

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 19084 of 2015 (I)

PETITIONER :

**T.A.XAVIER, AGED 67 YEARS,
S/O. AUGUSTINE, CONTRACTOR, M/S.T.A.XAVIER & SONS,
THAREPARAMBIL HOUSE, PALLURUTHY P.O., KOCHI - 682 006.**

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

RESPONDENTS:-:

- 1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF PUBLIC WORKS,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. SUPERINTENDING ENGINEER
PWD (BUILDINGS) SOUTH CIRCLE,
PUBLIC OFFICESBUILDING, MUSEUM P.O.,
THIRUVANANTHAPURAM, PIN - 695 033.**
- 3. EXECUTIVE ENGINEER,
PWD (BUILDINGS DIVISION), KOLLAM - 691 001.**
- 4. ASSISTANT EXECUTIVE ENGINEER,
PWD (BUILDING SUB DIVISION), KOTTARAKKARA,
KOLLAM DISTRICT, PIN - 691 506.**
- 5. ASSISTANT ENGINEER
PWD (BUILDING SECTION), KOTTARAKKARA,
KOLLAM DISTRICT - PIN - 691 506.**

R1 & R3 BY GOVERNMENT PLEADER SRI. GIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE SELECTION NOTICE DATED 15.11.2011 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P2: TRUE COPY OF THE REPRESENTATION DATED 19.09.2013 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P2(A): TRUE COPIES OF THE POSTAL ACKNOWLEDGMENTS EVIDENCING THE RECEIPT OF EXT.P2 REPRESENTATION AT THE OFFICE OF THE RESPONDENTS 3 TO 5.
- EXHIBIT P3: TRUE COPY OF THE PROCEEDING DATED 25.04.2014 OF THE 3RD RESPONDENT.
- EXHIBIT P4: TRUE COPY OF THE LETTER DATED 15.07.2014 FORWARDED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P4(A): TRUE COPY OF THE REPRESENTATION DATED 28.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P5: TRUE COPY OF THE REPRESENTATION DATED 20.01.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE PROCEEDING DATED 29.05.2015 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DATED 08.06.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P8: TRUE COPY OF THE JUDGMENT DATED 21.08.2014 IN W.P.(C) NO.6458/2014 OF THIS HON'BLE COURT.
- EXHIBIT P9: COPY OF THE LETTER DT 19/8/2015 ISSUE BY THE R3 TO THE R2.
- EXHIBIT P10: COPY OF THE MINUTES OF THE MEETING HELD ON 13/1/2015 IN THE CHAMBER OF THE R3.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.19084/2015

Dated this the 11th Day of December, 2015

J U D G M E N T

The petitioner has been awarded construction of a Mini Civil Station, Kottarakkara. It is admitted by the fifth respondent-Assistant Engineer in Ext.P6 that the petitioner has completed 77% of the work. This was sometime in the year 2014. It is the case of the petitioner that he had completed 85% of the work. Thereafter, the petitioner did not undertake the work. The petitioner submits that he was not given revised drawing and design for the ground and first floor as well as window shutters for the purpose of constructing strong room and canteen and therefore, he could not complete the work. The petitioner submits that the delay cannot be attributable to him.

2. In the statement filed by the third respondent-Executive Engineer, it is stated that the strong room was not included in the drawing. At para.4 of the statement it is stated as follows:

“It is submitted that as per the original drawing, space for Sub Treasury Office is provided in the first floor of the building. The strong room is not included for Sub Treasury Office at the first floor. As per the request of the District Treasury Officer, Kottarakkara, the

Sub Treasury and strong room must be provided in the ground floor for the convenience of the aged pensioners. Based on the request of the District Treasury Officer the proposal for shifting the Sub Treasury Office from first floor to Ground Floor was submitted to the Chief Architect, revised AR drawing. The contractor can carry out all other works except strong room as per the approved drawing, data and specification attached to the agreement for the work. But the contractor is trying to escape from the agreement by making loop hole on non-receipt of revised AR drawing.”

3. Now the fact remains that the work could not be completed by the petitioner. Petitioner submits that he is prepared to complete the remaining work within a further period of one month and he should be given revised rate of the work, hereafter to be executed by him.

4. The learned Government pleader opposes the said prayer and submits that it is on account of the laches on the part of the petitioner that the work is at standstill and that the bank guarantee has already been expired.

5. I am of the view that the first respondent shall take appropriate decision in this matter within three weeks from the date of receipt of a copy of this judgment. It is open for the first respondent to consider whether any revised rates can be granted to the petitioner. I am not expressing anything on the issue whether the petitioner is entitled for such rates or not. It is purely for the first respondent to decide, if the petitioner is willing to take the works to be completed.

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The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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