

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C) .No. 10334 of 2015 (N)

PETITIONER(S) :

BABY VARGHESE AGED 53 YEARS
S/OP. VARGHESE, NADAKKAL HOUSE, KIZHUMURI
RAMAMANGALAM PO, PIN-

BY ADVS.SRI.P.CHANDRASEKHARAN PILLAI (VENNELA)
SMT.BABY JOSE

RESPONDENT(S) :

1. STATE OF KERALA
REP. BY ITS SECRETARY, IRRIGATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM 695001
2. THE SUPERITENDING ENGINEER
IRRIGATION CENTRAL CIRCLE, THRISSUR 687001
3. EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER
MAJOR IRRIGATION DIVISION, KAKKANAD, ERNAKULAM 682023

BY SR. GOVERNMENT PLEADER MR. K.C.VINCENT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 10334 of 2015 (N)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO.67/2013 ON THE FILE
OF SUBORDINATE JUDGES COURT, ERNAKULAM

EXHIBIT P2: TRUE COPY OF ORDER IN WPC NO.8019/2012

EXHIBIT P3: TRUE COPY OF ORDER NO.D2-1800/08 DATED 25.1.2014
PASSED BY 2ND RESPONDENT

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S. TO JUDGE.

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.10334 OF 2015
.....

Dated this the 6th April, 2015

J U D G M E N T

The petitioner is before this Court in the second round of litigation. The petitioner was awarded certain work contract by the respondents. According to the petitioner, about 80% of the work was complete in respect of the total project cost of about Rs.2.2 crores . But the measurement was not taken and there was some lapse on the part of the respondents, under which circumstance, the petitioner was not in a position to complete the same. The respondents took further steps to terminate the contract and for re-tendering unilaterally, that too, without effecting any measurement, which made the petitioner to approach this Court by filing W.P.(C)No.8019 of 2012; more so since the representation preferred by the petitioner vide Ext.P6 therein was never considered by the competent authority. The said writ petition was disposed of as per Ext.P2 judgment dated 30.03.2012, directing the Government to consider the representation and pass appropriate orders in accordance with law, after affording an opportunity of hearing to the petitioner , within the time as specified therein.

2. The learned Counsel for the petitioner submits that no measurement was taken as requested in Ext.P6 and the second respondent /Superintending Engineer has now passed Ext. P3 order, unilaterally fixing a sum of Rs.54, 98,879/- as the alleged loss resulted because of the course pursued by the petitioner and demanding the same. This in turn is under challenge, pointing out that the petitioner, by virtue of the loss he has sustained, has already moved the civil court by filing OS.No.67 of 2013, copy of which has been produced as Ext.P1. It is only to wriggle out of the liability as per the decree, which might be passed against the respondents in Ext.P1, by the Trial Court, that Ext.P3 order has been issued by the second respondent/Superintending Engineer.

3. Heard the learned Government Pleader as well, who submits that, pursuant to Ext.P2 judgment, the matter was considered by the Government and final order was passed on 14.11.2012, after affording an opportunity of hearing to the petitioner on 31.10.2012. As per the said order, the claim of the petitioner was rejected . It is stated that the petitioner has not chosen to challenge the same.

4. After hearing both the sides, this Court finds that the contract stands already terminated. The learned Counsel for the petitioner submits that the work has not been re-tendered, with regard to which, the learned Government Pleader submits that re-tender notification has already been issued, but could not be finalised because of pendency of civil suit. The question to be considered is whether the respondents are liable to effect payment to the petitioner in respect of the work already completed or whether they are justified in realising any amount as mentioned in Ext.P3 from the petitioner during the pendency of the above civil suit.

5. It is settled law that, if at all any loss has been resulted, it cannot be quantified and realised by one of the parties to the contract and the same has to be got adjudicated by appropriate Forum. This being the position, it is open for the respondents to take appropriate proceedings, in accordance with law, to get the alleged loss/ amount quantified. It is also open for them to file counter claim, if so advised, in the civil suit filed by the petitioner as O.S.67 of 2013 before the Sub Court, Ernakulam and to pursue the matter accordingly.

The writ petition is disposed of, without prejudice to the rights and liberties of the parties as above. Recovery, if any to be made from the petitioner shall be subject to such quantification exercise. Nothing is mentioned with regard to the merits involved or as to the relative rights and liabilities, which is left open.

**P.R.RAMACHANDRA MENON
JUDGE**

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