

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 17907 of 2010 (K)

PETITIONER(S) :

P.BHASKARAN,
AGED 58 YEARS, SON OF KUNHIRAMAN, 'PRANAVAM', KOOVODE,
P.O.KUTTIKKOL, TALIPARAMBA, KANNUR DISTRICT.

BY ADVS.SRI.M.RAMESH CHANDER
SMT.K.A.SANJEETHA.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER,
HARBOUR ENGINEERING DIVISION, KANNUR-17.
3. THE SUPERINTENDING ENGINEER,
HARBOUR ENGINEERING, (NORTH CIRCLE), KOZHIKODE.
4. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT (BUILDINGS DIVISION),
OFFICE OF THE EXECUTIVE ENGINEER, THALASSERY.
5. THE SPECIAL DEPUTY TAHSILDAR,
(REVENUE RECOVERY), TALUK OFFICE, TALIPARAMBA,
KANNUR DISTRICT.

BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1:- TRUE COPY OF THE LETTER NO.D2.1128/01 2ND RESPONDENT DATED 30/08/2005.
- EXT. P2:- TRUE COPY OF THE REPLY BY THE PETITIONER DATED 19/09/2005.
- EXT. P3:- TRUE COPY OF THE ORDER NO.D4/1683/01/S.E. OF THE 3RD RESPONDENT DATED 02/04/2009.
- EXT. P4:- TRUE COPY OF THE LETTER NO.E1-555/2010 OF THE 4TH RESPONDENT DATED 06/03/2010.
- EXT. P5:- TRUE COPY OF THE COMMUNICATION NO. D1.11/06 OF THE 2ND RESPONDENT DATED 30/01/2010.
- EXT. P6:- TRUE COPY OF THE REPLY BY THE PETITIONER DATED 22/02/2010.
- EXT. P7:- TRUE COPY OF THE DEMAND NOTICE NO.E2-12018/10/HARBOUR ISSUED BY THE 5TH RESPONDENT DATED 26/03/2010.
- EXT. P8:- TRUE COPY OF THE DEMAND NOTICE NO.E2-12018/10/HARBOUR ISSUED BY THE 5TH RESPONDENT DATED 26/03/2010.

RESPONDENT(S) ' EXHIBITS :

- EXT. R3(A):- NECESSITY OF THE WORK BY LETTER NO.G4-1043/2000(4) DATED 05/09/2005.
- EXT. R3(B):- COMMUNICATION NO. D4-1683/01/S.E. DATED 07/09/2005.
- EXT. R3(C):- ORDER NO.5204/D9/04/CE DATED 30/03/2007.
- EXT. R3(D):- ORDER NO.D4/1683/01/SE DATED 02/04/2009.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. Vinod Chandran, J

W.P.(C).No.17907 of 2010-K

Dated this the 27th day of May, 2015

JUDGMENT

The petitioner challenges Exhibit P5 order of the 2nd respondent, by which quantification of damages allegedly due from the petitioner was made, for reason of breach of a contract awarded to the petitioner.

2. Admittedly the petitioner was awarded a contract for construction of Regional Fisheries Technical High School. The work having not been completed within the time stipulated in the contract, extensions were granted many a time, as evidenced from Exhibit P3 order; the last of which was granted upto 31.10.2008. The petitioner obviously did not complete the work even within the extended time granted.

3. The petitioner was, therefore, directed to appear before the awarder for discussing the terms of completion of the work. The petitioner failed to turn up before the awarder and the contract was terminated, with a specific rider that the balance work will be re-arranged at the full risk and cost of the contractor.

Subsequent to Exhibit P3, the damages due was quantified by Exhibit P5, even without notice to the petitioner, which is under challenge.

4. The petitioner contends that on the basis of the decisions in ***Abdul Rahiman v. D.F. Officer* [1988 (2) KLT 290 (FB)]** and ***Mohammed Kunhi v. Executive Engineer* [2001 (3) KLT 733]** the quantification of damages ought to have been by an independent agency and not by the 2nd respondent, who is an officer of the Department which awarded the contract to the petitioner. It is also submitted that even at the time of admission this Court, by an interim order dated 09.06.2010, directed that an independent authority could consider and assess the damages and quantify the same, which obviously has not been taken up by the Government.

5. The learned Government Pleader, however, contends that despite notice, the petitioner had not turned up for completion of the work and it is only then an order was passed at Exhibit P3 and the quantification has been done only after the work was completed on an re-arrangement.

6. Definitely the damages could be assessed only after completion of the work on re-arrangement. But even then, a notice before quantification is mandatory, since the damages could not have been quantified without notice to the petitioner and without hearing his objections on that count. That the petitioner would be liable for damages definitely requires no further adjudication, since he had been issued with notices for reason of the breach committed and he had failed to turn up, upon which Exhibit P3 order was passed. But even then the subsequent quantification ought to have been with notice to the petitioner.

7. The learned counsel for the petitioner points out that none of the bills presented by the petitioner were also processed or sanctioned by the Government. For that, however, the petitioner has to take up appropriate proceedings. However, in the circumstance of the quantification having been made without notice to the petitioner, the Government could take up appropriate proceedings, since the quantification of the liability as per Exhibit P3 dated 02.04.2009 was taken up and decided as per Exhibit P5 dated 30.01.2010 without notice to the petitioner. Hence, Exhibits

P5 and P7 would stand set aside, reserving the right of the Government to proceed in accordance with law. The limitation would be extended insofar as the petitioner having obtained a stay of the order on 09.06.2010, which stay order is in force till date.

Writ petition is allowed with the above observation.

Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]