

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 23371 of 2012 (V)

PETITIONER:

**P.V. PAULOSE,
GOVERNMENT CONTRACTOR,
PARASSERIL HOUSE, MEENPARA.P.O.,
PUTHENCROZ (VIA), ERNAKULAM.**

**BY ADVS.SRI.MURALI PURUSHOTHAMAN
SRI.DEEPU LAL MOHAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -695 001.**
- 2. THE COMMISSIONER OF RURAL DEVELOPMENT,
COMMISSIONERATE OF RURAL DEVELOPMENT, LMS COMPOUND
OPPOSITE CORPORATION OFFICE, VIKAS BHAVAN.P.O.
THIRUVANANTHAPURAM -695 033.**
- 3. THE PROJECT DIRECTOR,
POVERTY ALLEVIATION UNIT, DISTRICT PANCHAYAT,
P.B.NO.75, ALAPPUZHA -688 001.**
- 4. CHENGANNOOR BLOCK PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PULIYOOR.P.O.,
CHENGANNOOR -689 510.**
- 5. THE SECRETARY
CHENGANNOOR BLOCK PANCHAYAT REPRESENTED BY ITS SECRETARY
PULIYOOR.P.O., CHENGANNOOR -689 510.**

Contd.... 2

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ADDL.R6: JOY ABRAHAM

AGED 59, S/O.A.P.ABRAHAM, AMPALAPATT HOUSE,
VANAVATHUKARA, ERAMALLIKKARA.P.O.,
THIRUVANVANDOOR VILLAGE, CHENGANNOOR TALUK,
THIRUVALLA, PIN -689 109.

(IMPLEADED AS PER ORDER IN IA.3122/13 DT.4.7.13).

R1 TO R3 BY GOVERNMENT PLEADER : SRI. T.J. MICHAEL.

R4 AND R5 BY ADVS. SRI.IYPE JOSEPH

SRI.V.MANOJ KUMAR

R6 BY ADV. SRI.PRAMOD KOCHUTHOMMEN.E.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : COPY OF THE LETTER DATED 04.05.2007 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P2 : COPY OF THE RESOLUTION No. I (1) DATED 04.05.2007 OF THE PANCHAYAT COMMITTEE OF THE 4TH RESPONDENT BLOCK PANCHAYAT.
- EXHIBIT P3 : COPY OF THE SELECTION NOTICE NO.E 307/07 DATED 18.05.2007 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.
- EXHIBIT P4 : COPY OF THE AGREEMENT NO.346/07-08 DATED 26.05.2007 ENTERED INTO BY THE PETITIONER WITH THE 5TH RESPONDENT.
- EXHIBIT P5 : COPY OF THE ACKNOWLEDGEMENT DATED 31.08.2007 REGARDING HANDING OVER OF SITE OF THE SUBJECT WORK.
- EXHIBIT P6 : COPY OF THE LETTER NO. DB/07-08/KSY/DAMAGES/80 DATED 15.12.2007 ISSUED TO THE PETITIONER BY THE ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION, KALLISSERY.
- EXHIBIT P7 : COPY OF THE NOTICE NO. T1-4098/07/EIA DATED 01.01.2008 ISSUED TO THE PETITIONER BY THE ELECTRICAL INSPECTOR, ELECTRICAL INSPECTORATE, ALAPPUZHA.
- EXHIBIT P8 : COPY OF THE REPRESENTATION DATED 24.05.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P9 : COPY OF THE REPRESENTATION DATED 10.07.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P10 : COPY OF THE REPRESENTATION DATED 09.12.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P11 : COPY OF THE REPRESENTATION DATED 02.01.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P12 : COPY OF THE REPRESENTATION DATED 11.03.2009 SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT.
- EXHIBIT P13 : COPY OF THE LETTER DATED 27.07.2009 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P14 : COPY OF THE RESOLUTION NO. IV(1) DATED 29.11.2010 OF THE PANCHAYAT COMMITTEE OF THE 4TH RESPONDENT.

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- EXHIBIT P15 : COPY OF THE LETTER NO.E 408/07 DATED 29.11.2010 FORWARDED BY THE 5TH RESPONDENT TO THE ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION, KALLISSERY.**
- EXHIBIT P16 : COPY OF THE LETTER DATED 15.12.2010 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P17 : COPY OF THE LETTER NO. E.394/04 DATED 03.01.2011 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**
- EXHIBIT P18 : COPY OF THE LETTER NO. E.394/2004 DATED 25.03.2001 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**
- EXHIBIT P19 : COPY OF THE LETTER NO. E.129/2011 DATED 25.04.2011 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**
- EXHIBIT P20 : COPY OF THE REPRESENTATION DATED 19.07.2011 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR RURAL DEVELOPMENT, PLANNING AND CULTURE.**
- EXHIBIT P21 : COPY OF THE LETTER NO. E.394/04 DATED 02.08.2011 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**
- EXHIBIT P22 : COPY OF THE LETTER DATED 12.08.2011 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P23 : COPY OF THE LETTER NO. E.394/04 DATED 27.08.2011 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT**
- EXHIBIT P24 : COPY OF THE LETTER DATED 22.09.2011 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P25 : COPY OF THE LETTER NO. 37499/DD1/11/LSGD DATED 20.10.2011 ISSUED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT TO THE 2ND RESPONDENT.**
- EXHIBIT P26 : COPY OF THE REPRESENTATION DATED 16.12.2011 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P27 : COPY OF THE RESOLUTION NO.III (1) DATED 27.04.2012 OF THE PANCHAYAT COMMITTEE OF THE 4TH RESPONDENT BLOCK PANCHAYAT**
- EXHIBIT P28 : COPY OF THE LETTER NO.E.394/04 DATED 09.07.2012 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**
- EXHIBIT P29 : COPY OF THE LETTER DATED 10.08.2012 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**

