

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 11268 of 2014 (G)

PETITIONER(S)/PETITIONER:

**N.MOHAMMED ASHARAF,
S/O.MOHAMMED HAJI, AGED 44 YEARS,
PWD CONTRACTOR, NOORENGAL HOUSE,
MELMURI POST, MALAPPURAM DIST.**

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA
REP BY SECRETARY TO THE GOVERNMENT,
REVENUE DEPARTMENT , GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.**
- 2. THE DISTRICT COLLECTOR,
MALAPPURAM,
COLLECTORATE, POST MALAPPURAM,
PIN-676505.**
- 3. THE EXECUTIVE ENGINEER,
IRRIGATION DIVISION,
MALAPPURAM DIST, PIN-676505.**
- 4. THE MALAPPURAM MUNICIPALITY
REP BY ITS SECRETARY , POST MALAPPURAM,
MALAPPURAM DIST, PIN-676505**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.M.MUHAMMED SHAFI
R4 BY ADV. SRI.ESM.KABEER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1:- A TRUE COPY OF THE GO (MS) 429/09/RD DTD 30/10/2009.

**EXHIBIT P2:- THE TRUE COPY OF THE SELECTION NOTICE ISSUED TO THE
PETITIONER DTD 29/7/2010.**

**EXHIBIT P3:- THE TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN
PETITIONER AND THE 3RD RESPONDENT DTD 19/8/2010.**

**EXHIBIT P4:- A TRUE COPY OF THE PROCEEDINGS OF 3RD RESPONDENT DTD
19/8/2010.**

**EXHIBIT P5:- THE TRUE COPY OF THE COMMON JUDGMENT IN WPC NO 957/2013
AND 985/2013 OF THIS HONOURABLE COURT, DTD 17/6/2013**

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

vmr

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.11268 of 2014

Dated this the 20th day of March, 2015

JUDGMENT

The petitioner has approached this Court seeking for a direction to be given to the respondents to satisfy the balance amount of Rs.3,02,537/- (Rupees Three lakhs two thousand five hundred and thirty seven only) as per the final bill submitted by the petitioner in connection with the work awarded to the petitioner.

2. The case of the petitioner is that, he is a PWD Contractor and pursuant to the work awarded to the petitioner, he was required to complete the construction. As per the scheme, the expenditure was to be shared between the Government and the 4th respondent Municipality on a 50:50 basis in terms of Ext.P1 G.O. The petitioner believing the words of the respondents, completed the work and submitted the final bills. On submitting the final bills, only 50% of the amount, which is payable by the

Government has been released and the balance 50% payable by the 4th respondent Municipality was refused to be paid and the Municipality pleaded ignorance. When the petitioner approached the respondents 1 to 3, they informed the petitioner that their part is already over and the remaining 50% is to be satisfied by the Municipality. Because of the hide and seek game between the respondents 1 to 3 on the one side and the 4th respondent on the other side, the petitioner is before this Court for immediate interference.

3. No counter is filed from the part of respondents 1 to 3. A statement has been filed on behalf of the 4th respondent pleading total ignorance as to the sequence of events. It is stated that, they came to know about the alleged construction of the permanent blockades near Koottilangadi Bridge only through the writ petition. Paragraph 3 of the said statement is to the following effect:

"3. It is submitted that the issue was discussed in the Municipal Council on 16.10.2014 and Resolution No.1 was passed to the effect that the Municipality has not benefited anything from the alleged work. On enquiry it is told that the blockade is not available in the place. Moreover

there was no notice to the Municipality or not even discussed or intimated about such a work. The Municipality doubts even as to whether such a work was done in the area."

4. After hearing both the sides, this Court finds that the liability is sought to be shifted from one for the other among the respondents, particularly with regard to the remaining 50% to be cleared. When the respondents 1 to 3 say that the balance amount is to be cleared by the 4th respondent Municipality in terms of Ext.P1 G.O., the Municipality is allegedly not even aware of any construction or the rights and liberties sought to be projected in the writ petition. It is brought to the notice of this Court that, under similar circumstances, this Court has already intervened passing Ext.P5 judgment, whereby the due amount to the petitioner therein was ordered to be satisfied by the Government/Department with liberty to have the approximate extent to be recovered from the local authority in terms of Ext.P1. This Court does not find it necessary to take any deviation from the said stand, as there is no dispute with regard to the factum of completion of the work to the satisfaction of all concerned.

5. In the said circumstances, there will be a direction to respondents 1 to 3 to satisfy the balance amount payable to the petitioner at the earliest, at any rate, within 'six weeks' from the date of receipt of a copy of this judgment, failing which, interest shall be paid @ 9% per annum till the date of satisfaction. On payment of the amount as above, the respondents 1 to 3 will be free to have appropriate steps to get the due share from the 4th respondent/Municipality- the beneficiary in terms of Ext.P1.

The writ petition stands disposed of.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

sp