IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 21446 of 2014 (E)

PETITIONER:

V.GOVINDAN KUTTY,
VELAMKANADTH HOUSE, ENKAKAD POST,
WADAKKANCHERRY, THRISSUR DISTRICT.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENT(S):
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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695001.

2. THE SUPERINTENDING ENGINEER,
PUBLIC WORKS DEPARTMENT, ROADS & BRIDGES,
CENTRAL CIRCLE, ALUVA.

3. THE ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, ROADS & BRIDGES,
KUMARANELOOR P.O, PIN - 680590,
WADAKKANCHERY, THRISSUR DISTRICT.

4. THE ASSISTANT ENGINEER,
PUBLIC WORKS DEPARTMENT, ROADS & BRIDGES,
KUMARANELOOR P.O, PIN - 680590,
WADAKKANCHERY, THRISSUR DISTRICT.

5. THE CHIEF ENGINEER,
OFFICE OF THE CHIEF ENGINEER, PWD ROADS &
BRIDGES, THIRUVANANTHAPURAM - 695033.

BY GOVERNMENT PLEADER SRI.T.P.SAJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE LETTER DATED 24-08-2007 ISSUED BY THE SUPERINTENDING ENGINEER, PWD (R& B) CENTRAL CIRCLE, ALUVA.

EXHIBIT P2: TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER WITH THE SUPERINTENDING ENGINEER (PWD) (R & B) CENTRAL CIRCLE ALUVA.

EXHIBIT P3: TRUE COPY OF THE COMPLETION CERTIFICATE ISSUED TO THE PETITIONER BY THE SUPERINTENDING ENGINEER (PWD) (R & B) CENTRAL CIRCLE, ALUVA.

EXHIBIT P4: TRUE COPY OF THE RELEVANT PAGE OF THE AUDIT REPORT DATED 22-09-2011 HANDICAPPED.

EXHIBIT P5: TRUE COPY OF THE REPORT SUBMITTED BY THE EXECUTIVE ENGINEER TO THE SUPERINTENDING ENGINEER PWD (R & B) CENTRAL CIRCLE, ALUVA.

EXHIBIT P6: TRUE COPY OF THE LETTER DATED 20-09-2012 ISSUED BY THE EXECUTIVE ENGINEER PWD ROADS DIVISION, THRISSUR TO THE PETITIONER.

EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DATED 08-102012 SUBMITTED BY THE PETITIONER BEFORE THE EXECUTIVE ENGINEER, PWD ROADS DIVISION, THRISSUR.

EXHIBIT P8: PHOTOCOPY OF RELEVANT EXTRACT OF PWD MANUAL RELATING TO THE RESPONSIBILITY OF ASSISTANT EXECUTIVE ENGINEER PRESCRIBED UNDER PARAGRAPH 202.8.

EXHIBIT P9: PHOTOCOPY OF THE LETTER NO.20699/D1/09/PWD DATED 18.12.2009 ADDRESSED BY THE PRINCIPAL SECRETARY TO THE CHIEF ENGINEER.

EXHIBIT P10: PHOTOCOPY OF THE LETTER NO.CE/R&B/TCR/ROB/10534/06 DATED 5.6.2010 OF THE CHIEF ENGINEER TO THE SUPERINTENDING ENGINEER.

EXHIBIT P11: PHOTOCOPY OF THE LETTER NO.A1-144/04 DATED 16.2.2012 ISSUED BY THE ASST. EXECUTIVE ENGINEER TO THE EXECUTIVE ENGINEER OF THE PWD ROAD DIVISION.

EXHIBIT P12: PHOTOCOPY OF GOVERNMENT ORDER, G.O.(P)NO.13/2012/PWD DATED 1.12.2012.

EXHIBIT P13: PHOTOCOPY OF RELEVANT PORTION OF THE ORDER SHOWING DUTIES AND RESPONSIBILITIES OF THE OFFICERS CONCERNED, AS STIPULATED IN EXHIBIT P12.

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RESPONDENT(S)' EXHIBITS & ANNEXURES:

EXT.R3(A) : NIL

EXT.R3(B) : TRUE COPY OF THE SUPPLEMENTAL AGREEMENT DATED 27.2.2009.

EXT.R3(C) : TRUE COPY OF THE SUPPLEMENTAL AGREEMENT DATED 30.4.2009.

EXT.R3(D) : TRUE COPY OF THE G.O.(RT)NO.1427/2010/PWD DATED 9.9.2010.

EXT.R3(E) : TRUE COPY OF THE LETTER DATED 21.12.2009.

EXT.R3(F) : TRUE COPY OF THE LETTER DATED 22.7.2010.

EXT.R3(G) : TRUE COPY OF THE G.O.(RT)NO.383/2011/PWD DATED 228.2.2011.

ANNEXURE R2(A) : TRUE COPY OF ABSTRACT OF LOSS SUFFERED QUANTIFIED.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 21446 of 2014

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Dated this the 16th day of December, 2015

J U D G M E N T

The writ petitioner was awarded the contract work on 19.9.2007 to execute the R.O.B at Wadakkacherry. The original estimate amount was 1,26,10,000/-. Thereafter it was revised as Rs.2,31,30,925/- as seen from R3(g). The Government, as per the above proceedings, has granted the administrative sanction to the revised estimate.

2. The petitioner approached this Court on account of withholding Rs.6,11,442/- from his final bill. The petitioner seeks release of the above amount.

3. In the counter affidavit filed by the 2nd respondent, it is stated that the amount has been withheld as per the audit objection of the Accountant General. It is apparent that the Department has sustained a loss of Rs.6,11,442/- as estimated in R2(a).

4. Due to heavy rain, the retaining wall was collapsed and the estimation was taken for the rectification of defects in

respect of the work executed by the petitioner at the initial phase. It is stated in the counter itself that unusual heavy rain resulted in flooding at the construction site and formation of small streams. The flow resulted in washing away of the subsoil and the settlement of the foundation of the retaining wall. The reason as projected in the counter itself would show that the loss is on account of acts of vis major rather than attributable as to human conduct. It is seen from the counter that on account of the unexpected rainfall, they could not take the precautionary measures against soil erosion which ultimately resulted in fall of foundation. Thereafter, taking out of this incident at the instance of the petitioner, a revised estimate was prepared. No one has objected request of the petitioner for the revised estimation. At that juncture no one also have attributed any negligence on the part of the petitioner. Thus after having accepted the petitioners request for revised estimate and giving permission to the petitioner to complete the work, it is not open for the respondent to allege negligence on the part of the petitioner to retain Rs.6,11,442/- after acceptance of revised estimate at the instance of the petitioner.

5. The audit objection appears to have made noting the loss without ascertaining the cause of loss. Mainly because, State suffered a loss, it cannot be recovered from the petitioner's/officers unless it is attributable to any willful negligence on the part of the petitioner or on the part of the officers. As seen from the records, it is seen that the loss is on account of the unprecedent rainfall in the area at the initial phase of the work. The Government after having approved the revised estimate taking note of the above fact, any audit objection thereafter is unsustainable. If at all any tenable objection exists that ought to have been raised before revising the estimate as well as before entering into the supplementary agreement. In that view of the matter withholding the amount is unsustainable and it is arbitrary. Accordingly the respondents are directed to release the amount withheld within a period of three months from the date of receipt of the copy of this judgment.

sd/-

sab A.MUHAMED MUSTAQUE, JUDGE