

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

W.P(C).No. 22105 of 2010 (K)

PETITIONER(S):

M.K.SASIDHARAN NAIR, MELADATH HOUSE,
GOMAYANTHAPADI, MALAYINKKEZH,
KOTHAMANGALAM,
ERNAKULAM DISTRICT.

BY ADVS. SRI. ELVIN PETER P.J.
SMT. POOJA SURENDRAN

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. KUTTAMPUZHA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, KUTTAMPUZHA,
KOTHAMANGALAM, ERNAKULAM DISTRICT. PIN 686 691.
3. THE ASSISTANT ENGINEER, L.S.G.D.
SECTION, KUTTAMPUZHA.
4. THE DISTRICT PLANNING OFFICER,
ERNAKULAM.

R1, R3 & R4 BY GOVERNMENT PLEADER, SRI. SHYSON P. MANGUZHA
R2 BY ADVS. SRI. V.M. SYAM KUMAR
SMT. KRIPA ELIZABETH MATHEWS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1- TRUE COPY OF THE ORDER DATED 09.01.2008 ISSUED BY THE 3RD RESPONDENT.
- EXT.P2- TRUE COPY OF THE DECISION OF THE 2ND RESPONDENT PANCHAYAT DT. 18.11.2008.
- EXT.P3- TRUE COPY OF THE RESOLUTION OF THE 2ND RESPONDENT PANCHAYAT DECIDING TO GRANT 10% ABOVE THE ESTIMATE RATE.
- EXT.P4- TRUE COPY OF THE LETTER SENT BY THE 3RD RESPONDENT TO THE ASST. EXECUTIVE ENGINEER, KOTHAMANGALAM BLOCK PANCHAYAT.
- EXT.P5- TRUE COPY OF THE COMMUNICATION DATED 10.11.2008 SENT BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P6- TRUE COPY OF THE CIRCULAR DATED 03.08.2009 ISSUED BY THE 1ST RESPONDENT.
- EXT.P7- TRUE COPY OF THE ORDER DATED 01.10.2009 ISSUED BY THE 1ST RESPONDENT.
- EXT.P8- TRUE COPY OF THE REPRESENTATION DATED 17.11.2009 FILED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FOR LOCAL SELF GOVT. DEPARTMENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.22105 of 2010

Dated this the 16th day of June, 2015

JUDGMENT

This writ petition is filed by the petitioner challenging Ext.P7 order passed by the 1st Respondent dated 01.10.2009, declining approval to the decision of the Grama Panchayat to enhance the rate of the work awarded to the petitioner by the 2nd Respondent, Grama Panchayat. Brief facts of the case are as follows:

2. Pursuant to a notification issued by the 2nd Respondent, Grama Panchayat, inviting tenders for re-tarring Kuttampuzha-Urulanthanni road, the petitioner along with others submitted their tenders. After evaluation of the tenders, the tender submitted by the petitioner was accepted, which was 0.01% below the estimated rate. Thereupon, an agreement was executed by the petitioner with the 3rd Respondent on 09.01.2008 and on the same date, the 3rd Respondent has issued an order accepting the tender submitted by the petitioner and awarded the work to the petitioner, which is made out from Ext.P1.

3. Though the work was awarded to the petitioner, he could not start the work, because the market rates of tar, cement, steel rods etc. etc. have increased far above the rates fixed under the estimate. It is also contended by the petitioner that under similar circumstances, other contractors who were awarded work by the 2nd Respondent Panchayat have also not carried out the work due to the very same reason.

4. Confronted with such a situation, it appears that the Panchayat had taken a decision on 18.11.2008, which is borne out from Ext.P2, taking into account the adverse market conditions which prevents the petitioner and other contractors from carrying out the works, to enhance the rates of the work awarded. Pursuant to the said decision, it was decided to grant excess rate of Rs.3,33,792/- from the schedule rate to the petitioner in order to complete the work as per Ext.P1 award.

5. Thereupon, the petitioner has executed the work and submitted the final bill. But, unfortunately, a portion of the work carried out by him was not measured and thereupon he was paid the amount less an amount of Rs.75,000/-, which is

noted by the Assistant Engineer of the Grama Panchayat and forwarded to the Assistant Executive Engineer of the Block Panchayat by Ext.P4 communication.

6. Anyhow, the decision taken by the Panchayat was forwarded to the Government for its approval, which was declined by Ext.P7 order dated 01.10.2009, and that order is impugned by the petitioner in this writ petition.

7. The 4th Respondent has filed a counter affidavit basically contending that the petitioner is not entitled to get the amount as decided by the Panchayat pursuant to Ext.P2 minutes since the work that was scheduled, so far as the petitioner is concerned, was of the year 2004 and the rates increased for the work pursuant to Ext.P6 Government Circular dated 03.08.2009 was concerning the rate fixed as per 2008 Schedule. The relevant portion of paragraph 5 of the Counter Affidavit is extracted so as to identify exactly the reasons for declining the relief to the petitioner.

"5. x x x x x
 x x x x x

In the case in hand, the work was awarded to the petitioner and the rate of tar that was admitted and accounted in the project was that prevailing in 2007 and

not the rate that prevailing in 2004. Furthermore, rate enhancement is considered only in cases in which work was awarded at a rate which is less than 5% of the estimated rate. In the case in hand, the work is awarded at a rate 1% below the estimated rate. Therefore, on that scene also, the petitioner is not entitled for enhancement. Therefore, the petitioner is not entitled for the benefit of the Government Circular wherein rate enhancement is ordered for those works which are sanctioned at 2004 rate alone."

8. Heard the learned counsel for the petitioner and the learned Government Pleader, perused the records and the order impugned.

9. The petitioner contended that he carried out the work as per Ext.P1 award especially taking into account the decision taken by the Panchayat to enhance the rate from the award amount which only enabled him to carry out the work pursuant to the adverse market conditions and increase in price of the materials used for tarring, and therefore declining the relief as per Ext.P7 cannot be sustained.

10. On the other hand, the learned Government Pleader submits that the petitioner is not entitled to get advantage of Ext.P6 Government Circular dated 03.08.2009, wherein the

Government have decided to extend the P.W.D Schedule rates of 2008 to the contractors who were carrying out the contract work of Local Self Government Institutions. In my considered opinion, Ext.P6 was issued by the Government taking into account the escalation of the rates for the materials in the market and it was also with an intention to avoid the turmoil which disabled the contractors to carry out the works consequent to adverse market conditions such a Circular was issued by the Government.

11. Pursuant to declining the relief by Ext.P7 Government letter dated 01.10.2009, petitioner has submitted a representation before 1st Respondent Government, conveying the difficulties experienced by the petitioner and also generally explaining the adverse situation in market conditions.

12. After evaluating the facts and circumstances, the decision taken by the Panchayat enhancing the rate as per Exts.P2 and P3 and also the decision of the Government as per Ext.P6 Circular with the laudable object of executing the works awarded by the local bodies, it is only just and necessary that the issue is re-considered by the Government. In that view of the matter, I set aside Ext.P7 order of the Government dated

01.10.2009 and direct the Government to take a decision taking into account the observations made earlier, within a period of two months from the date of receipt of a copy of this judgment. In order to enable the Government to proceed with the matter, petitioner shall produce a copy of this judgment along with a copy of the writ petition, Ext.P8 representation dated 17.11.2009 and the attendant documents within a period of two weeks from the date of receipt of a copy of this judgment.

Writ petition is disposed of accordingly, and in the facts and circumstances of the case no order as to cost.

Sd/-

SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-