.**
- EXT.P4 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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P.R.RAMACHANDRA MENON, J.

W.P.(C) No. 3426 of 2015

Dated this the 10th day of March, 2015

J U D G M E N T

The petitioner is a PWD contractor, who was awarded certain works in connection with flooding in Thiruvananthapuram City damages occurred - Short term & long term measures for mitigation Phase I Natural Calamities - WRD - (Short Term Measures) protecting the left bank of Karamana River upstream of Madhupalam near Edagramom in Thiruvananthapuram Corporation by the concerned respondent. It is stated that some additional work was also there and a revised estimate was carried out and the entire work has been completed by the petitioner. After completing the work as above, bill was submitted on 28.12.2013. Out of the total sum of Rs.54,09,898/- claimed by the petitioner, he was paid only a sum of Rs.32,48,064/- and the balance is still to be paid. Since it was an emergency work, the petitioner had to complete the work on war footing, for which he had borrowed amounts from different corners and is incurring huge liability for not satisfying the entire payment and is made to

satisfy interest as well at heavy rate. This made the petitioner to approach this Court seeking for the reliefs in the following form:

- "1) Issue a writ of mandamus or writ of similar nature or order or direction commanding the respondents to sanction and disburse the balance bill amount of Rs.15,85,368/- (including retention amount) with respect to the works of Flooding in Thiruvananthapuram City damages occurred - short term & long term measures for mitigation phase I Natural calamities - WRD (Short Term Measures) protecting the left bank of Karamana River upstream of Madhupalam near Edagramom in Thiruvananthapuram Corporation forthwith.
- ii) issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to pay the interest at the rate of 18% of the amount due to the petitioner forthwith.
- iii) such issue such other reliefs as this Hon'ble Court may deem fit and proper in the interest of justice."

2. A statement has been filed on behalf of the 4th respondent referring to the facts and figures, pointing out that the bill submitted by the petitioner was passed for a gross amount of Rs.45,26,959/-. After effecting the statutory recoveries and other deductions to the tune of Rs.12,78,895/- (split up figures as given in the very same paragraph), the balance sum of Rs.32,48,064/- was released to the petitioner on 23.10.2014 as per cheque no.GJ 3309372 dated 23.10.2014. It is also pointed out that, 10% of the gross value has been withheld, as per the relevant terms of the agreement executed in this regard, which can be released to the petitioner only on completion of the entire formalities. It is added from the part of the Government Pleader that some additional works are also there in respect of which sanction from the Government is required to complete the procedural formalities.

3. The learned Government Pleader also points out that a sum of Rs.2,99,772/- was adjusted on the request made by the petitioner for executing Performance Guarantee and Security Deposit for other works undertaken by him in lieu of separate

Treasury Deposit Certificates, which were to be pledged to the concerned authority. This amount has been kept in a special deposit which can be released only on satisfactory completion of the other works entrusted to the petitioner and subject to the conditions in the agreement executed between them. With regard to the remaining grievance, the learned Government Pleader points out that the balance amount payable to the petitioner can be effected, only subject to the seniority. The version of the respondents, as discerned from paragraph 5, is in the following terms:

"The revised estimate for the work has been submitted to Government for sanction. Government have asked to furnish certain clarification on the revised estimate. Report to the Government is being processed and will be submitted soon. The balance amount will be paid to the contractor as per seniority and on receiving the final bill of the work on the basis of the revised estimate duly sanctioned by the Government. The contention raised by the petitioner is without

properly understanding the procedure for payment of bill amount. The final bill cannot be included in the EMLI without getting sanction on revised estimate. Part bill was included and payments made after deducting the statutory and other amounts. The revised estimate is not yet approved by Government and in such circumstances the respondents cannot disburse any amount as claimed by the petitioner.”

4. After hearing both the sides, this Court finds that this Writ Petition can be disposed of, recording the version/submission as above and directing the respondents to effect the payment due to the petitioner in accordance with law, on the basis of seniority. The 1st respondent is directed to consider the matter with regard to the administrative sanction sought for in connection with the additional work stated, as done by the petitioner. This shall be done at the earliest, at any rate within two months from the date of receipt of a copy of this judgment. Based on the administrative sanction, to be obtained as above, the disbursement of the due amount to the petitioner

shall be effected in terms of the seniority and in accordance with law, reckoning the date of completion of the work and the submission of the bill as the basis for the fixation of seniority.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

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