

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 8441 of 2008 (E)

PETITIONER :

I.DENNISON,S/O.LATE ISRAEL, AGED 54 YEARS
DAM SITE HOUSE, NEYYARDAM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS :

1. THE STATE OF KERALA REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE SECRETARY,
DEPARMENT OF FORESTS & WILD LIFE
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.
3. THE CHIEF CONSERVATOR OF FORESTS,
GOVT.OF KERALA, FOREST OFFICE, VAZHUTHACAUD
THIRUVANANTHAPURAM.
4. THE WILD LIFE WARDEN (SANCTUARY)
DEPARTMENT OF FORESTS, OFFICE OF THE WILD LIFE
WARDEN, WILD LIFE DIVISION, THIRUVANANTHAPURAM.
5. THE CONSERVATOR OF FORESTS,
AGUSTYA VANAM BIOLOGICAL PARK, GOVT. OF KERALA
FOREST OFFICE, VAZHUTHACAUD, THIRUVANANTHAPURAM.

R BY GOVERNMENT PLEADER SMT.M.T.SHEEBA
R BY SRI.M.P.PRAKASH,SPL.GP FOR FOREST

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015,
ALONG WITH WP(C).NO.8556/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE TENDER NOTIFICATION DATED 26.10.06

EXT.P2 : COPY OF THE LETTER DATED 30.12.2006 ISSUED BY THE 4TH RESPONDENT

EXT.P3 : COPY OF THE LETTER DATED 17.2.2007 ISSUED BY THE 4TH RESPONDENT

EXT.P4 : COPY OF THE LETTER DATED 1.3.2007 ISSUED BY THE 4TH RESPONDENT

EXT.P5 : COPY OF THE ORDER DATED 15.3.2007 ISSUED BY THE 4TH RESPONDENT

EXT.P6 : COPY OF THE JUDGMENT IN WP(C)NO.25635 OF 2007(B) DATED 12.09.07

EXT.P7 : COPY OF THE SHOW CAUSE NOTICE 24.10.2007 ISSUED BY THE 4TH
RESPONDENT TO THE PETITIONER

EXT.P8 : COPY OF THE REPLY DATED 10.11.2007 TO EXT.P7 SHOW CAUSE NOTICE

EXT.P9 : COPY OF THE SHOW CAUSE NOTICE DATED 20.11.2007 ISSUED BY THE 4TH
RESPONDENT TO THE PETITIONER

EXT.P10 : COPY OF THE REPLY DATED 29.11.2007 TO EXT.P9 SHOW CAUSE NOTICE

EXT.P11 : COPY OF THE ORDER DATED 5.1.2008 ISSUED BY THE 4TH RESPONDENT

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) Nos.8441 & 8556 of 2008

Dated this the 26th day of February, 2015

J U D G M E N T

The petitioner in both these writ petitions is the same. He has filed these writ petitions challenging the action of the respondents in blacklisting him. Both the writ petitions relate to different works. However, since the parties are same and the contentions identical, they are considered and disposed of together.

2. In W.P.(C).No.8441/2008, the petitioner had undertaken to execute certain specified civil works inside the forest area. The notification by which tenders were invited is Ext.P1. Pursuant to the notification, on the petitioner emerging as the successful tenderer, an agreement was executed. As per Ext.P2, the petitioner was requested to take possession of the site and to complete the work within a period of 1½ months. However, the petitioner did not complete the work within the time limit stipulated. Therefore, by Ext.P3 dated 17.02.2007, he was asked to complete the work. Later on, by Ext.P4 dated 01.03.2007 the time limit was extended by 20 days, up to 06.03.2007. Alleging that the petitioner had not completed the work even within the extended period, the contract was terminated. The security deposit was forfeited and it was proposed to re-tender the work at the risk and cost of the petitioner. The petitioner challenged the said action before this Court in WP(C).No.25635/07. By Ext.P6

judgment dated 12.09.2007, Ext.P5 was set aside and the matter was remitted back with a direction to issue a fresh show cause notice and to pursue further action on the basis thereof.

3. Accordingly, Ext.P7, a fresh show cause notice dated 24.10.2007 was issued. For which, the petitioner submitted Ext.P8 reply. Thereafter, Ext.P11 order dated 05.01.2008 was issued terminating the work, forfeiting the security deposit furnished by the petitioner and blacklisting him. The said proceedings are under challenge.

4. In WP(C).No.8556/2008, the petitioner had undertaken the work pursuant to Ext.P1 notification dated 26.10.2006. He had also executed Ext.P2 agreement. The work was to be completed within a period of 1½ months. Since the petitioner did not commence the work, the agreement was terminated by Ext.P4. However, the petitioner contended that the entire work was completed. Thereafter, by Ext.P5 order dated 28.02.2007, the petitioner was blacklisted. The petitioner challenged the said order in WP(C)No.25039/2007 of this Court. As per Ext.P6 judgment, the said writ petition was disposed of quashing Ext.P5 and directing initiation of fresh proceedings by issuing a show cause notice afresh. Accordingly, Ext.P7 show cause was issued. The petitioner replied to the same by submitting Ext.P8. On receipt of Ext.P8, a further notice was issued, which is Ext.P9 to which the petitioner submitted Ext.P10 reply. Thereafter, Ext.P11 order has been

passed cancelling the agreement, forfeiting the security deposit furnished by him and blacklisting him.

5. According to Adv.Sri.K.B.Pradeep who appears for the petitioner in both the cases, the allegation that the work was not completed is absolutely false and baseless. In fact, the work was completed within the stipulated time. Allegations of *malafides* are also levelled against the particular Wild Life Warden alleging that he had an axe to grind against the petitioner, for having picked up a quarrel with his brother-in-law, who was another Wild Life Warden. The petitioner alleges that the various proceedings taken against him by the brother-in-law of the 4th respondent had been either quashed by this Court or found to be unsustainable. According to the learned counsel, though it is alleged that the petitioner's work was of inferior quality, no notice of any defects in the work was ever issued to him or communicated. The work had been completed at considerable strain, under hostile conditions, inside the forest. Therefore, there is no justification for denying the payment due to the petitioner or for blacklisting him.

6. Separate counter affidavits have been filed by the 2nd respondent in both the writ petitions. According to the learned Government Pleader who appears for the 2nd respondent, sufficient opportunity had been provided to the petitioner to complete the work. The allegation of the petitioner that no time for completion of the work had been stipulated in the agreement, is denied. According to the

counter affidavit, the allegation that the 4th respondent has a brother-in-law who was also a Wile Life Warden, is itself without any basis. With respect to the work in WP(C).No.8441/2008, it is pointed out that, since the work was not completed within the stipulated time, the term had been extended by a period of 20 days. However, as the work was not completed in spite of the extension of time, the same was terminated. The work site was taken possession of as per a mahazar dated 14.03.2007 which according to the learned Government Pleader shows that, only 70% of the work had been completed by the petitioner. It is therefore, contended that, both the grounds stated for cancellation of the agreement are justified.

7. With respect to WP(C).No.8556/2008 it is contended that the petitioner had not even commenced the work, despite grant of sufficient time. Left with no other alternative, the work had to be cancelled. Accordingly, by Ext.P11 the petitioner's security deposit was forfeited and he has been blacklisted. It is pointed out by the learned Government Pleader that, the respective action in both the cases have been pursued, only after issuing fresh show cause notices to the petitioner after the initial order was set aside by this Court. The explanation of the petitioner was duly considered and only thereafter, the impugned orders have been passed. There are no grounds to interfere with the impugned orders, according to the learned Government Pleader.

8. Heard. It is clear from the contentions advanced on behalf of the respective counsel that, the dispute in this case relates to the quality of the work undertaken by the petitioner. On the one hand, the petitioner contends that the work was completed and that, the same was of the required quality. According to the learned Government Pleader, the work was not completed in one of the cases and in the other, not even commenced. The quality of the work is also stated to be below the expected standard. The above are essential questions of fact which, I am not in a position to determine, within the limits of the summary jurisdiction available under Article 226 of the Constitution. Apart from the above, there are absolutely no materials available in this case, on the basis of which, the said factual issues could be determined one way or the other. Therefore, the said issues are left open, if necessary to be agitated by the petitioner in separate proceedings to be initiated.

9. With respect to the question as to the sustainability of the impugned orders in both these writ petitions, I notice that the petitioner had been issued with fresh show cause notices after the judgments rendered by this Court in the earlier writ petitions filed by the petitioner. The petitioner was permitted to submit his explanation to the show cause notices, his explanation has been considered and the impugned orders have been passed. I do not find any infirmity in the impugned orders justifying an interference.

For the above reasons, these writ petitions fail and are dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV