

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 10183 of 2015 (W)

PETITIONER(S):

**BHARANICAVU LABOUR CONTRACT CO-OPERATIVE SOCIETY LTD.
NO.Q 1247, BHARANICAVU, PORUVAZHY P.O, KOLLAM DISTRICT
PIN 690 520, REPRESENTED BY ITS PRESIDENT
JALALUDEENKUTTY, S/O.POOKUNJU, AGED 59 YEARS, PARADISE
MUTHUVILAKKADU WEST, PORUVAZHY P.O, KOLLAM DISTRICT
PIN 690 520**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.P.T.ABHILASH**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF PUBLIC WORKS, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001**
- 2. DIRECTOR,
INLAND NAVIGATION DIRECTORATE, KALLADA HOUSE
ASHRAMAM P.O, KOLLAM, PIN 691 002**
- 3. ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT(ROADS SUB DIVISION)
KOLLAM 691 001**
- 4. ASSISTANT ENGINEER
HARBOUR ENGINEERING SECTION II, NEENDAKARA
KOLLAM 691 582**

R1 TO R4 BY ADV. GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE
JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES TO THE PETITIONER
DATED 20-01-96

EXT.P2 TRUE COPY OF THE RELEVANT PORTION OF G.O(MS) NO 135/97/CO-
OP DATED 13-11-97 ISSUED BY THE GOVERNMENT

EXT.P3 TRUE COPY OF THE SELECTION NOTICE DATED 7-3-2015 ISSUED BY
THE 2ND RESPONDENT

EXT.P4 TRUE COPY OF G.O(P0 NO 03/15/FIN.DATED 5-1-2015 ISSUED BY THE
GOVERNMENT

EXT.P5 TRUE COPY OF THE COMPLETION CERTIFICATE DATED 26-03-2015
ISSUED BY THE 3RD RESPONDENT

EXT.P6 TRUE COPY OF THE COMPLETION CERTIFICATE DATED 26-03-2015
ISSUED BY THE 4TH RESPONDENT

EXT.P7 TRUE COPY OF THE REPRESENTATION DATED 26-03-2015 SUBMITTED
BY THE PETITIONER BEFORE THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

vk

K.VINOD CHANDRAN, J.

W.P.(C).No.10183 of 2015

Dated this the 18th day of June, 2015

JUDGMENT

The petitioner is aggrieved with the fact that Ext.P3, insists for payment of Performance Guarantee in the manner stipulated therein, while many bills of his are pending payment before the authorities. The petitioner has produced Ext.P5 and Ext. P6 completion certificates to contend that the amounts due under these are yet to be paid to him. The petitioner relies on various judgments of this Court which have directed that, deposit of amounts may not be insisted and that the performance guarantee be adjusted from the pending dues.

2. It is to be noticed that, in all the said writ petitions there is a certificate produced by the petitioners therein, specifically showing the dues pending payment which payment, has not been made only for reason of the sanction having not been obtained. It is only in such circumstances, that the orders were issued directing adjustment of the performance guarantee from the bills

pending payment on the condition that, the first payment disbursed would be deducted of such amounts.

3. In the present case, it is to be specifically noticed that, the award itself was as per Ext.P3 dated 07.03.2015. The petitioner did not approach this Court within that time. The petitioner cannot be permitted to seek for extension of time and for deduction from the pending bills at this distance of time from Ext.P2.

4. The statement of the 2nd respondent indicates that the time allotted for executing the agreement without fine was 14 days from the date of the registration of the selection notice in the post office and further 10 days time would have been allowed by realising the fine of 1% of the PAC. The declaration itself incorporates such conditions and in case of failure to execute the agreement within the period specified, the tendering authority would cancel the offer of contract, forfeiting the Earnest Money Deposit. It is also specifically averred that the petitioners were addressed on 13.03.2015, directing them to be present before the Directorate on or before 02.04.2015 for

executing agreement with 1% fine. The petitioner failed to appear on 17.04.2015. The petitioner is said to have submitted a request with the copy of the writ petition. It is also categorically stated that Ext.P7 was never submitted before the authority. The petitioner by his own inaction is dis-entitled from seeking any relief invoking the extraordinary, discretionary remedy, under Article 226 of the Constitution of India.

The writ petition is hence dismissed. No costs.

**K.VINOD CHANDRAN
JUDGE**

AD