

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 25209 of 2009 (U)

PETITIONER(S):

**N.V.BABY,AGED 57,SIMON VARGHESE,
PERICKAMATTATHIL HOUSE, EZHAKKARANAD(S)P.O.
PUTHENCROUZ, ERNAKULAM DISTRICT.**

BY ADV. SRI.BOBMY MATHEW KOOTHATTUKULAM

RESPONDENT(S):

- 1. THE KERALA WATER AUTHORITY,REPRESENTED
BY ITS MANAGING DIRECTOR, JALABHAVAN
THIRUVANANTHAPURAM.**
- 2. THE SUPERINTENDING ENGINEER,P.H.CIRCLE,
KERALA WATER AUTHORITY, KOTTAYAM.**
- 3. THE EXECUTIVE ENGINEER,P.H.DIVISION,
KERALA WATER AUTHORITY, KOTTAYAM.**

R1-R3 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 - TRUE COPY OF THE AGREEMENT NO.19/SE/PHCK/2005-06
DATED 21.3.2006.
- EXT.P2 - TRUE COPY OF THE AGREEMENT SCHEDULE OF WORK IN
EXT.P1
- EXT.P3 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER DATED 16.6.2009 TO THE 1ST RESPONDENT
- EXT.P4 - TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT
DATED 18.6.2009.
- EXT.P5 - TRUE COPY OF THE LETTER DATED 19.6.2009
COMMUNICATED TO THE PETITIONER
- EXT.P6 - TRUE COPY OF THE REPLY SUBMITTED TO EXT.P5 BY THE
PETITIONER DATED 24.6.2009
- EXT.P7 - TRUE COPY OF THE LETTER OF THE 3RD RESPONDENT
DATED 3.8.2009
- EXT.P8 - TRUE COPY OF THE REPLY TO EXT.P7 SUBMITTED BY THE
PETITIONER ON 6.8.2009.
- EXT.P9 - TRUE PHOTO COPY OF THE FINAL BILL.
- EXT.P10 - TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT
DATED 22.2.2008.
- EXT.P11 - TRUE COPY OF THE CERTIFICATE ISSUED BY THE 3RD
RESPONDENT DATED 22.5.2009.
- EXT.P12 - TRUE COPY OF THE RELEVANT PAGES OF THE
MEASUREMENT BOOK.
- EXT.P13 - TRUE COPY OF THE FIRST PART BILL

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

SHAJI P. CHALY, J.

W.P.(C).No.25209 of 2009

Dated this the 27th day of November, 2015

JUDGMENT

This writ petition is filed seeking to quash Exts.P5 and P7 orders passed by the third respondent whereby the 3rd respondent has directed the petitioner to remit an amount of Rs.1,93,638/- allegedly towards excess amount of Rs.19,038/- and Rs.1,74,600/- towards cost of coupling pursuant to a work executed under a contract. The brief facts for the disposal of the writ petition are as follows:-

2. The petitioner is a Government contractor engaged in civil contract work with the State Government and other instrumentalities of the State. During the course of his business he has entered into Ext.P1 agreement with the first respondent for carrying out laying of pipes with 125mm GI pipe to a distance of 5420 mtrs from existing booster pump house at Malayiruthi to existing GL tank at Poovathilappu. It is the case of the petitioner that he has completed the work on 24.1.2008, which is the date within the extended period of contract

provided by the first respondent.

3. Anyhow, to cut a long story short, the first respondent has initiated action to recover the amount specified above from the petitioner. Ext.P5 dated 19.6.2009 is the letter addressed by the third respondent to the Assistant Executive Engineer, WSP Sub Division, Pala with copy to the petitioner, stating that consequent to the use of more flanges used in the work instead of coupling, the cost of coupling remaining with the contractor should be recovered.

4. Pursuant to receipt of Ext.P5, petitioner has submitted Ext.P6 disowning the liability created under Ext.P5 and requesting the third respondent to repay the retention amount as well as the amount detained pursuant to Ext.P5 notice. Anyhow, after receipt of Ext.P6, the third respondent has passed Ext.P7 order, stating that the amount of Rs.1,93,638/- is liable to be paid by the petitioner on account of the two matters referred above. On receipt of Ext.P7, petitioner has

submitted Ext.P8 representation before the third respondent reiterating the explanations offered by him in Ext.P6 and also narrating the circumstances why the petitioner is not liable to make any payments to the respondents. But, in spite of Ext.P8 and other personal representations made by him, the first respondent has not cared to consider the request made by the petitioner and were proceeding with recovery. It is thus aggrieved this writ petition is filed.

