

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 4890 of 2015 ()

PETITIONER :

**MOHAMMED HARISH B.A., AGED 36 YEARS,
S/O.B.M.ABDULLA, BALADUKA HOUSE, NEKRAJE P.O.,
KASARAGOD 671 543.**

**BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.**
- 2. THE EXECUTIVE ENGINEER,
PWD ROADS AND BRIDGES DIVISION, WAYANAD,
KALPETTA NORTH.**
- 3. THE SUPERINTENDING ENGINEER,
PWD ROADS AND BRIDGES NORTH CIRCLE, PWD COMPLEX,
MANANCHIRA, KOZHIKODE 673 001.**

BY GOVERNMENT PLEADER SRI. T.P. SAJID

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: COPY OF THE LETTER OF ACCEPTANCE NO.DC6/1470/2014
DATED 4/2/2015 OF THE 3RD RESPONDENT.**

**EXHIBIT P2: COPY OF THE NO OBJECTION CERTIFICATE ISSUED FROM THE
OFFICE OF 2ND RESPONDENT REGARDING THE SANCTIONED
AMOUNTS FOR THE WORK COMPLETED BY THE PETITIONER IN
WAYANAD DIVISION SHOWING IT TO BE TO THE TUNE OF
RS. 75,35,891/-.**

**EXHIBIT P3: COPY OF THE CIRCULAR DATED 7/3/03 ISSUED BY THE 1ST
RESPONDENT.**

EXHIBIT P4: COPY OF THE JUDGMENT DATED 20.01.03 IN OP 1943/03.

**EXHIBIT P5: COPY OF THE ORDER DATED 11.2.15 ISSUED BY THE 3RD
RESPONDENT.**

EXHIBIT P6: COPY OF THE JUDGMENT DATED 29.1.15 IN WPC 2485/15.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.4890 OF 2015

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Dated this the 19th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"(i) To issue a writ of certiorari or any other appropriate writ, order or direction, quashing Exhibit P-5 to the extent to which it denies the request of the petitioner for pledging the entire amount of security deposit of Rs.20,27,500/- as shown in Exhibit P-1 for the execution of the agreement for the work awarded in favour of him as per Exhibit P-1;

(ii) To declare that, the petitioner is eligible and entitled for adjustment of the portion of the amount due to the petitioner shown in Exhibit P-2 towards the whole of the security amount as demanded in Exhibit P-1;

(iii) To 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 Exhibit P-1 treating any part of Rs.75,35,891/- covered by Exhibit P-2 as security deposit by way of Treasury Deposit, as instructed to be deposited in Exhibit P-1; and

(iv) To grant such other reliefs, as this Hon'ble Court shall deem just."

2. The case projected by the petitioner is that he has been awarded a work by the respondents, which is stated as completed in all respects to the satisfaction of all concerned, as evident from Ext.P2. Pursuant to the submission of the final bill, verification was conducted and Ext.P2 N.O.C. has been issued by the 2nd respondent to the effect that a total sum of Rs.75,35,891/- 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 letter of acceptance was issued on 04.02.2015 by the 3rd respondent. By virtue of Ext.P1, the petitioner is supposed to furnish security deposit to the tune of Rs.20,27,500/- and '25%' of the said amount, i.e. an extent of Rs.5,06,875/- 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 Rs.75,35,891/- 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 as per Ext.P5 dated 11.02.2015, 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 Ext.P5 has been issued strictly on the basis of the terms of G.O.(P) No.104/2014/Fin. dated 14.03.2014, referred to as item No.3 in Ext.P5 and as such, the petitioner has to effect 'Treasury Deposit' to the requisite extent of 25% of the total security deposit.

6. 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', though the said Government Order is not made available before this Court, the crux of which has to be reasonably presumed 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 requested to pledge the deposit in favour of the Government/Governmental authorities to the requisite extent.

7. 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 Rs.75,35,891/- as evident from Ext.P3 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. It is true that disbursement has to be effected on the basis of seniority in effecting the payment, as already held by this Court. 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.P2 and the same needs to be disbursed only subject to successful completion of Ext.P1 work and subject to the terms of the contract.

9. In view of the turn of events, the time for satisfying the obligation and to execute necessary agreement shall stand extended by 'ten days' from today.

The writ petition is disposed of accordingly.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

//true copy//

P.S. to Judge

St/-