

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No.12981 of 2010 (W)

PETITIONER :-

M.K.CHANDRAHAS, AGED 70,
S/O.LATE.M.KESAVA PANICKER,
"CHEERUS" CRA 807, CHAYAKKUDI ROAD,
PETTAH, THIRUVANANTHAPURAM-695024.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENTS :

1. THE STATE OF KERALA,
REP.BY THE SECRETARY TO GOVT.,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE THRISSUR MUNICIPAL CORPORATION,
M.O.ROAD, THRISSUR, REP.BY ITS SECRETARY.
3. THE MUNICIPAL ENGINEER,
THRISSUR MUNICIPAL CORPORATION, M.O.ROAD, THRISSUR.

R2, R3 BY ADV. SRI.K.P.VIJAYAN
R2, R3 BY ADV. SRI.V.M.SYAM KUMAR
R2&3 BY ADV. SMT.KRIPA ELIZABETH MATHEWS
R2&3 BY ADV. SRI.V.N.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : A TRUE COPY OF THE LIST OF THE DETAILS INCLUDING PAYMENTS EFFECTED PREPARED BY THE PETITIONER.
- EXT.P2 : A TRUE COPY OF THE COMMUNICAITON BY THE URBAN AFFAIRS DIRECTOR TO THE 1ST RESPONDENT DTD.13.6.2005.
- EXT.P3 : A TRUE COPY OF THE COMMUNICAITON BY THE 2ND RESPONDENT DTD.28.5.2005.
- EXT.P4 : A TRUE COPY OF THE COMMUNICATION BY THE 1st RESPONDENT DATED 18.8.2005.
- EXT.P5 : A TRUE COPY OF THE COMMUNICATION BY THE PETITIONER TO THE C.E., THRISSUR CORPORATION DTD.17.11.2005.
- EXT.P6 : A TRUE COPY OF THE COMMUNICATION BY THE PETITIONER DTD.7.2.2006.
- EXT.P7 : A TRUE COPY OF THE COMMUNICATION BY THE PETITIONER DTD.30.11.2006.
- EXT.P8 : A TRUE COPY OF THE RELEVANT PAGE OF THE BOOK RELATED TO THE FINAL BILL DTD.24/11/2008.

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.12981 of 2010

Dated this the 01st day of June, 2015

JUDGMENT

The petitioner is a Contractor engaged by the 2nd respondent Corporation for carrying out the construction of shopping centre at East Fort Junction in South-West corner. He has entered into an agreement dated 24.12.1998 with the 2nd respondent and completed the construction and handed over the keys of the shopping centre by 22.9.2006. The grievance of the petitioner is that, though final measurements were completed and approved for payment as evident from Ext.P8 only 75% of the bill amount was paid and the balance amount was retained stating that certain issues have to be finally decided by the 2nd respondent before realising that amount. It was in such circumstances the petitioner has approached this Court in this Writ Petition seeking a writ of mandamus commanding respondents 2 and 3 to complete all further proceedings on the basis of Ext.P8 after hearing the petitioner and effect payment of the amount due to him within a time limit that may be fixed by this Court.

2. A counter affidavit has been filed on behalf of respondents 2 and 3 contending that as per CC 9th and the final bill the total amount expended for the work is ₹63,54,219/- from this final bill certain amounts were deducted under different heads including tax due to the Government, the amount spend by the Corporation for supplying cement and iron rods and an amount of ₹31,50,857/- is further deducted because the said amount was paid by the Corporation towards the bill amounts for CC 1 to 8. After deducting the said amount the balance amount is ₹.7,41,465/-. According to respondents 2 and 3, the petitioner was obliged to return balance materials from the items supplied by the department which was not complied with. Therefore an amount corresponding to the prevailing market rate is also deducted from the above amount and the remaining balance was ₹4,01,427/-, out of which 75% of the said amount i.e., ₹.3,01,070/- has already been paid to the petitioner. A reading of the counter affidavit filed by respondents 2 and 3 would show that an amount of ₹3,03,126/- was deducted from the final bill towards the value of the balance material supplied by the Department which were not returned by the petitioner. Respondents

2 and 3 would contend that such deduction is permissible as per paragraph 30 of the PWD Code.

3. By order dated 28.8.2014 this Court directed respondents 2 and 3 to pay the admitted amount within a period of one month. The learned Standing Counsel for the 2nd respondent on instructions submitted that, pursuant to the aforesaid order passed by this Court admitted amount has already been disbursed to the petitioner and what remains is the value for the materials not returned by the petitioner.

4. I heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the 2nd respondent/Corporation.

5. The grievance of the petitioner is that even after submission of Ext.P8, various amounts due to him in respect of the work already carried out are not disbursed by the 2nd respondent. But a reading of the counter affidavit filed by the 2nd respondent would indicate that there are certain disputes between the petitioner and the 2nd respondent regarding return of balance materials. The 2nd respondent would contend that the petitioner is yet to return

such materials and it was in such circumstances the balance payment to a certain extent is withheld by the Corporation. Per contra the learned counsel for the petitioner would contend that the 2nd respondent assessed value of such balance materials at the prevailing market rate, which is highly arbitrary and illegal. In order to meet the above submission the learned counsel for the 2nd respondent would rely on the provision under the PWD Code.

6. When there is factual disputes as to the balance amount payable to the petitioner in respect of the contract work already undertaken, the 2nd respondent cannot be directed to pay that amount before adjudication of such disputes. Such factual disputes cannot be adjudicated by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. In such circumstances, it is for the petitioner to make an appropriate representation before the 2nd respondent claiming the balance amount, if any, due from the 2nd respondent in respect of the work already undertaken by him. If such a representation is received within a period of three weeks from the date of receipt of a copy of this judgment, the 2nd respondent shall consider the same and pass appropriate orders, as

expeditiously as possible, at any rate, within a period of three months from the date of receipt of such representation. Needless to say that, while disposing such representation the 2nd respondent shall afford the petitioner a reasonable opportunity of being heard.

The Writ Petition is disposed of as above.

Sd/-
ANIL K.NARENDRAN, JUDGE

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