

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10182 of 2015 (W)

PETITIONER(S) :

**P.T.SREENIVASAN,
PWD CONTRACTOR, THAYYIL HOUSE,
CHELAVOOR P.O, KOZHIKODE- 673 571.**

**BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**
- 2. THE EXECUTIVE ENGINEER,
PWD ROADS DIVISION, KOZHIKODE- 673 001.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE SELECTION NOTICE NO.D3/765/2014
DATED 07.03.2015 ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT P2: TRUE COPY OF THE SELECTION NOTICE NO.D3/762/2014
DATED 07.03.2015 ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE SELECTION NOTICE NO.D1/2782/2014
DATED 18.03.2015 ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT P4: TRUE COPY OF THE SELECTION NOTICE NO.D1/2781/2014
DATED 23.03.2015 ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT P5: TRUE COPY OF THE REPRESENTATION DATED 23.03.2015
SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**

**EXHIBIT P6: TRUE COPY OF THE CERTIFICATE DATED 13.03.2015 ISSUED
FROM THE OFFICE OF 2ND RESPONDENT.**

**EXHIBIT P7: TRUE COPY OF THE CIRCULAR DATED 07.03.2003 ISSUED BY
THE 1ST RESPONDENT.**

**EXHIBIT P8: TRUE COPY OF THE JUDGMENT DATED 23.02.2015 IN
W.P.(C).NO.4156/2015 PASSED BY THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 10182 of 2015

Dated this the 30th day of March, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

“i. Issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to permit the petitioner to enter into the agreement for execution of the work awarded under Exhibits P1 to P4 adjusting the necessary amount from Rs.39,49,552/- covered by Exhibit P-6 towards the Security deposit demanded in Exhibit P-1 to P-4.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to waive the condition of depositing the amounts mentioned in Exhibit P-1 to P-4 and to adjust the same from the amount mentioned in Exhibit P-6 certificate.

iii. Pass such other order or direction as deem fit to the facts and circumstances of the case.”

2. The case projected by the petitioner is that, he had been awarded a work by the respondents, which is stated as completed to the satisfaction of all concerned, as evident from Ext.P6. Pursuant to the submission of the final bill, verification was conducted and Ext.P6 N.O.C. has been issued by the 2nd respondent to the effect that a total sum of ₹39,49,552/- is

payable to the petitioner in respect of the work already completed. The said amount is still to be disbursed to the petitioner.

3. While so, another work was awarded to the petitioner on being the successful bidder, issuing Exts.P1 to P4 by the 2nd respondent. By virtue of Exts.P1 to P4, the petitioner is required to furnish performance security to the tune of ₹7,53,100/- and '25%' of the said amount, i.e. an extent of ₹1,88,275/- is required to be satisfied in the form of 'Treasury Deposit' for fulfillment of the contract. It is stated that, in so far as a sum of ₹39,49,552/- is still to be disbursed to the petitioner, the petitioner might be permitted to have the requisite amount adjusted/set off/reckoned so as to meet the obligation under Exts.P1 to P4. Since such a request was not acceded to, which is against Ext.P7 Circular dated 7.3.2003, the petitioner is constrained to approach this Court by filing this writ petition.

4. Heard the learned counsel appearing for the petitioner as well as the learned Government Pleader appearing for the respondents.

5. The learned Government Pleader points out that, by

virtue of the Government Order bearing G.O.(P) No.104/2014/Fin. dated 14.03.2014, the successful bidder is required to effect a deposit to an extent of atleast 25% in the form of treasury deposit.

6. The learned counsel for the petitioner points out that, Ext.P6 certificate dated 13.03.2015 is only in respect of the particular work, wherein the admitted amount liable to be paid to the petitioner is ₹39,49,552/- and the prayer is to cause the said amount to be adjusted as against the 25% of the total performance security of ₹7,53,100/-. It is stated that the petitioner has already furnished Bank Guarantee for the balance amount.

7. After hearing both the sides, this Court finds that under similar circumstance, particularly when amount is liable to be disbursed to the contractors and when security/such other amount is demanded in respect of the subsequent works, interference has been made by this Court in O.P.No.1943/2003 directing for appropriate adjustment. Similar course has been adopted in subsequent cases as well, as per Ext.P8. Coming to the necessity to effect 25% of the security deposit in the form of

'Treasury Deposit', the crux of the circular sought to be relied on from the part of the respondents is that the party is at liberty to furnish security deposit in such form of his choice, subject to the rider that 25% shall be by way of 'Treasury Deposit'. It has to be borne in mind that, such deposit, as and when effected by the depositor, will of course, remain as a deposit in the name of the depositor, though the party may be required to pledge the deposit in favour of the Government/Governmental authorities to the requisite extent.

8. Coming to the instant case, it has to be noted that there is no dispute as to the eligibility of the petitioner to obtain the due amount, to the tune of ₹39,49,552/- as evident from Ext.P6 certificate issued by the concerned respondent. The entire amount as above is admittedly lying with the State/Department which is as good as a deposit. Petitioner has already furnished Bank Guarantee for the balance amount. It is true that disbursement has to be effected on the basis of seniority in effecting the payment. But, that in no way can place any bar with regard to the nature of relief sought for; as the petitioner is not seeking for any disbursement, but only to reckon the same as

against the security deposit to be effected for proceeding with further steps in connection with Exts.P1 to P4.

9. In the said circumstances, the concerned respondents are set at liberty to earmark the requisite amount covered by Exts.P1 to P4 towards security deposit to be furnished by the petitioner from the amounts payable to the petitioner as per Ext.P6. The said amount needs to be disbursed only subject to successful completion of Exts.P1 to P4 work and subject to the terms of the contract.

The writ petition is disposed of accordingly.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.