

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 31189 of 2009 (P)

PETITIONER(S):

**M/S.CHERIAN VARKEY CONSTRUCTION CO.(P) LTD.,
5TH FLOOR, ALPHA PLAZA, K.P. VALLON ROAD,
KADAVANTHARA, KOCHI-682 020,
REPRESENTED BY THE DIRECTOR, GEORGE VARKEY.**

**BY SRI.K.L.VARGHESE, SENIOR ADVOCATE.
ADV. SMT.SANTHA VARGHESE.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS (D) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER,
PWD (ROADS & BRIDGES),
THIRUVANANTHAPURAM.**
- 3. THE SUPERINTENDING ENGINEER,
PWD (ROADS & BRIDGES) SOUTH CIRCLE,
THIRUVANANTHAPURAM.**
- 4. THE EXECUTIVE ENGINEER,
PWD ROADS DIVISION, PATHANAMTHITTA.**

BY SR. GOVT. PLEADER SRI.K.K. SAIDALAVI.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE SELECTION NOTICE DATED 01/08/2000 ISSUED BY 3RD RESPONDENT TO PETITIONER.
- EXT.P2 COPY OF THE LETTER DATED 12/12/2005 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER TO THE 4TH RESPONDENT.
- EXT.P2A COPY OF THE REVISED ESTIMATE.
- EXT.P2B COPY OF THE COMPARATIVE STATEMENT.
- EXT.P2C COPY OF THE REVISED ESTIMATE DATA.
- EXT.P3 COPY OF THE LETTER DATED 18/09/2008 ISSUED BY 2ND RESPONDENT TO 1ST RESPONDENT.
- EXT.P4 COPY OF THE LETTER DATED 04/08/2011 ENCLOSING COPY OF THE ORDER OF THIS HON'BLE COURT DATED 01/08/2011 ISSUED BY PETITIONER TO THE 1ST RESPONDENT.
- EXT.P5 COPY OF THE ORDER DATED 08/03/2012 ISSUED BY THE 1ST RESPONDENT.
- EXT.P6 COPY OF THE LETTER DATED 02/12/2000 FROM THE CHIEF ENGINEER, PWD (ROADS AND BRIDGES), THIRUVANANTHAPURAM TO THE SUPERINTENDING ENGINEER, ROADS AND BRIDGES, SOUTH CIRCLE, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.31189 of 2009

Dated this the 7th day of September, 2015

JUDGMENT

The petitioner which is a private limited company has approached this Court seeking the following reliefs:

“(i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to make payment of the final bill amount of Rs.26,37,585.54 or such other amount found due to the petitioner for the work of “Construction of bridge at Manakkachira across Manimala River” immediately without any further delay.

(ii) grant interest at 18% per annum on the payment due to the petitioner from the date of preparation of the bill till date of payment or realisation.

(iii) grant costs to the petitioner and such other reliefs as prayed for and deemed fit to be granted in the circumstances of the case”.

2. According to the petitioner, the petitioner is constrained to approach this Court for the interference of this Court because of the failure of the respondent to make payment of the final bill amount for the construction of a bridge undertaken by the petitioner in spite of completion of the work and the inauguration of the bridge

on 12.8.2005. According to the petitioner, even as per Ext.P2, the revised estimate was submitted by the Assistant Executive Engineer to the 4th respondent-Executive Engineer on 12.12.2005, who in turn submitted the same to the 3rd respondent-Superintending Engineer and then to the Chief Engineer and ultimately, to the 1st respondent along with comparative statement and data of rates, copies of which have been produced as Exts.P2, P2 (a), P2(b) and P2(c). However, so far the revised estimate has not been approved by the Government nor payment made. According to the petitioner, an amount of Rs.26.38 lakhs is due to the petitioner since December, 2005.

3. The petitioner points out that as per the Full Bench decision of this Court in ***State of Kerala v Anil*** (2002(1) KLT 371), the respondents are bound to make payment maintaining priority in the payment of bills 'on first done basis'. According to the petitioner, the Assistant Executive Engineer having sent revised estimate to the fourth respondent-Executive Engineer as early as on 12.12.2005 evidenced by Ext.P2 and in turn to the third respondent-

Superintending Engineer, it was incumbent on the second respondent to approve the same or get it approved by the Government, if necessary, and ensure the payment of final bill. In the circumstances, the petitioner is entitled to interest as well, because the amount has been withheld depriving the petitioner the benefits thereof whereas the respondents have been enjoying the benefits thereto. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the respondents, it was stated that the Chief Engineer, Roads and Bridges, Thiruvananthapuram has submitted the revised estimate to the Government and the Government has sought some clarifications and those clarifications were sent to the Government by the Chief Engineer vide letter dated 18.9.2008. Considering the fact that the proposal was submitted by the Chief Engineer in September 2008, the learned single judge who considered the said writ petition on 1st August 2011 directed the first respondent to consider the revised estimate submitted by the Chief

Engineer, Roads and Bridges, Thiruvananthapuram for sanction and pass orders thereon. A time limit was also fixed.

5. