

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C). No.16371 of 2012 (V)

PETITIONER(S):

**R.MOHANDAS, AGED 45 YEARS,
S/O.RAGHAVAN, RESIDING AT SANTHI NIKETH,
CHIRACKAL.P.O., KANNUR.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.K.K.CHANDRALEKHA
SRI.K.C.SANTHOSHKUMAR
SRI.AJITH KRISHNAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695 001.**
- 2. THE SECRETARY TO GOVERNMENT,
WATER RESOURCES (I.R) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.)695 001.**
- 3. THE CHIEF ENGINEER,
IRRIGATION AND ADMINISTRATION,
THIRUVANANTHAPURAM.695 001.**

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI.ABDUL SALAM

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS:-

- P1- TRUE COPY OF THE JUDGMENT DATED 28.6.2010 AND MADE IN WP[C] NO.13958/2008.**
- P2- TRUE COPY OF THE GOVERNMENT ORDER DATED 26.3.2011.**
- P3- TRUE COPY OF THE STATEMENT OF FACTS DATED 24.9.2010 SUBMITTED BY THE PETITIONER BEFORE THE COMMITTEE CONSTITUTED FOR ASSESSMENT OF AMOUNT.**
- P4- TRUE COPY OF THE CHEQUE BEARING TRY NO.2248490 DATED 24.9.2011.**
- P5- TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF THE CLAIM MADE BY THE FEDERAL BANK LTD. IN OA NO.182/2009 OF DRT, ERNAKULAM.**
- P6- TRUE COPY OF THE REPRESENTATION DATED 14.5.2012 SUBMITTED BEFORE THE HON. CHIEF MINISTER OF KERALA.**
- P7- TRUE COPY OF THE REPRESENTATION DATED 26.6.2012 ADDRESSED TO THE 1ST RESPONDENT.**
- P7(A)- TRUE COPY OF THE POSTAL RECEIPT EVIDENCING THE SUBMISSION OF EXT.P7 TO THE 1ST RESPONDENT.**
- P7(B)- TRUE COPY OF THE POSTAL RECEIPT EVIDENCING THE SUBMISSION OF EXT.P7 TO THE 2ND RESPONDENT.**
- P8:- TRUE COPY OF THE ORDER DATED 9.10.2012 IN C.M.P NO.2272 OF 2011 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.**
- P9:- TRUE COPY OF THE INTERIM ORDER DATED 20.08.2011 IN W.P(C) NO.20212/2011 OF THIS COURT.**
- P10:- COPY OF THE LETTER DATED 15.5.2006 ISSUED FROM THE OFFICE OF THE EXECUTIVE ENGINEER, IRRIGATION DIVISION TO THE CHIEF MANAGER, FEDERAL BANK LTD.**

RESPONDENTS' EXHIBITS:- NIL

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.16371 of 2012

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Dated this the 9th day of April, 2015

JUDGMENT

The petitioner, an 'A' class contractor, approached this Court with W.P(C) No.13158 of 2008 as the respondents failed to pay the amount due to him in connection with the construction of a seawall at 1.1% below the estimated cost of ₹490 lakhs. In that case he obtained a judgment which made it clear that it was not proper at all to arrive at a conclusion that the petitioner was at default and there was delay on his part in commencing and executing the work. This Court while ordering reconsideration of the matter reminded the respondents that the direction to reconsider the matter shall not be considered as an opportunity to deny the legitimate claim of the petitioner, but it is only for the purpose of quantifying the amount due to them.

2. The petitioner alleges that the committee constituted for quantifying the amount due to be paid to him has appraised of all facts and circumstances, including the initiation of the proceedings by the Federal Bank Ltd., with whom he entered into a contract of

indemnity. The grievance of the petitioner is that the committee unilaterally fixed a meagre sum of ₹59,24,115/- as against the claim for interest @18%, return of security amount of ₹4 lakhs and other reliefs. It is with this background, the petitioner has approached this Court.

3. It could be seen that the committee proceeded on the assumption that the prayer of the petitioner to disburse the amount of ₹65,72,482/- and claim for interest and return of security deposit was not granted by this Court. I see valid force in the submission made by the learned counsel for the petitioner that the order passed by the committee is vitiated by non-application of mind.

4. It is crucial to note that the petitioner is precluded from seeking further adjudication by a civil court on account of the tender condition. It was pointed out that the petitioner submitted a request before respondents 1 and 2 seeking reconsideration of the entire matter and the appointment of an Arbitrator to resolve the dispute. The same remains unattended.

5. Considering the facts and circumstances now placed on board, this Court is of the view that the matter requires re-look by a properly constituted committee consisting of a former District

Judge as well as two technically qualified senior officer of the departments

Therefore, the writ petition is disposed of directing the respondent Government to constitute a committee consisting of a former District Judge and two technically qualified senior officers of the Finance Department and Water Resources Department, for quantifying the amount to be paid to the petitioner. The committee shall be constituted within a period of one month from the date of receipt of a copy of this judgment. The committee shall be directed to submit the report within three months thereafter. After obtaining the report as above, Exts.P7 and P10 shall be considered and formal orders shall be passed, within a period of two months from the date of receipt of a copy of the report of the committee.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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