

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 20092 of 2015 (J)

PETITIONER:

**GEORGE KURUVILA,
GOVERNMENT CONTRACTOR, SANKARAMANGALAM,
ERAVIPEROOR P.O., PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE CHIEF ENGINEER
PWD, ROAD & BRIDGES, THIRUVANANTHAPURAM-695 001.**
- 3. THE EXECUTIVE ENGINEER,
PWD, ROAD & BRIDGES DIVISION OFFICE, PATHANAMTHITTA-689 645.**

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PTO

WP(C).No. 20092 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: PHOTOCOPY OF THE WORK ORDER DATED 06.06.1998 ISSUED IN FAVOUR OF THE PETITIONER.

EXHIBIT-P2: PHOTOCOPY OF THE WORK ORDER DATED 20.5.1999 ISSUED IN FAVOUR OF THE PETITIONER.

EXHIBIT-P3: PHOTOCOPY OF THE REPRESENTATION DATED 20.6.2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P4: PHOTOCOPY OF THE JUDGMENT DATED 2.7.2002 IN O.P. NO.17721/02 OF THIS HONOURABLE COURT.

EXHIBIT-P5: PHOTOCOPY OF THAT LETTER NO.17098/G2/2002/PWD DATED 7.10.2003 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P6: TRUE COPY OF THE JUDGMENT DATED 9.2.2004 IN WP(C) NO.4598/2004 OF THIS HONOURABLE COURT.

EXHIBIT-P7: PHOTOCOPY OF THAT REPORT OF THE CHIEF ENGINEER DATED 14.10.2004.

EXHIBIT-P8: PHOTOCOPY OF THE ORDER DATED 21.4.2007 PROVIDED TO THE PETITIONER UNDER RTI ACT.

EXHIBIT-P9: PHOTOCOPY OF THE JUDGMENT DATED 12.6.2012 IN W.P.(C) NO.34863/2007 OF THIS HONOURABLE COURT.

EXHIBIT-P10: PHOTOCOPY OF THE ORDER VIDE NO.G.O.(RT) NO.221/2013/PWD DATED 13.2.2013.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE

SMJ

K. VINOD CHANDRAN, J.

W.P(C). No.20092 of 2015

Dated this the 17th day of July, 2015.

JUDGMENT

The petitioner is a Contractor, aggrieved by the non-compliance of the judgment at Ext.P9. The petitioner was imposed with a penalty in a work completed by him, as awarded by the Government. The petitioner had sought for refund of penalty, which was directed to be considered as per Exts.P4 and P6 as early as in 2002 and 2004. The petitioner's contentions were considered and despite Ext.P7 recommendation in favour of the prayer of the petitioner, the same was declined by Ext.P8, which was impugned by the petitioner in WP(C) No.34863 of 2007, the judgment of which is produced at Ext.P9 and the grievance projected herein is the non-compliance of the same.

2. The learned Single Judge of this Court found in Ext.P9 that the consideration in Ext.P8 was not proper. The contention with respect to the specific term in the contract permitting the Department to impose penalty for belayed performance was

noticed. It was specifically found that, when the Contractor does not admit such delay, it was not proper for the Department to compute the same without a proper adjudication. It was hence Ext.P8 was set aside and a reconsideration directed. The Government has purportedly complied with the judgment with Ext.P10, which refers the dispute to an arbitration panel. This Court does not find that the same would be in compliance of Ext.P9 judgment. Ext.P9 in fact directed that the matter be reconsidered.

In such circumstances, it is only proper that the arbitration panel be constituted expeditiously, at any rate, within one month and the so constituted panel be requested to pass an award within a specified time.

It is so directed and the writ petition is disposed of. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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