

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 30158 of 2008 (M)

PETITIONER :

**ASOKAN.T, S/O. KUNHIKANDAN,
AGED 53 YEARS, PATTALIL HOUSE, CHELAVOOR.P.O.,
KOZHIKODE.**

**BY SRI.P.N.KRISHNANKUTTY ACHAN,SENIOR ADVOCATE
ADV.SRI.K.MOHANAKANNAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
PUBLIC WORKS (D) DEPARTMENT, THIRUVANANTHAPURAM.**
- 3. THE PRINCIPAL SECRETARY TO GOVERNMENT, (FINANCE),
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 4. THE CHIEF ENGINEER,
ROADS & BRIDGES DIVISION, PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM.**
- 5. THE SUPERINTENDING ENGINEER,
ROADS & BRIDGES DIVISION, NORTHERN CIRCLE,
KOZHIKODE.**
- 6. THE EXECUTIVE ENGINEER,
ROADS DIVISION, PUBLIC WORKS DEPARTMENT, MANJERI.**

BY SR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE AGREEMENT WITH ANNEXURE EXECUTED BY THE PETITIONER ON 25/03/1998.**
- P2 COPY OF THE SUPPL. AGREEMENT SLIP DATED 30/9/99**
- P3 COPY OF THE SUPPLEMENTAL AGREEMENT SLIP DATED 23/11/2000**
- P4 COPY OF THE SUPPLEMENTAL AGREEMENT SLIP DATED 29/3/2001**
- P5 COPY OF THE SUPPLEMENTAL AGREEMENT SLIP DATED 27/8/2001**
- P6 COPY OF THE SUPPLEMENTAL AGREEMENT SLIP DATED 29/6/2002**
- P6(A) COPY OF THE SUPPLEMENT AGREEMENT SLIP DATED 27/2/2008**
- P7 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 9/1/2006**
- P8 COPY OF THE REPORT OF THE 4TH RESPONDENT AS PER HIS REPORT REFERENCE NO.NBC/71/2005 DATED 6/6/07 ADDRESSED TO THE 2ND RESPONDENT**
- P9 COPY OF THE LETTER NO.20152/D1/07/PWD DATED 5/11/07 ISSUED BY THE 2ND RESPONDENT**
- P10 COPY OF THE LETTER ISSUED BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT VIDE NO.DCI-5348/92 DATED 21/4/2008 WITH COMPLETION CERTIFICATE.**
- P11 COPY OF THE GO(RT) NO.666/96/PWD & T DATED 19/03/1996.**
- P12 COPY OF THE GO(RT) NO.416/2000/PWD DATED 22/04/2000**
- P13 COPY OF THE GO(RT) NO.304/2001/PWD DATED 17/03/2001**
- P14 COPY OF THE GO(MS) NO.19/2007/PWD DATED 16/03/2007**
- P15 COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 10/09/2008**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 30158 of 2008

Dated this the 23rd day of September, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P9 order passed by the 1st respondent, by which the petitioner's request for revisional rate has been declined.

2. The petitioner, who is a PWD contractor, was entrusted with the work of construction of a bridge at Kadalundi Kadvavu across the Kadalundi River in Tirur-Kadalundi-Chaliyam Road in the year 1996. The petitioner has produced Ext.P1 first agreement and Exts.P2 to P6 supplementary agreements. According to the petitioner, the work was completed satisfactorily as evident from Ext.P10. The rates available in the year 1992 was fixed. Since there was increase in price of materials and labour charges, considering the request of the petitioner, the chief engineer has forwarded Ext.P8 report to the Government and recommended for increase. However,

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the Government has passed Ext.P9 order informing the petitioner that the request cannot be considered for the time being. The petitioner points out that for similarly placed persons, benefits have been granted as evident from Exts.P11 to P14 and the Government has also declared their policy in Ext.P15 that the revised rates would be paid to the contractors. The petitioner's grievance is that the said benefit has been denied to him without any valid or justifiable reason. Hence, this writ petition.

3. The 5th respondent has filed a counter affidavit, wherein it is admitted that the request of the petitioner along with a report was placed before the Government. It is stated that the work of the bridge was completed and opened for traffic on 18.04.2008. The superintending engineer, vide letter No.DC1-5368/92 dated 21.04.2008, has issued completion certificate. It is also stated that the contractor has produced rate enhancement details given to similar type works in the State in other circles.

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However, according to the 5th respondent, this has to be decided at the Government level.

4. Arguments have been heard.

5. It is surprising to note that the petitioner's request has been declined by a one line order. No reason has been stated in it. The learned counsel for the petitioner would submit that the report of the chief engineer has neither been considered nor looked into while considering the petitioner's request. According to the learned counsel for the petitioner, the Arbitration Committee is the competent authority to consider the issue and to take a decision in the matter.

6. The learned counsel for the petitioner invited my attention to Exts.P11 to P14 Government Orders, where similar and identical matters were considered by the Government and enhancement was sanctioned without any objection. Therefore, according to the learned counsel for the petitioner, denial of the same in the case of the petitioner only is arbitrary, illegal and

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discriminatory. I see valid force in the submission.

Therefore, the writ petition is allowed. Ext.P9 is quashed. The 1st respondent is directed to refer the matter to the Arbitration Committee within a period of one month from today so that an appropriate decision can be taken after affording the petitioner an opportunity of being heard.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-