

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 18462 of 2005 (W)

PETITIONER(S):

**K. SODARAN, SREEKRISHNA NILAYAM,
THAZHAMEL, ANCHAL P.O., KOLLAM.**

BY ADV. SRI.MOHAN C.MENON

RESPONDENT(S):

- 1. STATE OF KERALA, REP. BY THE SECRETARY
TO GOVERNMENT, PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE SUPERINTENDING ENGINEER,
P.W.D. ROAD & BRIDGES SOUTH CIRCLE,
THIRUVANANTHAPURAM.**
- 3. THE EXECUTIVE ENGINEER, P.W.D.
ROADS DIVISION, THIRUVANANTHAPURAM.**

BY SENIOR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF APPLICATION/REPRESENTATION DT.22/10/02 OF THE PETITIONER TO R2**
- P2: COPY OF ORDER NO.DB4.3593/84 DT.24/10/02 OF THE R2**
- P3: COPY OF THE REPRESENTATION DT.25/10/02 OF THE PETITIONER TO R2**
- P4: COPY OF THE REPRESENTATION DT.9/12/02 OF THE PETITIONER TO R2.**
- P5: COPY OF GOVERNMENT ORDER DATED 30/3/02**
- P6: COPY OF LETTER DATED 9/12/02 ISSUED BY PETITIONER TO THE R2**
- P7: COPY OF LETTER SENT BY PETITIONER TO THE R2 DATED 30/7/03.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 18462 of 2005

Dated this the 4th day of September, 2015

J U D G M E N T

The petitioner has approached this Court aggrieved by the fine imposed by the 2nd respondent as per Ext.P2.

2. The petitioner, who is a government contractor having A class registration, had been awarded with the work, construction of approaches to the railway under bridge at Varkala. The contract was executed on 22.01.2000. As per the agreement, the work had to be completed within six months from 14.03.2000, i.e., on or before 30.09.2000. The petitioner alleges that the site was handed over only on 14.03.2000. Thereafter, the date of completion of the work was extended up to 30.09.2001 and thereafter, up to 31.03.2002. Then, again, the time was extended up to 31.03.2000 imposing a fine of ₹1,05,000/-. According to the petitioner, the said imposition of fine is against the direction of the

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government as a sum of ₹1.5 crores is due to the petitioner from the government. The petitioner alleges that though the work was completed in November, 2003, the part bills drawn in March and November 2003 are not so far disbursed and the final bill is not drawn. Hence, this writ petition.

3. The learned Single Judge, who heard the writ petition on 08.08.2007, dismissed the writ petition. However, the same was subsequently reviewed on the application submitted by the petitioner along with additional documents as Exts.P5 to P7, which the petitioner could not produce at the time of early hearing. In RP No.969/2007, which was filed by the petitioner herein for reviewing the judgment dismissing the writ petition, a statement had been filed by the State, to which the petitioner had filed reply. In the statement, it is stated as follows;

The work was awarded to the petitioner by
executing agreement dated 22.01.2000 and the

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actual time of completion was six months from 31.12.1999. After complying with formalities including execution of agreement, the contractor has taken over the site on 14.03.2000. According to them, there was no delay or laches on the part of the respondents in handing over of the land. As per the agreement, the actual time of completion of the work was six months from 31.12.1999. Within the time frame agreed as per the terms of the agreement, the contractor failed to complete the work. So, on the basis of the application submitted by the contractor for extension of time, the 2nd respondent granted extension of time for a total period of 27 months at different intervals as the contractor persistently failed to complete the work within the stipulated time frames granted and the extension of time was granted as stated above without imposition of fine and even then, the petitioner

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has not completed the work within the prescribed time; it is contended.

According to them, the contention of the petitioner that he could not complete the work due to non handing over of the land occupied by the Water Authority, Health Department and the land leased out to the SN Mission Hospital, KSEB and the Water authority, is not sustainable in view of the fact that the said land occupied by the above public undertakings is only a negligible portion of the land, which requires only at the time of finishing stage of the work. They have pointed out that as evident from Annexure A produced along with the review petition, the petitioner was granted enhanced rate for the remaining work done after February, 2001. Therefore, according to them, the petitioner cannot contend that the delay in handing over the meager portion of the land occupied by the above

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mentioned public undertakings caused any prejudice to him.

It is further stated that even after repeated requests and reminders made by the Department, the petitioner completed only 50% of the work as on 31.03.2002, i.e., expiry date of the extended period granted. This conduct of the petitioner itself proves his willful reluctance and laches in completing the work even within the extended period of time; according to the 2nd respondent. Under these circumstances, the Department was constrained to impose fine as per the agreement conditions to grant further extension of time up to 31.03.2003. It is further contended that at the time of issue of Ext.P2, no bill was pending without payment in relation to the work concerned.

4. Arguments have been heard.

5. The stand taken by the respondents is that

there was no delay or laches on their part. However, according to the learned counsel for the petitioner, it is against the report of the Government. According to the learned counsel for the petitioner, the delay in completing the work is only attributable to the respondents in effecting timely grant of free site for the execution of work as evident from Ext.P5, which is the government order dated 30.03.2002. Ext.P5 reveals that during the period of second extension for completion, the Arbitration Committee held on 15.01.2002 had rendered a decision, which has been accepted by the 1st respondent as per the order dated 30.03.2002. Ext.P5 shows the following facts;

- (a)The site was handed over only on 14.03.2000.
- (b)The other part of the site was still under the Water Authority, Health Department and the SN Mission Hospital, KSEB.
- (c)Since funds were not allotted for shifting, execution of work took time.

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- (d) Only after the land is made available to the contractor, the work could be continued.
- (e) The balance work could be continued only after the government land is made available to the Chief Engineer.
- (f) Enhanced rate would be payable after the required land is handed over.
- (g) The committee was convinced that the petitioner could not continue the work as the land belonging to different departments of the Government need to be transferred and made available to him for doing the work.
- (h) The enhanced rate for the work could be paid after February 2001.

6. The very fact that time was granted to the petitioner justifies the case of the petitioner. However, while granting extension at the third time, Ext.P2 was issued imposing fine. It is crucial to note that the materials made mention of in Ext.P5, which are narrated above, escaped the attention of the 2nd respondent while

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imposing penalty. It is also relevant to note that the enhancement of rate was allowed by the Arbitration Committee. Had there been any willful delay on the part of the petitioner, such a course would not have been adopted by the State Arbitration Committee. Therefore, on a consideration of the entire materials now placed on board, this Court is of the view that the petitioner is entitled to the relief as prayed for.

In the result, the writ petition is allowed. Ext.P2 is quashed and the petitioner is exonerated from paying the amount mentioned in Ext.P2.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-