

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. 24887 of 2012 (I)

PETITIONER:

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

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

RESPONDENTS:

- 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 BLCOK PANCHAYAT, PULIYOOR.P.O.
CHENGANNOOR - 689 510.**
- 6. P.V.RAMACHANDRA KURUP
CHAIRMAN, AREKKARA MULANILKUNNATHILPADY
THAZHAMBHAGOM PARACHANDA ROAD ACTION COUNCIL ,
PUTHAN VEEDU, KOZHUVALLOOR POST, CHENGANNUR
ALAPUZZHA DISTRICT - 689 521**

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7. THE DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE & ANTI- CORRUPTION BUREAU, EASTERN RANGE
MUTTAMBALAM, KOTTAYAM MUNICIPALITY, KOTTAYAM -686 004.

8. THE DIRECTOR
VIGILANCE & ANTI -CORRUPTION BUREAU, PMG
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM -695 033.

9. THE SECRETARY TO GOVERNMENT
VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM -695 001.

R1-R3,R7 TO R9 BY GOVERNMENT PLEADER: SRI. T.J.MICHAEL
R4 & 5 BY ADVS. SRI.IYPE JOSEPH
SRI.V.MANOJ KUMAR
R6 BY ADVS. SRI.T.B.SHAJIMON
SMT.GOVINDU P.RENUKADEVI

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 ACKNOWLEDGEMENT DATED 04.04.2007 REGARDING HANDING OVER OF SITE OF THE SUBJECT WORK.**
- EXHIBIT P2 : COPY OF THE LETTER DATED 24.02.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P3 : COPY OF THE LETTER DATED 24.05.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P4 : COPY OF THE LETTER DATED 02.07.2008 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P5 : COPY OF THE REPRESENTATION DATED 11.06.2009 SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT.**
- EXHIBIT P6 : COPY OF THE RESOLUTION NO. V(2) DATED 20.08.2009 OF THE PANCHAYAT COMMITTEE OF THE 4TH RESPONDENT BLOCK PANCHAYAT.**
- EXHIBIT P7 : COPY OF THE LETTER DATED 30.04.2010 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P8 : COPY OF THE LETTER DATED 20.08.2010 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P9 : COPY OF THE LETTER DATED 15.12.2010 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- EXHIBIT P10 : COPY OF THE LETTER NO.E 307/07 DATED 03.01.2011 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**
- EXHIBIT P11 : COPY OF THE REPRESENTATION DATED 19.07.2011 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR RURAL DEVELOPMENT, PLANNING AND CULTURE.**
- EXHIBIT P12 : 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 P13 : COPY OF THE RESOLUTION NO. III (1) DATED 29.09.2011 OF THE PANCHAYAT COMMITTEE OF THE 4TH RESPONDENT BLOCK PANCHAYAT.**
- EXHIBIT P14 : COPY OF THE LETTER NO. E. 304/2007 DATED 12.10.2011 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.**

EXHIBIT P15 : COPY OF THE LETTER NO. E. 304/2007 DATED 04.09.2012 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.

EXHIBIT P16 : COPY OF THE REPRESENTATION DATED 05.10.2012 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.

EXHIBIT P17 : COPY OF THE LETTER NO. E. 394/2004 DATED 17.03.2008 ISSUED TO THE PETITIONER BEFORE THE 5TH RESPONDENT.

EXHIBIT P18 : COPY OF THE AGREEMENT SCHEDULE ATTACHED TO AGREEMENT NO. 279/07-08 DATED 13.03.2007 ENTERED INTO BETWEEN THE PETITIONER AND THE 5TH RESPONDENT SECRETARY (FOR AND ON BEHALF OF THE 4TH RESPONDENT BLOCK PANCHAYAT)

EXHIBIT P19 : COPY OF THE AGREEMENT SCHEDULE ATTACHED TO AGREEMENT NO. 346/07-08 DATED 26.05.2007 ENTERED INTO BETWEEN THE PETITIONER AND THE 5TH RESPONDENT SECRETARY (FOR AND ON BEHALF OF THE 4TH RESPONDENT BLOCK PANCHAYAT)

EXHIBIT P20 : COPY OF THE LETTER NO. 3634/R&I1/08/C.R.D DATED 29.08.2013 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXHIBIT P21 : COPY OF THE EXPLANATION DATED 11.09.2013 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P22 : COPY OF THE LETTER NO. 3634/R&I1/08/C.R.D DATED 28.10.2013 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXHIBIT P23 : COPY OF THE VIGILANCE ENQUIRY REPORT NO. VE 1/12/ERK DATED 29.01.2013 SUBMITTED BY THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE & ANTI - CORRUPTION BUREAU, EASTERN RANGE, KOTTAYAM.

EXHIBIT P24 : COPY OF FORWARDING ENDORSEMENT NO. VE 1/12/ERK DATED 13.03.2013 ISSUED BY THE SUPERINTENDENT OF POLICE, VIGILANCE & ANTI - CORRUPTION BUREAU, EASTERN RANGE, KOTTAYAM.

EXHIBIT P25 : COPY OF THE LETTER NO. E5-VE 1/12/ERK/3615/2011 DATED OCTOBER, 2013 ADDRESSED BY THE DIRECTOR, VIGILANCE & ANTI - CORRUPTION BUREAU TO THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, VIGILANCE DEPARTMENT.

RESPONDENT(S)' EXHIBITS:

EXT.R6(A): PHOTOGRAPHS OF THE PRESENT CONDITION OF THE ROAD.

EXT.R6(B): COPIES OF DETAILS OBTAINED UNDER THE RIGHT TO INFORMATION ACT.

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EXT.R4(A): COPY OF LETTER DT.29.11.08 ISSUED BY PETITIONER TO THE 5TH RESPONDENT.

EXT.R4(B): COPY OF LETTER DT.25.3.09 ISSUED BY PETITIONER TO THE 5TH RESPONDENT.

EXT.R4(C): COPY OF RESOLUTION DT.9.3.10 OF THE CHENGANNUR BLOCK PANCHAYAT COMMITTEE.

//TRUE COPY//

PA TO JUDGE

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ANIL K.NARENDRA, J.
== == == == == == == == == == == == == == == ==
W.P.(C). No.24887 of 2012
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Dated this the 15th day of September, 2015

JUDGMENT

The petitioner was entrusted with the work of improvements to Areekkara Mulanilkunnathilpady Thazhambhagom Parachanda Road in Mulakuzha and Venmony Panchayat, on the strength of an agreement dated 13.3.2007 executed with Chengannur Block Panchayat, the 4th respondent herein. The site of the subject work was handed over to the petitioner on 4.4.2007 and as per the terms of contract the period of completion of the work was to expire on 3.4.2008.

2. Going by the averments in the writ petition, on handing over the site, the petitioner mobilized the required manpower and machinery. But, work could not be commenced owing to the presence of several electric posts and electric lines in the site. In spite of repeated requests, no timely steps were taken by the Panchayat in this regard. In order to substantiate this contention, the petitioner would rely on Ext.P4 representation. The petitioner would contend that, due to laches and omissions solely attributable to respondents 4

and 5, the work was indefinitely delayed. Subsequently, in August 2008 electric posts and electric lines were removed from the site. However, by that time, the contractual period for completion of the work had already expired. Thereafter, the petitioner proceeded with the work and completed the 1st and 2nd phase of the construction namely the formation of the road as well as the soiling and metalling of entire stretch of the road by October 2008. Thereafter, he has submitted all bills for payment. When there was undue delay in payment of the bills, the petitioner submitted Ext.P5 representation before the Government. While the said representation was pending, the Panchayat Committee which met 20.08.2009 had deliberations on the work in question and resolved vide Ext.P6 resolution to revise the rates of the balance work remaining to be done, as per the current schedule of rates.

3. Relying on Ext.P6 resolution, the petitioner would contend that, the Panchayat Committee had admitted the delay on the part of the Panchayat in removing the electric posts from the site, which resulted in the delay in completion

of the work. Further, the Panchayat Committee was also convinced that, due to huge increase in price of construction materials and wages, the petitioner would incur huge loss if the balance work has to be undertaken as per the agreed rate. It was accordingly the Panchayat Committee entrusted the Assistant Engineer concerned, the task of revising the rates of the balance work as per current schedule of rates.

4. After completing the construction of the first and second phase in October 2008, the petitioner had intimated the 4th respondent that, unless the tarring work is immediately carried out, the metal laid on the road is likely to be displaced. After repeated requests it was only by the end of March, 2010 the 4th respondent made available 63 barrels of bitumen, in the place of 163 barrels of bitumen required for carrying out the work. By Ext.P10 letter the 5th respondent, the Secretary of the Panchayat has directed the petitioner to complete the tarring work within 10 days and report the same. The petitioner would contend that, Ext.P10 letter of the 5th respondent is without referring to Ext.P6 resolution passed by

the Panchayat Committee by which the Assistant Engineer concerned was entrusted with the task of revising the estimate. Later, the Panchayat Committee in Ext.P13 resolution dated 29.09.2011 observed that, the petitioner has abandoned the work half way and he demands revision of rates at the current schedule of rates for completing the subject work. Accordingly, the Panchayat Committee in Ext.P13 resolved to initiate legal action against the petitioner.

5. Ext.P13 was followed by Ext. P14 letter dated 12.10.2011 of the 5th respondent by which the petitioner was directed to appear before him on 19.10.2011 for completing the procedure regarding closure of the work. Highlighting the grievance, the petitioner submitted Ext.P16 representation dated 05.10.2012 before the 5th respondent. It was thereafter the petitioner has approached this Court in this writ petition seeking a declaration that in view of Ext.P6 resolution passed by the Panchayat Committee, he is entitled for grant of suitable revision of rates at the current PWD schedule of rates for executing the balance work or he may be relieved from the

work without any risk and cost after disbursing all the amounts due in respect of the work already done by him. He has also sought for various other reliefs.

