

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 26525 of 2012 (M)

PETITIONER(S) :

P.J.JACOB,
P.W.D. CONTRACTOR, PEEJAY CONSTRUCTIONS, ALINCHUVADU
VENNALA, EDAPPALLY.P.O, ERNAKULAM DISTRICT.

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.T.K.BIJU (MANJINIKARA) .

RESPONDENT(S) :

1. THE DEPUTY TAHSILDAR (REVENUE RECOVERY) ,
KANAYANNUR TALUK, ERNAKULAM, KOCHI-682 011.
2. THE GREATER COCHIN DEVELOPMENT AUTHORITY
KOCHI-20, REPRESENTED BY ITS SECRETARY.
3. THE SUPERINTENDING ENGINEER,
GREATER COCHIN DEVELOPMENT AUTHORITY, KOCHI-20.
4. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R2, R3 BY ADV. SRI.S.B.PREMACHANDRA PRABHU &
BY GOVERNMENT PLEADER SRI.NOUSHAD THATTATHIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23/02/2015, THE COURT ON 22/05/2015 DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1- TRUE COPY OF THE NOTICE INVITING TENDERS ISSUED BY THE
3RD RESPONDENT.
- EXT. P2- TRUE COPY OF THE TENDER FORM SUBMITTED BY THE
PETITIONER IN PURSUANCE TO EXT.P1.
- EXT. P3- TRUE COPY OF THE SELECTION NOTICE NO.E1/6270/2007/GCDA
DATED 21/05/2008 ISSUED BY THE 3RD RESPONDENT.
- EXT. P4- TRUE COPY OF THE AGREEMENT NO.6/2008-2009 EXECUTED
BETWEEN THE PETITIONER AND 3RD RESPONDENT.
- EXT. P5- TRUE COPY OF THE PROCEEDING NO.32463/IA3/10/LSGD DATED
22/06/2010 OF THE 4TH RESPONDENT.
- EXT. P6- TRUE COPY OF THE ORDER NO.4627/G4/2010/GCDA DATED
23/03/2012 OF THE 2ND RESPONDENT.
- EXT. P7- TRUE COPY OF THE ORDER NO.4627/G4/2010/GCDA DATED
11/06/2012 OF THE 2ND RESPONDENT.
- EXT. P8- TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED
03/09/2012 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

- EXT. R2 (A) - TRUE COPY OF THE AGREEMENT NO.48/08-09 DATED
18/12/2008.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.26525 of 2012

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Dated this the 22nd day of May, 2015

JUDGMENT

Ext.P5 proceedings issued by the 4th respondent and the consequential revenue recovery proceedings (Ext.P8) initiated against the petitioner are under challenge in this writ petition.

2. The petitioner, who is an 'A' class contractor, was awarded with the work of strengthening Kaloor-Kadavanthara road, he being the lowest bidder. On receipt of Ext.P3 selection notice, he executed Ext.P4 agreement, on the basis of which the site was handed over to the petitioner. The petitioner alleges that he completed the work to the satisfaction of respondents 2 to 4. He further alleges that the road continues to be free from defects even now. There was a vigilance enquiry on the allegation that the work was awarded to the petitioner who was the second lowest bidder.

3. In the counter affidavit filed by the 2nd respondent, they would contend that in the vigilance enquiry, it was found that the petitioner was the second lowest bidder and the first lower rate was quoted by another contractor by name Shaju C.Skaria. However, it

was found that certain corrections were made in the tender document submitted by the said Shaju Skaria with the help of some officials of the Greater Cochin Development Authority. It was found that the rate quoted by the said Shaju Skaria was changed to 45% from 15% above the estimated rate. The matter was reported to the Government and accordingly, the Government ordered to cancel the tender and Ext.P4 agreement. The work was terminated and the petitioner was paid for the work already executed. Thereafter, the respondent corporation invited tenders for completing the balance work as per Government order. In the subsequent tender, the petitioner quoted the lowest rate viz., 33% above the estimated rate and the work was again awarded to him and the agreement was executed by the petitioner as Ext.R2(a).

4. The 4th respondent imposed a liability of ₹13,50,000/- upon all the persons associated with the awarding of work to the petitioner as per Exts.P1 to P4. Accordingly, the petitioner was directed to pay ₹4,05,000/- and the Secretary of the respondent corporation was directed to initiate departmental proceedings. It was also stated that though the disciplinary action was initiated

against the officials concerned, the same was closed by giving them a warning.

5. The 4th respondent has also filed a counter affidavit raising almost all the same contentions.

6. Arguments have been heard.

7. Admittedly, the entire work was completed by the petitioner in two phases. The respondents had no case that the work was not upto the mark. An enquiry was conducted behind the back of the petitioner wherein it was found that there were some irregularities in allotting the work. However, ultimately the officials were exonerated.

8. The main argument advanced by the learned counsel for the petitioner is that before quantifying the liability against the petitioner as per Ext.P5 no opportunity was provided to the petitioner. This was not denied by the respondents. The final payment due to the petitioner was released on 23.12.2008. It is settled law that no liability can be quantified by a party to the agreement against another party to the agreement without affording the other party an opportunity of being heard.

9. Therefore, the quantification of liability against the petitioner unilaterally by the 4th respondent as per Ext.P5 is in violation of the principles of natural justice and, therefore, *void ab initio*. Crowning all these, the officials who were actually responsible for the alleged irregularities were exonerated from the liability. No special reasons could be pointed out by the respondents for making the petitioner a scapegoat. Under these circumstances, this Court is of the definite view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Ext.P5 proceedings dated 22.6.2010 issued by the 4th respondent and consequential Ext.P8 recovery proceedings dated 3.9.2012 issued by the 1st respondent are quashed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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