

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 19884 of 2012 (I)

PETITIONER(S):

**MONSON JOB @ MANOJ, AGED 47 YEARS
KALLUKALAM HOUSE, PATHANAMTHITTA.**

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENT(S):

- 1. THE COMMISSIONER
COMMISSIONERATE OF RURAL DEVELOPMENT
GOVERNMENT OF KERALA, L.M.S.COMPOUND
THIRUVANANTHAPURAM-695033.**
- 2. THE PROJECT OFFICER
DISTRICT RURAL DEVELOPMENT AGENCY, KOTTAYAM-686001.**
- 3. THE EXECUTIVE ENGINEER
DISTRICT RURAL DEVELOPMENT AGENCY, KOTTAYAM-686001.**
- 4. THE SUPERINTENDING ENGINEER
COMMISSIONERATE OF RURAL DEVELOPMENT
GOVERNMENT OF KERALA, L.M.S. COMPOUND
THIRUVANANTHAPURAM-695033.**
- 5. THE SUPERINTENDING ENGINEER
PWD ROADS AND BRIDGES, THIRUVANANTHAPURAM-695033.**
- 6. GOVERNMENT OF KERALA
REPRESENTED BY SECRETARY
RURAL DEVELOPMENT DEPARTMENT
THIRUVANANTHAPURAM-695001.**
- 7. GOVERNMENT OF INDIA
MINISTRY OF RURAL DEVELOPMENT
REPRESENTED BY SECRETARY, KRISHI BHAVAN
NEW DELHI-110001.**

**BY GOVERNMENT PLEADER SRI. REFEEK V.K.
R7 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R7 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT-P1. PHOTOCOPY OF AGREEMENT DATED 16.5.2005.
- EXHIBIT-P2. PHOTOCOPY OF REPORT DATED 7.9.2002.
- EXHIBIT-P3. PHOTOCOPY OF LETTER DATED 20.11.2002 OF R4.
- EXHIBIT-P4. PHOTOCOPY OF INSPECTION NOTE DATED 27.8.2003.
- EXHIBIT-P5. PHOTOCOPY OF LETTER NO.A3/3359/2001/C/DRDA DATED 17.11.2003.
- EXHIBIT-P6. PHOTOCOPY OF LETTER NO.26244/JRY-3/03/CRD DATED 10.12.2003.
- EXHIBIT-P7. PHOTOCOPY OF PETITIONER'S REPRESENTATION DATED 22.7.2004.
- EXHIBIT-P8. PHOTOCOPY OF JUDGMENT DATED 05.03.2010 IN W.P.(C)
NO.14398/2006 (L).
- EXHIBIT-P9. PETITIONER'S NOTICE DATED 26.8.2010.
- EXHIBIT-P10. PHOTOCOPY OF 3RD RESPONDENT'S LETTER DATED 20.09.2010.
- EXHIBIT-P11. PHOTOCOPY OF PETITIONER'S REPRESENTATION DATED 06.10.2010
AND PROOF OF DELIVERY TO R3.
- EXHIBIT-P12.PHOTOCOPY OF LETTER DATED 31.3.2011 FROM THE 4TH
RESPONDENT.
- EXHIBIT-P13.PHOTOCOPY OF STATEMENT DATED 04.05.2011 TO 4TH RESPONDENT.
- EXHIBIT-P14.PHOTOCOPY OF THE ORIGINAL ESTIMATE.
- EXHIBIT-P15.PHOTOCOPY OF REVISED ESTIMATE.
- EXHIBIT-P16.PHOTOCOPY OF TENDER NOTICE.

RESPONDENTS' EXHIBITS :-

- EXHIBIT R3(A): PHOTO COPY OF THE MEASUREMENTS RECORDED IN M BOOK
NOS.22,23,24,39 & 40/02 OF DRDA, KOTAYAM.

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

=====

W.P.(C). No.19884 OF 2012

=====

Dated this the 1st day of June, 2015

JUDGMENT

The petitioner, a contractor who was awarded the work for formation of two roads in Ottayeetti-Thazathukattupara road in Teekoy Panchayath and in Melukavumattom-Kalluvettom road in Melukavu Panchayath, work viz., under the Prime Minister's Grama Sadak Yojana (PMGSY) Scheme, in the package No.KR-07-01 in Erattupetta Block in Kottayam District, had earlier approached this court in W.P.(C) No. 14398/2006, when he was asked to stop the work on departmental instructions. In Ext.P8 judgment dated 5.3.2010, this court found as follows:-

“Para 14:Therefore, the stand taken in Exts.P14 and P15 by the respondents herein that there was no hurdle from any corner to complete the work in the stipulated time, cannot be accepted at its face value. This is clearly a distorted attempt to pass the buck to the petitioner for the delay occurred which was not because of any inaction on his part and 80% of the work was already over also. In fact, a reading of Ext.P16 shows that the notices have been issued to him only from 31.10.2005 onwards which is even after receipt of Ext.P12 request made by the petitioner. They were issued long period after

Exts.P10 and P11 were addressed to the respective parties. This also justifies the conclusion that the work was stopped after the period of inspection by the Joint Director, NRRDA and as sanction was sought for by the first respondent from the Central Government to complete the work as per the original estimate. In fact, the Ministry agreed to proceed the work only by Ext.P2 (a) letter. Para 2 of Ext.R2(a) evidences the decision of the Ministry in the following words:

“this Ministry hereby agrees to allow the Executing Agency to complete the road with gradients marginally more than the exceptional gradient on limited stretches with necessary cautionary boards indicating the steep gradient. However, the State Government may ensure that such instances of providing steep gradients beyond the permissible values should not get repeated and the State Executing Agency has to prepare a comprehensive DPR and make sure that all geometric parameters are as per Rural Roads Manual for any project submitted for consideration in future”.