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**EXHIBIT P30 : COPY OF THE LETTER NO.E.394/2004 DATED 04.09.2012 ISSUED TO
THE PETITIONER BY THE 5TH RESPONDENT.**

**EXT.P31: COPY OF NOTICE NO.B.P.71/07 DT.28.3.07 ISSUED BY THE 4TH
RESPONDENT PANCHAYAT.**

RESPONDENT(S)' EXHIBITS: NIL

**EXT.R4(A): COPY OF CONSENT LETTER DT.26.9.07 EXECUTED BY PETITIONER IN
FAVOUR OF 4TH RESPONDENT.**

**EXT.R4(B): PHOTOGRAPHS OF THE PRESENT CONDITION OF THE ROAD (2 IN
NUMBERS).**

**EXT.R4(C): COPY OF LETTER ISSUED BY MEMBER OF LEGISLATIVE ASSEMBLY,
MLA, CHANGANNUR ISSUED TO THE DISTRICT COLLECTOR, ALAPPUZHA
DT.13.11.2013 SANCTIONING AN AMOUNT OF ₹10,00,00/- FOR IMPROVEMENT OF THE
ROAD FROM VANAVATHUKKARA – VALLATHODE.**

//TRUE COPY//

PA TO JUDGE

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ANIL K.NARENDRA, J.

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W.P.(C). No. 23371 of 2012

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Dated this the 15th day of September, 2015

JUDGMENT

The petitioner, a contractor who had undertaken the work of construction of Vanavathukara Ermallikkara Vallathode Road in Chengannur Block Panchayat, on the strength of Ext.4 agreement entered into with the 5th respondent, is before this Court in this writ petition seeking a writ of certiorari to quash Ext.P27, by which the contract in question was terminated at his risk and cost. The petitioner has also sought for writ of mandamus commanding the 4th respondent to permit him to execute the balance work covered by Ext.P4 by sanctioning reasonable extension of time and by granting suitable revision of rates at the current PWD schedule of rates.

2. The specific case of the petitioner in this writ petition is that, it is due to the delay on the part of the respondent Panchayat in removing the electric posts and electric line standing on the road, he could not commence the construction work in time. Relying on Ext.P14 resolution taken

by the Panchayat Committee, the petitioner would contend that, on 29.11.2010, the Panchayat Committee considered the issue in detail and came to a conclusion that the petitioner could not commence the work in time since the Panchayat could not remove the electric posts and electric line in the site. By the time, the petitioner commenced the work, the price of the materials and labour increased exorbitantly, as a result of which if the petitioner is proceeding with the work without any revision of rates and wages, he would sustain heavy loss. In such circumstances, it was resolved in Ext.P14 that only if the estimate is revised, the petitioner will be in a possession to undertake the remaining work.

3. The petitioner would contend that, it is without reference to Ext.P14 decision of the Panchayat Committee, it was decided in Ext.P27 to terminate the contract in question at the risk and cost of the petitioner. However, the reasoning of the Panchayat in Ext.P27 decision and that in Ext.P28 covering letter issued by the Secretary of the Panchayat is that, it is due to the fault on the part of the petitioner, the contract work

could not be completed in time. During the course of arguments, the learned counsel for the petitioner has also placed reliance on the judgment of a learned Judge of this Court dated 26.9.2014 in W.P.(C)No.6559 of 2011, in a case involving similar facts and circumstances, wherein the contractor concerned was absolved from the work in question without risk and cost.

4. Respondents 4 and 5 have filed a counter affidavit justifying the stand in Ext.P27 and Ext.P28. But a reading of the aforesaid counter affidavit would show that no reasons whatsoever have been stated in the counter affidavit for not taking into consideration Ext.P14 decision of the Panchayat Committee and the conclusions made therein, while taking a decision in Ext.P27 to terminate the contract in question at the risk and cost of the petitioner, is that the work could not be completed due to the fault on the part of the petitioner. It is also not disputed that, the decision taken in Ext.P27 is without affording the petitioner a reasonable opportunity of being heard.

5. Therefore, the decision taken in Ext.P27 is vitiated by total non-application of mind and the procedure adopted by the Panchayat is contrary to the principles of natural justice.

In such circumstances, without going into the merits of the rival contentions, I deem it appropriate to dispose of this writ petition, setting aside the decision taken by the Panchayat Committee in Ext.P27 and also Ext.P28 communication issued by the 5th respondent, thereby directing 4th and 5th respondents reconsider the matter, after affording the petitioner an opportunity of being heard. It would be open to the petitioner to submit a written submission before the said respondents along with supporting documents, if any, and rely on judgment of this Court dated 26.9.2014 in W.P.(C)No.6559 of 2011. The petitioner shall submit written submission before the said respondents, within a period of 3 weeks from the date of receipt of a certified copy of this judgment. On receipt of such written submission, the 4th and 5th respondents shall consider the matter and pass a reasoned order, with notice to the petitioner and affording him a reasonable opportunity of

being heard. Orders in this regard shall be passed, as expeditiously as possible, at any rate within a period of three months from the date of receipt of the written submission.

Sd/-
ANIL K.NARENDRAN,
JUDGE.

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