

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 19062 of 2015 (G)

PETITIONER(S):

**P.AHAMMED KUTTY,
P.W.D.CONDTRACTOR, PALLIYIL HOUSE, VELLILA P.O.,
MANKADA (VIA), MALAPPURAM - 679 324.**

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

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 ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
GOVERNMENT PLEADER SRI.BIJU MEENATTOOR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 19062 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1- TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT
DATED 22.6.2015.**

**P2- TRUE COPY OF THE REQUEST LETTER SUBMITTED BY THE PETITIONER
DATED 22.6.2015.**

**P3- TRUE COPY OF THE COMMUNICATION DATED 2.6.15 ISSUED BY THE
2ND RESPONDENT TO THE 1ST RESPONDENT.**

P4- TRUE COPY OF THE JUDGMENT IN WP(C) NO.4890 OF 2015 DATED 19.2.2015

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P.(C) No. 19062 of 2015 (G)

Dated this the 9th day of July, 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.16,22,100/- (Rupees sixteen lakhs twenty two thousand one hundred 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.

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.2,44,40,000/- (Rupees two crore fourty four lakhs fourty thousand 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 has submitted on the basis of the counter affidavit that the total arrears pending against the petitioner is 2.47 crores and the adjustment made already with respect to new contracts awarded would come to Rs.45,17,560/- 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.16,22,100/- 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.

Sd/-
K.VINOD CHANDRAN,
JUDGE