6. During the pendency of the writ petition, the petitioner was issued with Ext.P20 letter dated 29.08.2013 of the 2nd respondent directing him to offer explanation, if any, to the recommendation alleged to have been made by the Vigilance to terminate the work at his risk and cost and to include him in the black list. On receipt of Ext.P20 notice, the petitioner submitted Ext.P21 explanation dated 11.09.2013. Along with Ext.P21 explanation, the petitioner has also produced copy of Exts.P23, P24 and P25. In view of Ext.P20 notice, the petitioner has also filed an application to amend the writ petition seeking appropriate reliefs against the said notice.

7. The 4th and 5th respondents have filed counter affidavit, contending, inter alia, that there was delay on the part of the petitioner in completing the work. But it is pertinent to note that, in the aforesaid counter affidavit

nothing has been stated regarding the decision taken by the Panchayat Committee, as reflected in Ext.P6.

8. The petitioner has also filed reply affidavit reiterating the contentions raised and producing certain additional documents.

9. A counter affidavit has also been filed by the 6th respondent supporting the stand taken by the 5th respondent Block Panchayat, to which the petitioner has filed a reply affidavit.

10. The 2nd respondent has also filed a counter affidavit supporting the stand taken by the 5th respondent.

11. I heard the learned counsel for the petitioner, learned Government Pleader appearing for respondents 1 to 3 and 7 to 9, the learned counsel for respondents 4 and 5 and also the learned counsel appearing for 6th respondent.

12. The main issue that arises for consideration in this writ petition is as to whether the petitioner can be relieved from the work in question without risk and cost, after disbursing all the amounts due him in respect of the work he

had already undertaken.

13. It is mainly relying on Ext.P6 resolution taken by the Panchayat Committee, the petitioner is contending that, the delay in the execution of the work in question was solely due to the inaction on the part of the Panchayat in removing the electric posts and electric lines from the site. The petitioner would also contend that, there was inordinate delay on the part of the Panchayat in complying with its obligations under the contract and it was only for these reasons, he could not complete the work in time. In Ext.P6, the Panchayat Committee had admitted the delay on its part in removing the electric posts from the site, which resulted in the delay in completion of the work. Further, the Panchayat Committee noticed that, due to huge increase in price of construction materials and wages, the petitioner would incur huge loss if the balance work has to be undertaken as per the agreed rate. It was accordingly the Panchayat Committee entrusted the Assistant Engineer concerned, the task of revising the rates of the balance work as per current schedule

of rates. Therefore, the petitioner would contend that, he is entitled to be absolved from the liability to complete the work, without any risk and cost. The petitioner relying on Ext.P27 judgment of this Court in W.P.(C).No. 6559 of 2011 would contend that, in similar circumstances, in respect of a work undertaken by Pazhayannur Block Panchayat, this court relying on a resolution passed by that Block Panchayat, which is similarly worded to Ext.P6 resolution passed by the 4th respondent Block Panchayat, absolved the contractor concerned from the work, without any risk and cost.

13. Though the petitioner would contend that, it is solely due to the delay on the part of the Panchayat in removing the obstructions in the site and fulfilling its obligations under the contract, he could not complete the work in time, the respondents would contend that it is solely due to the failure on the part of the petitioner in fulfilling his obligations under the contract, the work could not be completed in time. The pleadings and documents on record make it explicitly clear that, there is serious factual disputes

as to the actual cause for the delay/non-completion of the work in question. It has also to be noticed that, in Ext.P6, the Panchayat Committee had admitted the delay on its part in removing the electric posts from the site, which resulted in the delay in completion of the work in question. However, when adjudication of the whole issues involve disputed question of facts, this Court will not be justified in invoking its discretionary jurisdiction under Article 226 of the Constitution of India.

14. Therefore it is for the 4th and 5th respondents to take an appropriate decision in the question as to whether the petitioner can be absolved from the obligations under the contract in question, without risk and cost. A decision in this regard has to be taken by the 4th and 5th respondents, after taking note of Ext.P6 resolution and also Ext.P27 judgment of this Court in W.P.(C).No. 6559 of 2011, and after affording the petitioner a reasonable opportunity of being heard, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of the

judgment. It would be open to the petitioner to submit a written submission before the 4th and 5th respondents along with supporting documents, if any, and the said respondents shall consider the same and pass a reasoned order.

15. As far as the challenge in this writ petition against Ext.P20 notice issued by the 2nd respondent, by which the petitioner has been asked to offer explanation, if any, to the recommendation alleged to have been made by the Vigilance to terminate the subject work at his risk and cost and to include him in the black list is concerned, on receipt of Ext.P20 notice, the petitioner has submitted Ext.P21 explanation. But, going by the pleadings on record, nothing transpired subsequent to the submission of Ext.P21 explanation. If the 2nd respondent wants to proceed further with Ext.P20 notice, it is for the said respondent to consider the explanation submitted by the petitioner in Ext.P21 with notice to him and pass appropriate orders thereon. It would be open to the petitioner to submit a written submission before the 2nd respondent with supporting documents, if any, and the 2nd

respondent shall consider the same and pass a reasoned order and any decision in this regard shall be communicated to the petitioner forthwith.

The writ petition is disposed of as above. No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE.

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