5. Respondents 1 to 3 have filed a counter affidavit refuting the allegations, statements and claims made by the petitioner in the writ petition and also contending that the petitioner is liable to pay the amount demanded in Ext.P7, for the reason that consequent to change of the technical specifications, couplings unused in the process, remained with the petitioner and therefore the petitioner was liable to return the same or else to pay its costs. And having not done so, the first respondent is justified in recovering the cost of the said products.

Therefore, it is contended that the action initiated by the first respondent is fully justified. The petitioner has filed a reply to the counter reiterating the stand taken by him in the writ petition and also explaining that there is no provision made under the contract with regard to the use of couplings in the whole process and therefore it was the petitioner who has employed such products during the execution of the work and therefore he is not liable to return couplings to the first respondent, thereby he contended that the recovery initiated by the first respondent cannot be sustained under law.

6. Heard learned counsel for the petitioner Sri.Boby Mathew Koothattukulam and Sri.George Mathew appearing for respondents 1 to 3.

7. The prime contention advanced by the learned counsel for the petitioner is that as per Ext.P9 final bill, it is seen that 624 numbers of coupling is used in the execution of the project and the entire payments for the execution of the work was given to the petitioner. It is the

further contention of the petitioner that after setting Ext.P9 final bill, the third respondent had made certain corrections in Ext.P9 and the used quantity of couplings was corrected to 312 Nos against the original entry "624 Nos". Therefore, the petitioner contends that, there is no basis for warranting such a correction. The petitioner also contends that since, the entire contract value as per Ext.P9 was paid to him, the same was done by the third respondent after evaluating the facts and figures and taking into account the entire circumstances of the execution of the contract work. Therefore, if at all, the third respondent had to make a correction, the petitioner contends, a notice should have been provided to him, thus enabling him to explain the circumstances.

8. On the other hand, the learned Standing Counsel for the Water Authority contends that the facts and circumstances prevailing in the case shows that consequent to the use of a deviated technical product in the execution of the contract, a large number of couplings

became unusable, which was liable to be returned by the petitioner to the first respondent.

9. Therefore what remains now is that, the whole dispute turns out to be a factual one, disabling this Court to arrive at a decision exercising the discretionary power under Article 226 of the Constitution of India. What I find from Ext.P7 order passed by the third respondent is that, even though Exts.P6 and P8 representations were filed by the petitioner, none of the aspects claimed thereunder were considered by the third respondent. I also feel that when the final bill was passed consequent to Ext.P9 and the amounts were paid to the petitioner, the third respondent should not have ventured to carry out the correction to Ext.P9 without providing sufficient opportunity to the petitioner to explain the circumstances by which he is not liable to return or make any payment for any unused articles.

10. Moreover, Ext.P7 does not reveal, that the claims and contentions raised by the petitioner were

taken into account by the third respondent while passing Ext.P7 order. It is a well settled proposition of law that an administrative authority considering a request, is liable to take into account the entire aspects put forth by the party, failing which the same amounts to violation of principles of natural justice and thereby render the whole proceedings arbitrary. Therefore I set aside Ext.P7 order passed by the third respondent. The learned Standing Counsel for the first respondent at this point of time submitted that the second respondent is the agreement authority and therefore it is only proper that the second respondent is directed to take a decision on the grievances put forth by the petitioner. Therefore there will be a direction to the second respondent to take a decision in Exts.P6 and P8 representations submitted by the petitioner impugning Ext.P7 order passed by the third respondent. Needless to say, the second respondent shall take into account the entire grievance put forth by the petitioner in Exts.P6 and P8. So also petitioner is

given the liberty to produce any documents in support of his claim before the second respondent. The whole exercise shall be completed by the second respondent after providing an opportunity of hearing to the respective parties as directed above within a period of two months from the date of receipt of copy of this judgment.

11. This writ petition is disposed of accordingly.

**Sd/-
SHAJI P. CHALY
JUDGE**

//TRUE COPY//

PA TO JUDGE

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