

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 17137 of 2015 ()

PETITIONER :

**M/S.MALABAR ASSOCIATES,
CITY GATE, BYEPASS JUNCTION, KACHERIPADI,
MANJERI, MALAPPURAM DISTRICT, PIN-676 121,
REPRESENTED BY ITS MANAGING PARTNER PAHAMED KUTTY,
PALLIYIL HOUSE, VELLILA (P.O), MANKADA (VIA),
MALAPPURAM-679 324.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI
SMT.ANJANA KANNATH**

RESPONDENT(S):

- 1. THE SUPERINTENDING ENGINEER,
PUBLIC WORKS DEPARTMENT,
OFFICE OF THE SUPERINTENDING ENGINEER,
ROADS & BRIDGES, NORTH CIRCLE, PWD COMPLEX,
MANANCHIRA, KOZHIKODE, PIN-673 001.**
- 2. THE EXECUTIVE ENGINEER,
PWD ROADS & BRIDGES, MANJERI, MALAPPURAM,
PIN-676 121.**

BY GOVERNMENT PLEADER SMT. C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 17137 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT
DATED 20.5.2015**
- P2 - TRUE COPY OF THE REQUEST LETTER SUBMITTED BY THE PETITIONER
DATED 1.6.2015**
- P3 - TRUE COPY OF THE COMMUNICATION DATED 2.6.2015 ISSUED BY THE 2ND
RESPONDENT TO THE 1ST RESPONDENT**
- P4 - TRUE COPY OF THE JUDGMENT IN WPC.NO.4890 OF 2015 DATED 19.2.2015**
- P5 - TRUE COPY OF THE INTERIM ORDER IN WPC.NO.32896 OF 2014 DATED
17.1.2014**
- P6 - TRUE COPY OF THE INTERIM ORDER IN WPC NO.12407 OF 2015 DATED
17.4.2015**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. VINOD CHANDRAN, J.

W.P.(C) No. 17137 of 2015 (N)

Dated this the 18th day of June, 2015

J U D G M E N T

The petitioner is a contractor, who has been regularly carrying on contracts awarded by the Public Works Department of the State. The petitioner has been awarded with a work. However, the petitioner is required to remit an amount of Rs.33,41,920/- (Rupees twenty nine lakhs eight thousand eight hundred and fifty only), 50% of which has to be made in the form of Treasury Deposit and the balance in the form of National Savings Certificate or in the form of Bank Guarantee from any Nationalised or Scheduled Bank having validity up to 01.04.2019. The petitioner is also directed to deposit the performance guarantee of Rs.76,74,866/- as unbalanced amount.

2. The petitioner's specific contention is that, the petitioner has executed other works with the very same

Department, the bills of which are pending, which would come to a total of Rs.2,30,00,000/- (Rupees two crore thirty lakhs only). The same is evidenced by the communication issued by the Executive Engineer, PWD produced at Ext.P3. The petitioner contends that there is considerable delay in the bills being processed and payment being effected. Since amounts in excess of the amount demanded in Ext.P1 is pending consideration with the Government itself, the petitioner may be exempted from making the deposit as indicated in Ext.P1, is the argument.

3. The learned Government Pleader appearing for the State would contend that in fact such orders have been passed in Ext.P4 judgment and though a dispute is not intended to be raised on that account, there can be no prayer as to the deduction being effected from a later bill, since the Government sanctions the bills according to the seniority of pendency.

4. The fact remains that, amounts far in excess the amount demanded in Ext.P1 is pending sanction for payment to the petitioner as per Ext.P3. In such circumstances, the petitioner can be exempted from the deposit as indicated in Ext.P1 on the petitioner filing an undertaking before the first respondent that an amount of Rs.33,41,920/- and Rs.76,74,866/- towards performance guarantee shall be deducted from the first bill hereafter sanctioned or released for payment to the petitioner and such amounts retained with the Department in satisfaction of the demand made as per Ext.P1.

5. The writ petition is disposed of with a direction to the petitioner to produce certified copy of the judgment and the undertaking as above within a period of fourteen days from the date of receipt of a certified copy of this judgment. It is made clear that no cancellation of Ext.P1 shall be made in the meanwhile.

In view of the turn of events, the time for satisfying the obligation and to execute necessary agreement shall stand extended by ten days from today.

K.VINOD CHANDRAN,
JUDGE