Finally, it is requested that “further necessary action to complete the road work may please be taken accordingly.

15. These are documents in support of the plea of the petitioner that he cannot be blamed at all for the stoppage of work and there was actually a proposal for realignment and to revise the estimate. What is attempted in the counter affidavit is to show that no written communications were issued to the petitioner to stop the work or deviate from the programme. The evidence, as above, shows the other way, especially Ext P8 which, records that the work remained stopped already, in view of the intervening developments.

16. In that view of the matter, the termination of the work at the risk and cost of the petitioner is clearly arbitrary and is without any application of mind and also, without considering the relevant aspects. Any administrative decision in such circumstances cannot survive.

17. The termination of the work at the risk, and cost of the petitioner, cannot therefore be upheld and petitioner cannot be saddled with any liability for the loss and damages as indicated in Ext.P16. Hence, Ext:P16 is quashed. The learned counsel for the petitioner had submitted that various amounts towards bank guarantee, performance guarantee, redemption amount, security and balance payment are due to the petitioner. There will be a direction to the respondents to release the various amounts due to the petitioner towards bank guarantee, performance guarantee, redemption amount, security and the balance payment, if any, for the work already done. The same will be quantified and disbursed within a period of three months from the date of receipt, of a copy of this judgment."

2. This court has already found that the termination of the work at the risk and cost of the petitioner was arbitrary. At the same time, the respondents were directed to release various amounts due to him towards bank guarantee, performance guarantee, redemption amount, security and balance payment, if any, for the work already done. There was a further direction to quantify and disburse the same within a period of 3 months. Petitioner's grievance is that even though he was paid about Rs.5,00,000/- towards the balance amount due on various counts, no payment was made towards the extra work done

by him, for which the respondents did not take any steps even to measure, despite his repeated representations.

3. While so seeing the steps to re-tender the work as per Ext.P16 proceedings-for renovation of Ottayeetti-Thazhathukattupara-Mangalagiri-Teekoy Road, he filed this writ petition seeking a direction to the respondents to cause the quantity of work executed by him under Ext.P1, measured before the site is altered consequent to Ext. P16 re-tender notice. He also prayed for a direction to the 1st respondent to consider the claim in Ext.P13 and make balance payment due to him for the actual quantity of work executed by him under Ext. P1.

4 Subsequent to the judgment Ext P8, petitioner had submitted Ext.P13 before the respondents, which contains the details of the extra work done by him, but not measured for which payment is due to him. According to him Ext.P13 contains the details of work done by him and the measurements taken by himself, since the respondents did not take any steps to cause measurement.

5. The respondents have filed a detailed counter affidavit dated 12.9.2012, producing the details of work and saying that entire payments were made. It is stated that the entire work was measured and recorded in Ext.R1 (a) ie. in M Book Nos.22/02,23/02,24/02,39/02 & 40/2002 of the DRDA Kottayam. They produced the details of measurement taken on 20.1.2005 as Ext R3(a) and stated that a new measurement is impossible. According to them no amount is due to petitioner. Now Ext. P16 tender is issued by PWD. Petitioner's work was under DRDA.

6. When Ext. P16 was issued, petitioner sought directions from this court to get the measurement of the work executed by him for the stretch of 2 km before the site was handed over. On 22.8.2012 this court had passed an interim order directing the respondents to file an affidavit showing the measurements, if any, taken, with regard to the work executed by the petitioner within a period of two weeks, as it will be difficult to get the measurement later if a new contractor is engaged pursuant to Ext.P16.

7. But the respondents have not taken any steps to

take the measurement. In the counter affidavit their stand is that no measurement can be taken at this distance of time. Counsel for the petitioner submits that measurement is possible and the same can be done in the presence of petitioner, the concerned officers and the present contractor, with reference to Ext. P13.

8. In view of the findings in Ext.P8 judgment in which the contentions raised by the respondents regarding the stoppage of work by the petitioner, were not found acceptable and the petitioner's claim is on the basis of his own measurement in Ext.P13, regarding the extra quantity of work done by him, it is only appropriate for the respondents to consider the same with due notice to the petitioner and the present contractor who is working at a particular stage.

In these circumstances, I direct the respondents 1 and 2 to take appropriate action to see that the extra work claimed to have been executed by the petitioner as per Ext.P13 is measured with notice to all concerned including the petitioner and the present contractor within a period of

one month from the date of receipt of a copy of the judgment and to take appropriate follow up action without any further delay and to finalise and settle the payments, due to the petitioner, in accordance with such measurement.

This writ petition is disposed of accordingly.

Sd/-
P.V.ASHA, JUDGE

SKV