

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 29716 of 2012 (L)

PETITIONER(S):

**U.K. MOHAMED, AGED 49 YEARS
S/O. ABDUL KHADER, PWD CONTRACTOR, 'AYSHA MANZIL'
B.S.NAGAR, P.O.KUNJATHUR, MANJESWAR
KASARAGOD DISTRICT.**

**BY ADVS.SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETIL
SRI.P.SAJU**

RESPONDENT(S):

- 1. THE EXECUTIVE ENGINEER PWD
BUILDINGS DIVISION, KASARAGOD. 671 121**
- 2. SUPERINTENDING ENGINEER
PWD BUILDINGS (NORTH) CIRCLE, KOZHIKODE. 673 001**
- 3. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM. 695 001**

BY GOVERNMENT PLEADER SRI.P.K.ABDUL RAHMAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 29716 of 2012 (L)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 TRUE PHOTOCOPY OF THE AGREEMENT DATED 26.8.2009 WITH R2
 WITH SCHEDULE OF ITEMS AND RATES.**
- EXT.P2 TRUE PHOTOCOPY OF THE ORDER OF R2 SANCTIONING BONUS FOR
 EARLY COMPLETION**
- EXT.P3 TRUE PHOTOCOPY OF THE FINAL BILL DATED 31.3.2011**
- EXT.P4 TRUE PHOTOCOPY OF THE LETTER OF THE PETITIONER ADDRESSED
 TO R1 WITH COPIES TO R2 & CHIEF ENGINEER.**
- EXT.P5 TRUE PHOTOCOPY OF THE LAWYER NOTICE DATED 10.10.2012
 ADDRESSED TO R1**
- EXT.P5(a) TRUE PHOTOCOPY OF THE POSTER ACKNOWLEDGMENT.**
- EXT.P6 TRUE COPY OF REPLY DATE 1.12.2012 OF FIRST RESPONDENT IN
 REPLY TO EXT.P5 LARGER NOTICE**

RESPONDENT(S)' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFFIQUE, J.

W.P.(C).No.29716 of 2012

Dated this the 11th day of November, 2015

JUDGMENT

Petitioner has approached this Court claiming payment of Ext.P3 final bill amount. According to the petitioner there is no dispute regarding liability to pay and the payment has been withheld arbitrarily and illegally.

2. The facts involved in the writ petition would disclose that the petitioner had obtained a contract for construction of a building for an auditorium and library in Kasargode District. An agreement was also executed on 26/8/2009. Petitioner completed the work on 20/10/2010. He was awarded bonus of ₹1,04,284/- for early completion as evident from Ext.P2. The final bill for the work was prepared by the department and passed by the 1st respondent, Executive Engineer on 31/3/2011 for a total value of ₹1,65,922.13/-. Petitioner submits that the said amount has not been paid and has been illegally withheld. Though he had submitted representations, no action has been taken in the matter.

3. The learned Government Pleader seeks time for filing counter affidavit. This writ petition was admitted on 17.01.2013 and though the service was complete, no counter affidavit has been filed, until today. Hence the request of the learned Government Pleader seeking for further time to file a counter affidavit is rejected.

4. Since no counter affidavit has been filed in the case, which is pending since 2012, it has to be assumed that there is no dispute regarding the liability to pay. Petitioner has since produced Ext.P6 dated 1/12/2012 by which he was informed that an amount of ₹4,11,000/- has been withheld from the final bill based on an audit objection. It is mentioned in Ext.P6 that there has been certain objection with reference to the rate allowed and rate quoted. A perusal of Ext.P6 does not instill confidence in this Court to permit the Executive Engineer to withhold such amount on the basis of audit objection. This is not an instance where the bill given by the petitioner had not been passed by the competent authority. If the bill has been passed, definitely there is an

obligation to pay the amount, unless there are valid reasons for not paying the same.

5. In the said circumstances, deduction of the amount is clearly arbitrary and without taking into consideration the provisions of the contract. Subsequent audit objection cannot be a reason for withholding the amount from the contractors bill unless the liability is admitted by the contractor.

6. It is also pertinent to note that the petitioner has quoted a rate 29% above the schedule rate. When the schedule rates are clear and not disputed by the respondents, the petitioner is entitled for rate which is 29% above the schedule rates. That in Ext.P6 it is indicated that the 2008 PWD rates are less than the schedule rates. Such a view cannot be taken in a contract, which has been executed in a manner in terms of rate quoted by the petitioner as per Ext.P1 agreement. Under such circumstance, the disputes now raised in terms of Ext.P6 is not bona fide and cannot be mulcted upon the petitioner. On account of such a reason, I

confirm my view that the withholding of amount is quite arbitrary and though the matter comes within the realm of private law of contract, this Court is entitled to direct the respondents to pay the admitted amount as per the terms of the contract. Dispute if any raised for delay of payment should be bonafide and is allowable in terms with the contract.

In the result, this writ petition is allowed and the respondents are directed to pay the petitioner the entire amount covered by Ext.P3 bill, without reference to Ext.P6.

Sd/-
A.M.SHAFFIQUE
JUDGE

VS