

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 21269 of 2015 (G)

PETITIONER(S) :

**K.I.POULOSE, AGED 53 YEARS,
(GOVERNMENT CONTRACTOR), KAVIKUNNEL HOUSE,
KUNNACKAL P.O., MOOVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K.MANOJKUMAR
SMT.SMITHA S.PILLAI**

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS (E) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE CHIEF ENGINEER,
PUBLIC WORKS DEPARTMENT, (ROADS AND BRIDGES)
TRIVANDRUM 695 001.**
- 3. THE SUPERINTENDING ENGINEER,
P.W.D (ROADS AND BRIDGES), SOUTH CIRCLE,
TRIVANDRUM - 695 001.**
- 4. THE EXECUTIVE ENGINEER
P.W.D ROADS DIVISION, KOTTAYAM - 686 001.**
- 5. THE ASSISTANT ENGINEER
P.W.D ROADS SECTION, ETTUMANUR, KOTTAYAM 686 631.**

BY SRI.ABDUL SALAM, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Contd...2/-

AMV

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APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: COPY OF THE NOTICE NO.10/4875/2012 DATED 25/4/2013 ISSUED BY THE GOVERNMENT.
- P2: COPY OF THE LETTER DATED 6/7/2013 SUBMITTED BY THE PETITIONER TO THE SUPERINTENDING ENGINEER, PWD ROADS AND BRIDGES, SOUTH CIRCLE, TVM.
- P3: COPY OF THE LETTER NO.DB10/4875/2012/26/9/2013 ISSUED BY THE SUPERINTENDING ENGINEER, SOUTH CIRCLE, TVM TO THE PETITIONER.
- P4: COPY OF THE DEPOSIT RECEIPT DATED 17/10/2013 ISSUED BY THE AUTHORIZED SIGNATORIES WITH CODE(S) RS.39,88,000.00/- TO THE PETITIONER.
- P5: COPY OF THE RECEIPT DATED 17/10/2013 ISSUED BY THE AUTHORIZED SIGNATORIES WITH CODE (S) RS.20,13,000.00/- TO THE PETITIONER.
- P6: COPY OF THE BANK GUARANTEE EXECUTED BY PETITIONER BEFORE THE SOUTH INDIAN BANK LIMITED FOR THE AMOUNT OF RS. 3,89,72,650/- DATED 17/10/2013.
- P7: COPY OF THE BANK GUARANTEE EXECUTED BY PETITIONER BEFORE THE SOUTH INDIAN BANK LIMITED FOR THE AMOUNT OF RS.2,01,22,300/- DATED 30/9/2013.
- P8: COPY OF THE LETTER NO.DB-10/4875/12 DATED 15/11/2013 ISSUED BY THE SUPERINTENDING ENGINEER, TVM, TO THE ACCOUNTANT GENERAL, THISSUR.
- P9: COPY OF THE LETTER NO.DB-10/4875/12 DATED 18/10/2013 ISSUED BY THE SUPERINTENDING ENGINEER, TVM, TO THE ASSISTANT EXECUTIVE ENGINEERS, KOTTAYAM AND ETTUMANOOR.
- P10: COPY OF THE LETTER DATED 26/11/2013 SUBMITTED BY THE PETITIONER TO THE SUPERINTENDING ENGINEER, P.W.D ROADS & BRIDGES, SOUTH CIRCLE, TVM.
- P11: COPY OF THE LETTER NO.DB10-4875/2012 DATED 22/7/2014 ISSUED BY THE SUPERINTENDING ENGINEER, TVM TO THE ASSISTANT EXECUTIVE ENGINEER, KOTTAYAM AND PETITIONER.
- P12: COPY OF THE LETTER DATED 22/8/2014 ISSUED BY THE ASSISTANT ENGINEER, ETTUMANOOR, TO THE PETITIONER.
- P13: COPY OF THE REPRESENTATION DATED 24/9/2014 SUBMITTED BY THE PETITIONER TO THE SUPERINTENDING ENGINEER, TRIVANDRUM.

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- P14: COPY OF THE GOVERNMENT ORDER G.O.(RT) NO.1344/2014/PWD DATED 25/9/2014 ISSUED BY THE GOVERNMENT.**
- P15: COPY OF THE EXTRACT OF THE COMPLETION CERTIFICATE ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER, NO.25/SECCA/2013-14 DATED 6/5/2013.**
- P16: COPY OF THE EXTRACT OF THE SIMILAR COMPLETION CERTIFICATE ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER, NO.40/SECCA/2011-12 DATED 14/10/2011.**
- P17: COPY OF THE JUDGMENT DATED 3/10/2014 IN WPC NO.26046/2014 (E) PASSED BY THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.**
- P18: COPY OF THE ORDER G.O.(RT) NO.455/2015/PWD DATED 23/3/2015 ISSUED BY THE GOVERNMENT.**
- P19: COPY OF THE COMMUNICATION DATED 18.06.2015 NO.B111/13 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER, AND TAHSILDAR, (JUNIOR SUPERINTENDENT) L.A. (GENERAL) KOTTAYAM.**

RESPONDENT(S)' EXHIBITS :

ANNEXURE R3(a) : COPY OF THE REQUEST MADE BY THE WRIT PETITIONER DATED 22.05.2015.

/TRUE COPY/

PA.TO JUDGE

AMV

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 21269 of 2015

Dated this the 20th day of October, 2015

JUDGMENT

The petitioner was awarded with the work of construction of Pattithanam-Manarcaud bye-pass road. There was a delay in acquisition of the land. The petitioner approached the Government to revise the rate. This Court directed the Government to consider the same as per the direction in W.P.(C) No.26046/2014. Thereafter, the Government took a decision. Ext.P18 is the decision.

2. In Ext.P18, the Government observed as follows :

“Government have examined the matter in detail. The Department has failed to completely acquire the land for construction and to handover the same to the contractor in time. In the circumstances, Government are pleased to order that the Chief Engineer (R & B) will take necessary arrangements to close the above mentioned work without risk and cost on either side and to re-tender the work after completion of land acquisition.”

3. The learned Senior Counsel would submit that the acquisition is over and the finding that acquisition is not completed in Ext.P18, is therefore not correct. It is further submitted that the Government ought to have examined whether the petitioner could be retained as a contractor on payment of revised rate.

4. On the other hand, the learned Government Pleader submits that the contract has been foreclosed without any risk on the part of the petitioner. It is further submitted that the petitioner made a request by R3(a) for return of performance guarantee.

5. It is obvious in Ext.P18, the Government made certain remarks that the Department ought not to have awarded the work without completion of the acquisition. The finding as above is made based on the fact that was existing at the time of award of contract. It seems that the fact that the land acquisition has been completed, is escaped from the consideration of the Government. Ext.P19 would show that the entire acquisition is complete and the land has been handed over to the Public Works Department. Therefore, it is also open for the Government

to consider whether the work shall be awarded to the petitioner on a revised rate. Since that aspect has not been considered, this Court is of the view that an appropriate decision shall be taken by the Government, as a supplemental decision on Ext.P18, within one month after hearing the petitioner.

The writ petition is disposed of as above.

Sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

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