

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 18526 of 2015 (M)

PETITIONER(S):

**DOMINIC ZACHARIAS,
MANAGING PARTNER, M/S.MAJESTIC CONSTRUCTIONS,
KARIMKUNNAM, THODUPUZHA, IDUKKI DISTRICT.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.P.T.ABHILASH**

RESPONDENT(S):

- 1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF PUBLICWORKS, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. CHIEF ENGINEER,
PWD (ROADS AND BRIDGES), PUBLIC OFFICES, MUSEUM,
THIRUVANANTHAPURAM - 695 033.**
- 3. SUPERINTENDING ENGINEER,
PWD (ROADS AND BRIDGES), CENTRAL CIRCLE, ALUVA,
ERNAKULAM DISTRICT, PIN - 683 101.**
- 4. EXECUTIVE ENGINEER, PWD (ROADS DIVISION), IDUKKI - 685 603.**
- 5. ASSISTANT EXECUTIVE ENGINEER,
PWD (ROADS SUB DIVISION), NEDUMKANDAM, IDUKKI DISTRICT,
PIN - 685 553.**
- 6. ASSISTANT ENGINEER,
PWD (ROADS SECTION), NEDUMKANDAM, IDUKKI DISTRICT,
PIN - 685 553.**

BY GOVERNMENT PLEADER SRI.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE PROCEEDING OF THE DIVISIONAL ACCOUNTS OFFICER UNDER THE 4TH RESPONDENT, DETAILING THE REGISTRATION OF THE BILL OF THE PETITIONER ON 4.3.2015.
- EXT.P-2: TRUE COPY OF THE JUDGEMENT DATED 13.8.2014 IN WPC NO.16027/2014 OF THIS HON'BLE COURT.
- EXT.P-3: TRUE COPY OF THE REPRESENTATION DATED 17.9.2012 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P-4: TRUE COPY OF THE REPRESENTATION DATED 15.1.2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P-5: TRUE COPY OF THE ORDER DATED 19.9.2014 ISSUED BY THE GOVERNMENT.
- EXT.P-6: TRUE COPY OF THE PROCEEDING DATED 18.12.2014 OF THE 3RD RESPONDENT.
- EXT.P-7: TRUE COPY OF THE CLOSURE AGREEMENT ENCLOSED ALONG WITH EXT.P6.

RESPONDENT(S)' EXHIBITS:

- EXT.R5(a): A TRUE COPY OF THE SITE HANDED OVER PERFORM.
- EXT.R5(b): A TRUE COPY OF THE PWD MANUAL (RELEVANT PAGES)

//TRUE COPY//

P.A.TO JUDGE.

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.18526 of 2015

Dated this the 1st day of October, 2015

JUDGMENT

The petitioner is a contractor, wants to foreclose the contract.

The Government vide Ext.P5 Order allowed the claim and ordered as follows:

“Hence Administrative Department is requested to direct concerned to settle the claims of the contractor as per the contract conditions and initiate departmental enquiry to identify lapses on the part of the officers involved in the execution of the work”.

2. Based on the Government Order, the foreclosure agreement has been prepared by the third respondent. The petitioner is aggrieved by the clause whereby, it is stipulated that the petitioner shall not claim for the loss suffered by him. The petitioner challenges the stipulation of the waiver clause in the draft agreement.

This Court is of the view, since the Government has allowed the petitioner's claim without any other conditions, it is

inappropriate for the third respondent to include the waiver clause waiving the right of the petitioner to claim loss. If the petitioner has any genuine claim, he is at liberty to approach the civil court and establish such claim before the civil court. The legal remedy of the petitioner cannot be directed to waive in foreclosure agreement. Therefore, the third respondent is directed to delete waiver clause in Ext.P7 and permit the petitioner to execute the foreclosure agreement in the light of the directions of the Government. The bill shall be released to the petitioner in accordance with the seniority.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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