

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

W.P.(C).No.10144 of 2009 (K)

PETITIONER(S):-

M/S.WESTERN MARINE ENGINEERING,
SHIP BUILDERS & REPAIRS, NEAR ST.LAWRENCE SCHOOL,
PB NO.915, EDAKOCHI, KOCHI 682 006,
REP. BY ITS MANAGING PARTNER, SHRI.K.T.JACOB.

BY ADV. SRI.JOY THATTIL ITTOOP.

RESPONDENT(S):-

1. M/S.GARDEN REACH SHIP BUILDERS AND ENGINEERS LTD.,
(A GOVT. OF INDIA UNDERTAKING)
DECK MACHINERY, TARATALA UNIT, KOLKATTA - 700088,
REP. BY ITS CHAIRMAN & MANAGING DIRECTOR.
2. THE CHIEF MANAGER, DECK MACHINERY AND PRODUCTION,
M/S.GARDEN REACH SHIP BUILDERS AND ENGINEERS LTD.,
(A GOVT. OF INDIA UNDERTAKING)
DECK MACHINERY, TARATALA UNIT, KOLKATTA - 700088.
3. THE CHIEF NAVAL STAFF, NAVAL HEAD QUARTERS, NEW DELHI.
4. THE SECRETARY TO THE GOVERNMENT,
THE HON'BLE MINISTER FOR DEFENCE,
MINISTRY OF DEFENCE, GOVERNMENT OF INDIA,
104, SOUTH BLOCK, NEW DELHI -110 001.

R2 BY ADV. SRI.PREMJIT NAGENDRAN.
R BY ADV. SRI.S.KRISHNAMOORTHY, CGC
R4 BY ADV. SRI.K.R.SUNIL, CGC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1. TRUE COPY OF THE FAX MESSAGE DATED 11.03.2004.
- EXT.P2. TRUE COPY OF THE FAX MESSAGE DATED 21.04.2004.
- EXT.P3. TRUE COPY OF THE WORK COMPLETION CERTIFICATE (8 NOS.)
- EXT.P4. TRUE COPY OF THE INVOICES DATED 31.03.04 & 27.04.04 (8 NOS.)
- EXT.P5. TRUE COPY OF THE COMMUNICATION ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 09.11.2005.
- EXT.P6. TRUE COPY OF THE COMMUNICATION ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 15.05.2007.
- EXT.P7. TRUE COPY OF THE COMMUNICATION DATED 12.03.2007 ISSUED BY THE SOUTHERN NAVAL COMMAND.
- EXT.P8. COPY OF THE LETTER DATED 19.02.09 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P9. COPY OF THE JUDGMENT DATED 03.03.2009.
- EXT.P10. TRUE COPY OF THE REPRESENTATION DATED 18.3.09 ADDRESSED TO THE 4TH RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

- EXT.R2(a) PHOTOSTAT COPY OF THE COMMUNICATION NO.DO/242/VAK DATED 12.03.2007 ISSUED BY THE SOUTHERN NAVAL COMMAND.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.10144 of 2009-K

Dated this the 24th day of June, 2015

JUDGMENT

The petitioner is aggrieved with the non-disbursal of the amounts, raised in the invoices indicated at Exhibit P4 series, by the 1st respondent.

2. The petitioner alleges that the award of the work and the completion of the same are admitted by the respondents and there is a dispute between the 1st respondent and the 3rd respondent as to the payments to be made. The petitioner, hence, filed a writ petition in the year 2008 and withdrew it with liberty, as evidenced at Exhibit P9, since the pendency of the petition was said to be standing against the disbursement. The petitioner has approached this Court with this writ petition on the very same contentions, since disbursement was not effected.

3. At the outset it has to be noticed that the works completed were all with respect of a work order of 2002. The work is seen to have been completed as per Exhibit P3. There is

no indication of the date on which the works were started or concluded, except in one of the completion certificates. At Exhibit P3(8), it was stated that the work was completed on 28.09.2003. The bills were raised on the 1st respondent in 2004. Even when the earlier writ petition was filed, it was beyond the three year period of limitation. The petitioner did not approach the appropriate Civil forum nor did he invoke the extra-ordinary remedy under Article 226 within that period.

4. Further, the specific contention of the petitioner is that the petitioner was a sub-contractor under a sub-contractor, one M/s.Sagar Ship Repairs, Bombay, carrying out the work awarded by the 3rd respondent to the 1st respondent. While the work was going on, certain additional work is said to have been entrusted by the 2nd respondent to the petitioner, for which the petitioner had raised Exhibit P4 invoices. The petitioner contends that the 1st respondent has to pay the same, especially since the 3rd respondent for whom the work was carried on, has certified completion of such work and has also issued Exhibit R2(a), directing the 1st respondent to make payment of an amount of Rs.2,37,647/-.

5. The learned counsel for the 1st respondent, however, submits that the 1st respondent has not entrusted any work to the petitioner. The petitioner was a sub-contractor, under a sub-contractor carrying on the work awarded to the 1st respondent by the 3rd respondent. The communication produced at Exhibit P1 would at best indicate that a notice was issued to the sub-contractor who had been carrying on such work. There is no indication in Exhibit P1 that the same is with respect to an additional work. In any event, the 1st respondent has no privity of contract with the petitioner and the 1st respondent had engaged another sub-contractor M/s.Sagar Ship Repairs, based at Mumbai, who had in fact sub-contracted the work to the petitioner herein.

6. A reading of Exhibit P1, as has been stated by the learned counsel for the 1st respondent, would not indicate that any specific contract was granted to the petitioner. The petitioner also has the specific case that the petitioner had agreed to do some additional works, which, even according to the petitioner, was not on the basis of any specific work order or agreement pursuant to a valid award of contract. It is not

clear as to on whose instruction the work was carried out; whether it was under the instruction of the 1st respondent or the 3rd respondent. No document is produced to show the entrustment of such work. The petitioner, on the basis of Exhibit P3 series completion certificates, raises invoices/bills evidenced at Exhibit P4 series, as against the 1st respondent and contends that the 3rd respondent has instructed the 1st respondent to pay the amounts to the petitioner.

7. In the context of the petitioner not being able to show any specific contract with the 1st respondent, the mere raising of invoices as against the 1st respondent would not entitle the petitioner to claim the said amounts. The admission made in the counter affidavit, relied on by the petitioner, is also only with respect to the receipt of Exhibits P5 and P6. The 1st respondent does not admit the contents of the said documents. The additional works said to have been carried out by the petitioner for the 3rd respondent, in any event, was without any formal orders from the 1st respondent and it was on its own volition. The petitioner admits that they do not have any contract with the 1st respondent. On the basis of the

additional works executed for the 3rd respondent and the certification of such works by the competent authority of the 3rd respondent, the petitioner raised a claim against the 1st respondent, which cannot be countenanced. The contention of the petitioner that the works were carried out on the instruction of respondents 1 and 2 remains unsubstantiated.

For all the above reasons, the writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]