

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 18410 of 2014 (A)

PETITIONER :

**B.ANILKUMAR, S/O.A.V.BHARGAVAN,
ANIL AGENCIES, CHIRAYINKIL ROAD,
ATTINGAL, THIRUVANANTHAPURAM-695101.**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
S.SUJIN**

RESPONDENTS :

- 1. THRE SUPERINTENDING ENGINEER,
OFFICE OF THE SUPERINTENDING ENGINEER,
NATIONAL HIGHWAYS SOUTH CIRCLE,
THIRUVANANTHAPURAM-695004.**
- 2. SMT.ROSAMMA, EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER
PWD NATIONAL HIGHWAY DIVISION, PATTOM,
THIRUVANANTHAPURAM-695004.**
- 3. THE ASST.ENGINEER
OFFICE OF THE EXECUTIVE ENGINEER
P.W.D.NATIONAL HIGHWAY DIVISION, PATTOM P.O.
THIRUVANANTHAPURAM-695004.**
- 4. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE COMMUNICATION DATED 9.8.2013 ISSUED BY THE THIRD RESPONDENT.
- EXHIBIT-P2: TRUE COPY OF THE ORDER PASSED BY THE STATE EXPRESS TRANSPORT CORPORATION TAMIL NADU LTD, CHENNAI-2, DATED 18.01.2014.
- EXHIBIT-P3: TRUE COPY OF THE INFORMATION DATED 4.2.2014 ISSUED BY THE TAMIL NADU ROAD TRANSPORT CORPORATION.
- EXHIBIT-P4: TRUE COPY OF THE NOTICE SENT BY THE EXECUTIVE ENGINEER ON 30.10.2013 TO THE PETITIONER.
- EXHIBIT-P5: TRUE COPY OF THE SAID INTERIM ORDER GRANTING STATUS QUO IN WPC NO.27952/2013.
- EXHIBIT-P6: TRUE COPY OF THE IA NO.2302/2014 IN WPC NO.15545/2013 SUBMITTED BY THE PETITIONER BEFORE THIS HON'BLE COURT.
- EXHIBIT-P7: TRUE COPY OF THE ORDER DATED 20.2.2014 PASSED IN IA NO.2302/2014 IN WPC 15545/2013.
- EXHIBIT-P8: TRUE COPY OF THE LETTER DATED 22.02.2014.
- EXHIBIT-P9: TRUE COPY OF THE NOTICE DATED 14.3.2014 ISSUED BY THE EXECUTIVE ENGINEER TO THE PETITIONER.
- EXHIBIT-P10: TRUE COPY OF THE STATEMENT DATED 13.3.2014 ISSUED BY THE EXECUTIVE ENGINEER TO THE PETITIONER.
- EXHIBIT-P11: TRUE COPY OF THE CALCULATION/STATEMENT OF ACCOUNTS ABSTRACT.
- EXHIBIT-P12: TRUE COPY OF THE OBJECTION DATED 25.2.2014 SUBMITTED BY THE PETITIONER BEFORE THE SUPERINTENDING ENGINEER.
- EXHIBIT-P13: TRUE COPY OF THE NOTICE ISSUED BY THE SUPERINTENDING ENGINEER DATED 25.3.2014.
- EXHIBIT-P14: TRUE COPY OF THE NOTICE ISSUED BY THE SUPERINTENDING ENGINEER DATED 26.3.2014.
- EXHIBIT-P15: TRUE COPY OF THE STATEMENT DATED 28.3.2014 SUBMITTED BY THE PETITIONER.
- EXHIBIT-P16: TRUE COPY OF THE COMPLAINTS PREVIOUS FILED BY THE PETITIONER.
- EXHIBIT-P17: TRUE COPY OF THE CONTRACT ENTERED INTO BETWEEN THE PETITIONER AND THE DEPARTMENT ON 6.5.2013.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 18410 of 2014

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Dated, this the 20th day of February, 2015

JUDGMENT

The petitioner has approached this Court seeking for a direction to be given to the respondents to transfer back the amount encashed by invoking the Bank Guarantee, with interest.

2. The sequence of events as narrated in the writ petition shows that the petitioner came to be successful bidder in respect of collection of toll at Amaravila, on the National High Way 47 of Thiruvananthapuram district and the task was taken over by the petitioner w.e.f. 06.05.2013. According to the petitioner, various hurdles and obstructions came across him with regard to collection of toll. It is pointed out that the toll was not being satisfied in respect of the vehicles belonging to the Tamil Nadu State Transport Corporation. There was route diversion as well. Several proceedings were filed by the petitioner including by way of W.P.(C) 15545 of 2013 and W.P.(C) No. 27952 of 2013. While so, the contract of the petitioner was terminated for the alleged non-satisfaction of the due

amount and subsequently, the Bank Guarantee furnished by the petitioner was encashed, which is sought to be set back in this writ petition.

3. The learned counsel for the petitioner submits that the course pursued by the respondents is not correct or proper, being contrary to the actual facts and figures, and that the petitioner is entitled to have Bank Guarantee restored, by transferring requisite extent of amount to the bankers of the petitioner.

4. Heard the learned Government Pleader as well.

5. Going by the pleadings set forth and the relief sought for in the writ petition, this Court finds that a finding has to be arrived at, as to whether any lapse was there on the part of the petitioner or whether the respondents were justified in invoking the Bank Guarantee for the alleged non-satisfaction of the due amount under the contract. What were the circumstances under which toll collection was undertaken to be carried out by the petitioner, what extent of breach, if at all any is there, and what relief could be aspired by the petitioner etc. are matters to be considered in the light of specific pleadings to be raised and the evidence to be let in. The said exercise cannot be pursued by this Court invoking the writ jurisdiction under Article 226 of the Constitution of India.

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: 3 :

In the above circumstances, without prejudice to the rights and liberties of the petitioner to pursue other appropriate remedy in accordance with law, interference is declined and the writ petition is dismissed.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd