

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 6661 of 2015 (G)

PETITIONER(S):

**SIRAJ T.A., AGED 40 YEARS,
S/O.ALI, KONGORPPILLY HOUSE,
PANANGADU P.O., KOCHI.**

*** ADDITIONAL PETITIONERS P2 TO P4 IMPEADED**

**2. AABIDHA, AGED 63 YEARS,
W/O LATE ALI, KONGORPPILLY HOUSE, PANANGADU P.O.,
KOCHI.**

**3. BADARUNNEESA,
W/O LATE SIRAJ T.A., KONGORPPILLY HOUSE, PANANGADU P.O.,
KOCHI.**

**4. ANSIL ALI, (MINOR), AGED 6 YEARS,
REPRESENTED BY HIS MOTHER BADARUNNEESA
W/O LATE SIRAJ T.A., KONGORPPILLY HOUSE, PANANGADU P.O.,
KOCHI.**

**5. ANSHA SIRAJ, (MINOR), AGED 3 YEARS,
REPRESENTED BY HER MOTHER BADARUNNEESA,
W/O.LATE SIRAJ T.A., KONGORPPILLY HOUSE, PANANGADU P.O.,
KOCHI.**

**ADDL. P2 TO P5 ARE IMPEADED AS PER ORDER DATED 23.07.2015 IN
IA 9568/15.**

**BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO**

RESPONDENT(S):

**1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

**2. ROADS AND BRIDGES DEVELOPMENT CORPORATION OF KERALA LTD.,
REPRESENTED BY MANAGING DIRECTOR, PREETHI BUILDINGS,
M.V.ROAD, PALARIVATOOM, COCHIN - 682 025.**

**R1 BY GOVERNMENT PLEADER SMT.C.K.SHERIN
R2 BY ADV. SRI.M.VIJAYA KUMAR, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 6661 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE CONTRACT AGREEMENT DTD.6.6.2014.

EXT.P2: TRUE COPY OF THE NOTIFICATION DTD.4.5.2013.

EXT.P3: TRUE COPY OF THE COMMUNICATION DTD.8.1.2015.

EXT.P4: TRUE COPY OF THE REPRESENTATION DTD.19.1.2015.

EXT.P5: TRUE COPY OF THE LETTER DTD.7.2.2015.

EXT.P6: TRUE COPY OF THE DEATH CERTIFICATE DTD.26.5.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A. MUHAMED MUSTAQUE, J.

W.P.(C) No. 6661 of 2015

Dated this the 18th day of December, 2015

J U D G M E N T

The original writ petitioner, namely, Siraj T.A., a handicapped person having 60% disability, was awarded with the right to collect user fee on contract basis from Road Over Bridge at Parappanangadi for one year from 09.06.2014 till 09.06.2015. Since Siraj T.A. is no more, his LRs are on record now. He quoted the highest amount of ₹7,77,777/- and agreement was executed on 06.06.2014. The petitioner has to pay the amount in 24 installments at the rate of ₹33,055/- per month.

2. Thereafter, during the currency of the agreement, there was some protest from the local people. Accordingly, the awarder/the 2nd respondent has issued free passes to 318 light motor vehicles and decided to give a concession in monthly installments and it was reduced to @ ₹20,482/- plus TCS. Thus, the monthly

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installment to be made by Siraj is ₹23,850/-. The total amount is ₹5,01,408/-. The petitioner has approached this Court challenging Exts.P3 & P5.

3. The learned counsel for the petitioners submits that on account of the issuance of free passes, the petitioners suffered huge loss and the determination of loss by reducing monthly payment is illegal.

4. It has to be noted first that the 1st petitioner, who is the awardee, is no more. The decision to reduce the monthly installment has been taken on account of the protest from the local people. It appears that such a decision is arbitrary in the sense that a contractor accepts a contract taking into account the factors given on record at the time of contract. The subsequent reduction is owing to the intervening factors. Certainly, this can frustrate the contractor. The clauses of the contract cannot be unilaterally changed by one party, without concurrence of the other party.

Therefore, this Court is of the view that Exts.P3 & P5

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have to be set aside. Considering the fact that the awardee continued till the term is over, he cannot withdraw from the liability as he has carried out the contract till the period was over. In that view of the matter, this Court is of the view that a lenient view can be taken to settle the liability. The Managing Director shall sympathetically take a decision in the matter, after hearing the petitioners within a period of one month and the 2nd respondent shall give maximum concession to the petitioners.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE