

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 25240 of 2009 (Y)

PETITIONER:

**K.M. IBRAHIM
S/O. MUHAMMED KUNJU,
PATTOLIL VEEDU, EDAKULANGARA, KARUNAGAPALLY.**

**BY ADVS.SRI.A.N.RAJAN BABU
SRI.P.GOPALAKRISHNAN (MVA)
SRI.A.R.EASWAR LAL**

RESPONDENTS:

- 1. STATE OF KERALA
REP.BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, TRIVANDRUM.**
- 2. PRINCIPAL SECRETARY TO FINANCE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.**
- 3. CHIEF ENGINEER,
PWD ADMINISTRATION, TRIVANDRUM.**
- 4. SUPERINTENDENT ENGINEER,
BUILDING AND LOCAL WORKS,
SOUTH CIRCLE, TRIVANDRUM.**

R1 TO R4 BY SPL. GOVT. PLEADER (FINANCE) SRI. P.V. LONACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE ORDER No.DB12/26/41/05.
- EXT- P2- TRUE COPY OF THE ORDER TO CANCEL THE LICENSE BEARING No.21/BSE/2002-03 ISSUED FROM THIS OFFICE.
- EXT- P3- TRUE COPY OF THE ORDER No.BSC 3479/09/F5 DATED 27-07-2009 FROM THE 3RD RESPONDENT INTIMATING THE PETITIONER THE LICENSE WAS CANCELLED.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 25240 OF 2009-Y

DATED THIS THE 5th DAY OF JANUARY, 2015.

J U D G M E N T

Challenge in this writ petition is against Ext.P3 proceedings issued by the 4th respondent cancelling registration of the petitioner as a contractor. Evidently the petitioner was awarded with a contract work namely, "Vettamukku-Thevalakkara Road". The contract was awarded during May 2006, fixing the time for completion of the work, before 08-10-2006. It is evident from Ext.P1 proceedings issued by the 4th respondent that, on the basis of the request made by the petitioner, the time for completion was extended upto 31-10-2008, based on recommendation made by the Executive Engineer of the division concerned, subject to the condition that the petitioner will not be entitled for any enhancement in the rates or for other benefits on account of the extension. According to the petitioner, the work was completed satisfactorily within the extended time limit and he has not

committed any default. But the 4th respondent had issued Ext.P2 notice, after completion of the work requesting the petitioner to produce his original licence (registration card) because the 3rd respondent had ordered to cancel the 'B-class' licence issued to the petitioner. Subsequently Ext.P3 proceedings was issued by the 4th respondent cancelling the registration based on a proceedings issued by the 2nd respondent, stating the reason that the Finance (inspection) Department had requested to cancel the registration based on the irregularities noted during inspection conducted by the Finance Inspection Wing at the office of the Executive Engineer.

2. In the counter affidavit filed on behalf of the 2nd respondent it is contended that the petitioner had failed to complete the work within the stipulated time. However it is conceded that Ext.P1 proceedings sanctioning extension of time was granted after the Finance Inspection Wing had conducted the inspection. It is further contended that Ext.P3 order was issued after being fully satisfied that the

work in question was delayed for a long time due to culpable negligence on the part of the petitioner.

3. If there occurred any culpable negligence on the part of the petitioner in not completing the work, the authorities concerned in the Department ought to have cancelled the contract and to re-tendered the same at his risk and cost. It is evident that the period of completion was extended on the request of the petitioner. In Ext.P1 it is specifically mentioned that the extension was granted on convincing about the reasons mentioned by the petitioner with respect to non-completion of the work. Therefore it has to be held that the cancellation of registration, alleging non-completion of the work within the time stipulated, cannot be sustained. But in Ext.P3 proceedings it is mentioned that the cancellation was recommended on the basis that irregularities were detected in the work, based on inspection conducted by the Finance Inspection Wing, at the office of the Executive Engineer. If such grave irregularity was detected in which action was warranted to

the extent of cancelling the registration of the petitioner, it was obligatory on the part of respondents 3 & 4 to point out such irregularities to the petitioner and to initiate separate proceedings for cancellation of the registration, with opportunity afforded to the petitioner. In the case at hand, from Ext.P2 & P3 it is evident that the cancellation of registration was done without issuing any notice to the petitioner and without affording him any opportunity to show cause. For the said reason alone the impugned proceedings is bad, as violative of principles of natural justice. Further the stand taken by the respondents seems to be contradictory in view of the averments in the counter affidavit and Ext.P1 proceedings granting extension of time limit.

4. Under the above mentioned circumstances the writ petition is liable to be allowed, and this court orders so. Exhibit P3 order cancelling the 'B-class' contract registration of the petitioner is hereby set aside.

5. It is made clear that the respondents will be at liberty to initiate fresh steps if so advised, proposing cancellation of the registration, if there exist any valid reasons for the same. But such proceedings shall be taken only after issuing appropriate notice to the petitioner and only after affording him adequate opportunity to object such proceedings.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge