

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 21039 of 2010 (D)

PETITIONER(S):

**ANILKUMAR C.V.,
PUBLIC WORKS CONTRACTOR, ANIL BHAVAN, KOTTANADU P.O.
MALLAPALLY, THIRUVALLA.**

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENT(S):

- 1. THE EXECUTIVE ENGINEER,
P.I.P.DIVISION OFFICE, CHENGANNUR-686 101.**
- 2. THE DISTRICT COLLECTOR,
CIVIL STATION, PATHANAMTHITTA.**
- 3. GOVERNMENT OF KERALA,
REPRESENTED BY SECRETARY, IRRIGATION DEPARTMENT,
KERALA GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

R1 TO R3 BY SRI.MOHAMMED SHAFI GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE LETTER DATED 20.04.2007 FROM R1.**
- EXT.P2: COPY OF THE LETTER DATED NIL FROM ASST.ENGR.**
- EXT.P3: COPY OF THE LETTER DATED 18.01.2008 FROM R1.**
- EXT.P4: COPY OF THE LETTER DATED 24.06.2008 FROM R1.**
- EXT.P5: COPY OF THE LETTER DATED 19.06.2009 FROM R1.**
- EXT.P6: COPY OF THE REQUISITION FOR RR DATED 12.4.2010 FROM R1.**
- EXT.P7: COPY OF THE REQUISITION FOR RR DATED 12.4.2010 FROM R1.**
- EXT.P8: COPY OF THE REQUISITION FOR RR DATED 12.4.2010 FROM R1.**

RESPONDENT'S EXHIBITS:

- EXT.R1(a): COPY OF THE SITES HANDING OVER DOCUMENTS IN RESPECT OF 3 TENDERS ARE PRODUCED.**
- EXT.R1(b): COPY OF THE LETTER DATED 11.09.2007.**
- EXT.R1(c): COPY OF THE LETTER DATED 27.05.2008.**
- EXT.R1(d): COPY OF THE NOTICE DATED 24.06.2008.**
- EXT.R1(e): COPY OF THE ORDER DATED 26.08.2008.**
- EXT.R1(f): COPY OF THE ORDERS DATED 20.08.2008.**
- EXT.R1(g): COPY OF THE ORDERS DATED 26.08.2008.**

//TRUE COPY//

P.A TO JUDGE

THOTTATHIL B.RADHAKRISHNAN

W.P.(C) No. 21039 of 2010

Dated this the 8th day of January, 2015

J U D G M E N T

The petitioner carried out three contracts for the Government. Alleging that there was breach of contract and failure to complete the works, the contracting authority rearranged the works after terminating the contracts with the petitioner. Thereafter, the contracting authority proceeded to fix the liability of the petitioner on the basis of the so-called risk and cost incurred as referable to the loss allegedly sustained by the Government, as a result of the payment made to the subsequent contractor over and above the rates agreed to by the petitioner. This claim of the 3rd respondent Government stands disputed by the petitioner contractor. Obviously, therefore, without an adjudication by a competent judicial authority, there cannot be any revenue recovery or enforcement of recovery of the so-called risk and cost directly by the Government. This is the settled law. At the same time, in so far as forfeiture of security deposits is concerned, forfeiture is an action by the Government as regards money

already in its hands. The contractor will have the liberty to sue to that extent. Under such circumstances, this writ petition is entitled to succeed, in so far as the challenge as against the revenue recovery and other proceedings, in so far as recovery of risk and cost and other elements are concerned. The fixing of responsibility in that regard also will not stand. The impugned proceedings to that extent are quashed, preserving the liberty of the State to sue the petitioner, if so advised, for recovery of amounts which may be due for breach of contract. The petitioner will also have the freedom to sue the Government for release of amounts covered by the security deposit which stands forfeited.

In the result, the impugned proceedings are quashed to the aforesaid extent and the original petition will stand allowed, accordingly, in part as above.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG