

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 5966 of 2015 (U)

PETITIONER(S):

**S.R.VENUGOPALA PRABHU,
PROPRIETOR, M/S.NATIONAL ELECTRIC COMPANY
CONSULTING ENGINEERS & CONTRACTORS, A1/71
MULLASSERY CANAL ROAD, ERNAKULAM, KOCHI-682011.**

BY ADV. SRI.S.R.DAYANANDA PRABHU

RESPONDENT(S):

- 1. THE SUPERINTENDING ENGINEER,
P.H.CIRCLE (FORMER HUDCO CIRCLE)
KERALA WATER AUTHORITY,
KOCHI-682011.**
- 2. EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY,
PROJECT DIVISION, PERUMBAVUR
PIN-683 542.**

BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1 :** LETTER FOR ACCEPTANCE OF TENDER DATED 13-1-2003 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT P2 :** SPECIAL CONDITIONS ATTACHED TO THE NOTICE INVITING TENDER DATED NIL.
- EXT P3 :** ORDER DATED 28-06-2005 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT P4 :** LETTER DATED 26-11-2004 ISSUED BY THE KERALA ELECTRICAL AND ALLIED ENGINEERING COMPANY LIMITED TO THE PETITIONER.
- EXT P5 :** TRUE COPY OF INVOICE NO.473 DATED 18-11-2004 ISSUED BY THE KERALA ELECTRICAL AND ALLIED ENGINEERING COMPANY LIMITED TO THE PETITIONER.
- EXT P6 :** GUARANTEE CERTIFICATE DATED 26-11-2004 ISSUED BY THE KERALA ELECTRICAL AND ALLIED ENGINEERING COMPANY LIMITED TO THE PETITIONER.
- EXT P7 :** LETTER DATED 25-11-2009 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXT P8 :** LETTER DATED 07-05-2013 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXT P9:** REPLY LETTER DATED 16-05-2013 ISSUED BY THE PETITIONER TO THE SECOND RESPONDENT.
- EXT P10 :** LETTER DATED 15-05-2014 ISSUED BY THE PETITIONER TO THE SECOND RESPONDENT.
- EXT P11 :** LETTER DATED 23-09-2014 ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT.
- EXT.P12:** COPY OF PROCEEDINGS OF THE ELECTRICAL INSPECTOR, ERNAKULAM DATED 28/9/10.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.5966 of 2015

Dated this the 24th day of March, 2015

JUDGMENT

Non-disbursement of the amount of Rs.83,700/- (Rupees Eighty three thousand and seven hundred only) retained from the bills of the petitioner and non-return of the sum of Rs.66,300/- (Rupees Sixty six thousand and three hundred only) effected by the petitioner towards the security deposit in connection with the work awarded, form the subject matter of challenge in this writ petition.

2. Pursuant to Ext.P1 letter of acceptance of the tender dated 13.11.2003 issued by the first respondent, the petitioner purchased a transformer to be installed in the premises of the respondents, but the installation and commissioning got delayed for reasons only attributable to the respondents herein.

3. The learned counsel for the petitioner points out that, the factual position in this regard is discernible from Ext.P3 order

dated 28.06.2005. As a matter of fact, the transformer was purchased by the petitioner as evident from Ext.P5 invoice dated 18.11.2004. Ext.P6 is the Guarantee Certificate. The commissioning got delayed for seven years, which is discernible from Ext.P7 letter dated 25.11.2009 addressed to the Electrical Inspectorate. Sanction was given by the Electrical Inspector only on 28.09.2010, which was necessary by virtue of the mandate under Section 54 of the Electricity Act, 2003. Finally, the line was commissioned on 25.05.2012, but thereafter the transformer got damaged on 07.05.2013. In the meanwhile, a sum of Rs.83,700/- (Rupees Eighty three thousand and seven hundred only) was retained in the final bill submitted by the petitioner as the retention amount and the security deposit of Rs.66,300/- (Rupees Sixty six thousand and three hundred only) was also not released. The claim made by the petitioner for returning the said amounts was not acceded to, stating that the transformer had to be rectified by the petitioner. The petitioner pointed out that, the petitioner was not liable to satisfy the demand, for the reason

that the installation was made after several years of procurement of the transformer and the delay was never attributable to the petitioner, but to the respondents. The refusal on the part of the respondents to accede to the request made by the petitioner is under challenge in this writ petition.

4. A Counter Affidavit has been filed from the part of the respondents and the petitioner has filed a Reply Affidavit as well. The learned Standing Counsel for the respondents submits that, as per the terms of Ext.R1(a) proceedings, it was the duty of the petitioner to have obtained sanction from the Electrical Inspectorate and as such, the delay, if at all any, was only of the petitioner and not of the respondents. Reference is also made to Ext.R1(c) proceedings, whereby various defects were required to be cleared by the Electrical Inspector, as per the letter addressed to the Executive Engineer of the Water Authority, with copy to the petitioner. It was for the petitioner to have rectified the defects then and there, which was not done.

5. The learned counsel for the petitioner however points out

that, serial Nos.12 and 13 of Ext.R1(c) are not coming within the purview of the petitioner.

6. After hearing both the sides, this Court finds that there is a disputed question of fact, which cannot be adjudicated by this Court in a proceeding under Article 226 of the Constitution of India. It is also pointed out that, there is no clause enabling arbitration of the dispute. With regard to the question of limitation as to the filing of civil suit, the learned counsel for the petitioner submits that, the cause of action has arisen only when the transformer got damaged and the request made by the petitioner to disburse the retention amount and the security deposit was refused to be acceded to. Before relegating the petitioner to pursue such exercise, this Court finds it fit and proper to cause the dispute to be considered by the authorities at higher level.

7. Accordingly, the petitioner is set at liberty to file an exhaustive representation before the Managing Director of the Water Authority and on filing such proceeding within 'two weeks'

from the date of receipt of a copy of this judgment, the same shall be dealt with and appropriate orders shall be passed after hearing the petitioner, in accordance with law, at the earliest, at any rate, within 'two months' from the date of receipt of a copy of the representation.

The writ petition is disposed of.

Sd/-

**P.R. RAMACHANDRA MENON,
JUDGE**

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