

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 26012 of 2015 (B)

PETITIONER:

**M.V.VISWANATHAN, AGED 55 YEARS,
SON OF VELAYUDHAN PILLAI,
GOVERNMENT CONTRACTOR,
FATHIMA BUILDINGS, 2ND FLOOR, ELOOR ROAD,
NORTH KALAMASSERY, KOCHI - 683 104.**

**BY ADVS.SRI.B.ASHOK SHENOY
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH
SRI.RIYAL DEVASSY**

RESPONDENT(S):

- 1. KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR,
JALABHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM, PIN - 695 033.**
- 2. THE SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY, PH CIRCLE,
HOSPITAL ROAD, ERNAKULAM, KOCHI - 682 011.**

BY ADV. SRI.GEORGE MATHEW, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. TRUE COPY OF LEGAL NOTICE DATED 08.08.2014 SENT TO 2ND RESPONDENT BY PETITIONER'S COUNSEL.
- EXHIBIT P2. TRUE COPY OF LETTER NO.A4.1791/02 DATED 12.09.2014 ISSUED BY 2ND RESPONDENT TO PETITIONER'S COUNSEL.
- EXHIBIT P3. TRUE COPY OF JUDGMENT DATED 17.07.2014 IN OS NO.1161 OF 2013 OF THE HON'BLE MUNSIFF'S COURT, ERNAKULAM.
- EXHIBIT P4. TRUE COPY OF LETTER NO.PHC/CHN/W1-6595/2014 DATED 14.07.2015 ISSUED BY 2ND RESPONDENT TO PETITIONER.
- EXHIBIT P5. TRUE COPY OF LETTER NO.MVV/SE/PHCK/270/15 DATED 21.07.2015 SUBMITTED BY PETITIONER TO 2ND RESPONDENT.
- EXHIBIT P6. TRUE COPY OF LETTER NO.MVV/SE/PHCK/8115 DATED 31.07.2015 SUBMITTED BY PETITIONER TO 2ND RESPONDENT.
- EXHIBIT P7. TRUE COPY OF LETTER NO.PHC/CHN/W1-6595/2014 DATED 01.08.2015 ISSUED TO PETITIONER BY 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

- EXT. R1(A) : TRUE COPY OF LETTER NO.PHC/CHN/W1-6595/2014 DATED 28.7.2015.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 26012 of 2015

Dated this the 07th day of October, 2015

JUDGMENT

The petitioner has undertaken certain works approved by the water authority. The petitioner completed the work in the year 2010. The retention amount due to the petitioner is around Rs.26 lakhs apart from the final bill.

2. The petitioner also now been awarded with certain other works by the water authority. The petitioner required to deposit as a security of Rs.13 lakhs towards as performance guarantee and also an amount of Rs.3 lakhs as security deposit towards the guarantee. The petitioner submits that the amount payable by him towards security deposit and performance guarantee shall be adjusted from the amount due to him.

3. The learned Standing Counsel opposed. The Water Authority has filed a detailed counter affidavit. It

is submitted that the petitioner cannot seek such a relief by way of adjustment. It is also submitted that the petitioner has done certain additional work and it requires administrative sanction from higher authorities and the final bill has not been yet approved and finalised. Therefore, the petitioner is bound to pay the amount demanded for the new work.

4. It is to be noted that the petitioner is entitled for an amount of Rs.26 lakhs towards the retention amount. In that case, this Court is of the view that there is no difficulty for the Water Authority in adjusting the amount payable by the petitioner towards the security deposit and performance guarantee from the amount due to the petitioner as retention amount. Therefore, there shall be a direction to the respondents to adjust the amount payable by the petitioner towards the work awarded as per Ext.P4 from the amount due to the petitioner covered by Ext.P2.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE,
JUDGE