

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 4156 of 2015 (T)

PETITIONER :

**TOM C. KAVALAKKAL
MANAGING PARTNER,
TAN-B CONSTRUCTION, NMXII/433
NEAR MILMA, CNG MAIN ROAD, NILAMBUR
MALAPPURAM DISTRICT, PIN-679 329.**

**BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN:695001.**
- 2. THE SUPERINTENDING ENGINEER
PWD ROAD DIVISION, PWD COMPLEX, MANACHIRA
KOZHIKODE, PIN-673001.**
- 3. THE EXECUTIVE ENGINEER
PWD ROADS DIVISION, MANJERI, PIN-676121.**

R1 TO R3 BY SR. GOVT. PLEADER SRI. K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 4156 of 2015 (T)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE SELECTION NOTICE NO.DCI/5725/2013 DATED 19.1.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE REPRESENTATION DATED 28.1.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE REPLY NOTICE DATED 2.2.2015 SENT BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE CERTIFICATE ISSUED FROM THE OFFICE OF 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE CIRCULAR DATED 7.3.2003 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE INTERIM ORDER DATED 17.12.2014 IN WP(C) NO.32896/2014 PASSED BY THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 4156 of 2015

Dated this the 23rd day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i. Issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to permit the petitioner to enter into the agreement for execution of the work awarded under Ext.P1 adjusting the necessary amount from Rs.22,43,088/- covered by Ext.P4 towards the Security deposit of Rs.12,35,150 in the Treasury Security Scheme in compliance with Ext.P1.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to waive the condition of depositing Rs.12,35,150/- in the Treasury Security Scheme and adjust the same from the amount mentioned in Exhibit P4 certificate.

iii. Pass such other order or direction as deem fit to the facts and circumstances of the case."

2. The case projected by the petitioner is that he had been awarded a work by the respondents, which is stated as completed to the satisfaction of all concerned, as evident from Ext.P4. Pursuant to the submission of the final bill, verification was

conducted and Ext.P4 N.O.C. has been issued by the 3rd respondent to the effect that a total sum of ₹22,43,088/- is payable to the petitioner in respect of the work already completed. The said amount is still to be disbursed to the petitioner.

3. While so, another work was awarded to the petitioner on being the successful bidder and Ext.P1 dated 19.01.2015 was issued by the 2nd respondent. By virtue of Ext.P1, the petitioner is supposed to furnish performance security to the tune of ₹49,40,450/- and '25%' of the said amount, i.e. an extent of Rs.12,35,150/- is required to be satisfied in the form of 'Treasury Deposit' for fulfillment of the contract. It is stated that, in so far as a sum of ₹22,43,088/- is still to be disbursed to the petitioner, the petitioner might be permitted to have the requisite amount adjusted/set off/reckoned so as to meet the obligation under Ext.P1. Since such a request was not acceded to, which is against Ext.P5 Circular dated 7.3.2003, the petitioner is constrained to approach this Court by filing this writ petition.

4. Heard the learned counsel appearing for the petitioner as well as the learned Government Pleader appearing for the respondents.

5. The learned Government Pleader points out that, by virtue of Government Order bearing G.O.(P) No.104/2014/Fin. dated 14.03.2014, the successful bidder is required to effect a deposit to an extent of atleast 25% in the form of treasury deposit. In the instant case, the learned Government Pleader also points out that a sum of ₹9,75,81,905/- is pending disbursement to the petitioner for the period from 1.1.2014 to 31.12.2014.

6. The learned counsel for the petitioner points out that, Ext.P4 certificate dated 03.2.2015 is only in respect of the particular work wherein the admitted amount liable to be paid to the petitioner is ₹22,43,088/- and the prayer is to cause the said amount to be adjusted as against the 25% of the total performance security of ₹49,40,450/-. It is stated that the petitioner has already furnished Bank Guarantee for the balance amount.

7. After hearing both the sides, this Court finds that under similar circumstance, particularly when amount is liable to be disbursed to the contractors and when security/such other amount is demanded in respect of the subsequent works, interference was made by this Court in O.P.No.1943/2003

directing for appropriate adjustment. Similar course has been adopted in subsequent cases as well, as per Ext.P6. Coming to the necessity to effect 25% of the security deposit in the form of 'Treasury Deposit', the crux of the circular sought to be relied on from the part of the respondents is that the party is at liberty to furnish security deposit in such form of his choice, subject to the rider that 25% shall be by way of 'Treasury Deposit'. It has to be borne in mind that, such deposit as and when effected by the depositor, will of course, remain as a deposit in the name of the depositor, though the party may be required to pledge the deposit in favour of the Government/Governmental authorities to the requisite extent.

8. Coming to the particular facts and circumstances, it has to be noted that there is no dispute as to the eligibility of the petitioner to obtain the due amount, to the tune of ₹22,43,088/- as evident from Ext.P4 certificate issued by the concerned respondent. The entire amount as above is admittedly lying with the State/Department which is as good as a deposit in a Treasury. Petitioner has already furnished Bank Guarantee for the balance amount. It is true that disbursement has to be effected on the basis of seniority in effecting the payment. But,

that in no way can place any bar with regard to the nature of relief sought for; as the petitioner is not seeking for any disbursement, but only to reckon the same as against the deposit to be effected as security for proceeding with further steps in connection with Ext.P1.

8. In the said circumstances, the concerned respondents are set at liberty to earmark the requisite amount covered by Ext.P1 towards security deposit to be furnished by the petitioner from the amounts payable to the petitioner as per Ext.P4 and the same needs to be disbursed only subject to successful completion of Ext.P1 work and subject to the terms of the contract.

The writ petition is disposed of accordingly.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

kp/-