

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 19410 of 2015 (A)

PETITIONER(S) :

P.B.MANAF,
PUTHIYEDETH HOUSE, MUTTOM,
THAYIKATTUKARA P.O.,
ALUVA, PIN-683 106.

BY ADVS.SRI.R.D.SHENOY (SR.)
SRI.LEGITH T.KOTTAKKAL
SRI.S.VINOD BHAT

RESPONDENT(S) :

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1. KERALA PUBLIC WORKS DEPARTMENT,
BUILDINGS, NORTH CIRCLE, PWD COMPLEX,
KOZHIKODE-673 001,
REPRESENTED BY THE SUPERINTENDENT ENGINEER.
 2. KERALA STATE CONSTRUCTION CORPORATION LIMITED,
(A GOVERNMENT OF KERALA UNDERTAKING) HAVING ITS
ADMINISTRATIVE OFFICE IN DOOR NO.30/1521-A ,
BAY UNDER THE BRIDGE, NORTHERN SIDE OF RAILWAY,
PONNURUNNI, VYTIKA-682 019,
REPRESENTED BY ITS GENERAL MANAGER.
 3. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
 4. THE CHIEF ENGINEER,
BUILDINGS, KERALA PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SRI.T.P.SAJID
R2 BY ADV. SRI.M.V.THAMBAN
BY SRI.M.V.THAMBAN, SC., KSCC LTD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IVS.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1 : COPY OF THE AGREEMENT NO.CC/GM/CA/251 DATED 15-10-2012 BETWEEN THE PETITIONER AND 2ND RESPONDENT.
- EXT. P2 : COPY OF THE LETTER NO.DB3/4673/2006 DATED 19-10-2013 ISSUED BY THE 1ST RESPONDENT.
- EXT. P3 : COPY OF THE NO.CE/BL/WYND/391/2006(2010) DATED 20-11-2013 ISSUED BY CHIEF ENGINEER, PWD BUILDINGS, THIRUVANANTHAPURAM.
- EXT. P4 : COPY OF LETTER NO.CC/GM/POLY-M/010/2064 DATED 18-8-2014 ISSUED BY THE 2ND RESPONDENT.
- EXT. P5 : COPY OF LETTER NO.CC/GM/POLY-M/010/2069 DATED 28-8-2014 ISSUED BY THE 2ND RESPONDENT.
- EXT. P6 : COPY OF LETTER DATED 23-10-2014 SENT BY THE PETITIONER TO PWD, THIRUVANANTHAPURAM.
- EXT. P7 : COPY OF LETTER NO.CC/GM/POLY-M/010/2597 DATED 14-1-2015 ISSUED BY THE 2ND RESPONDENT.
- EXT. P8 : COPY OF LETTER DATED 22-1-2015 SENT BY THE PETITIONER.
- EXT. P9 : COPY OF LETTER NO.RO/KNR/229/11/59 DATED 30-1-2015 ISSUED BY THE 2ND RESPONDENT.
- EXT. P10 : COPY OF LETTER DATED 6-2-2015 SENT BY THE PETITIONER.
- EXT. P11 : COPY OF THE ORDER CC/GM/POLY-M/010/2774 (A) DATED 28-2-2015 PASSED BY 2ND RESPONDENT.
- EXT. P12 : COPY OF THE LETTER DATED 10-4-2015 SENT BY THE PETITIONER.
- EXT. P13 : COPY OF THE LETTER NO.RO/KNR/229/11/409 DATED 29/06/2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS:

- EXT.R2 (A) : COPY OF THE PROCEEDINGS OF THE MANAGING DIRECTOR DATED 31/10/2012 BEARING ORDER NO.CC/F4/1814/2011.
- EXT.R2 (B) : COPY OF THE PROCEEDINGS OF THE MANAGING DIRECTOR DATED 09/09/2013 BEARING ORDER NO.F4/1814/2011/891.
- EXT.R2 (C) : COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DATED 23/02/2015 BEARING ORDER NO.DB3/4373/06.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.19410 of 2015

Dated this the 28th day of September, 2015

JUDGMENT

The petitioner is a Government Contractor, entered into an agreement dated 15.10.2012 with the second respondent for construction of main building for Government Polytechnic at Meppady in Wayanad District. Thereafter, the petitioner's work has been terminated by Ext.P11. This is under challenge before this Court.

2. The work is being executed by the Public Works Department through the second respondent. Originally, the work was awarded to the petitioner's brother. That was terminated. Thereafter, entrusted with the petitioner. In fact, the work has to be completed on 21.8.2014. By Ext.P4, the second respondent brought to notice of the Public Works Department, the time may be extended upto 31.12.2015. It is noted in Ext.P4 as follows:

“Invite your kind attention to the above reference cited. The extended period of time of completion for the above work will expire on

21.8.2014. We have completed about 40% of the work. The work could not progress as per target due to change in strata of foundation and occurrence of rock which had to be blasted off. Also there was problem is getting construction materials like sand and aggregate.”

3. The second respondent wrote another letter to the Public Works Department, which is produced as Ext.P5. It is stated as follows:

“During site leveling a huge mass of rock out crop was met with which completely stopped further activities at the site. There was no provision in the schedule for blasting or chiselling rock for levelling site. Moreover, the local people started agitating over blasting of rock. The department also took time to assess the quantity of rock excavation required for the work and in approving the extra item. This has considerably affected the progress of the work. Due to this a long delay occurred in setting marking of column position.”

4. It is further stated in Ext.P5 that due to the peculiarity of the site, as said above this work attracts may unexpected additional cost neither covered by the work contract nor mentioned anywhere in the contract regarding compensation for the same.

5. In this matter, a counter affidavit has been filed on behalf of the first respondent. It is stated in the counter affidavit that the Contractor was well aware of the site conditions and fact of levelling a site. It is submitted that after the termination, it was retendered. However, there was no valid bidders. Thereafter, in another tender, one offer was received and the technical bid has been approved and the matter is pending before the Chief Engineer.

6. The petitioner, in fact, highlighted his grievances by Ext.P12 before the second respondent. As seen from Exts.P4 and P5, there are certain other issues relating to the execution of the work. The unexpected delay is owing to rock formation and blasting the rock.

7. This Court is of the view, in such situation, a practical approach is required rather than working out the legal rights based on contract. The public interest would sub serve if actual cause of delay is found out rather than rights being agitated based on terms of the contract. The delay appears to be apparently as pointed out in Exts.P4 and P5 by the second respondent. Any further delay, perhaps, would also cause additional expenses as it may require to

be awarded to the new contractor at the new revised rate.

8. This Court is of the view, the Chief Engineer-the fourth respondent shall thrash out this issue by providing some enhancement to the petitioner taking note of the factors leading to the delay. The Chief Engineer is also free to fix any terms and conditions to ensure the work is completed taking note of the cause of the delay.

Therefore, the Chief Engineer shall take appropriate decision on Ext.P12 after hearing the petitioner and the officials of the second respondent. This Court is of the view, the Chief Engineer shall take a decision in this matter after adverting to the above observation. Needful shall be done within two weeks from the date of receipt of a copy of this judgment. Till a decision is taken as above, finalisation shall be deferred. Awarding contract to a new tenderers would depend upon the outcome of the decision of the Chief Engineer.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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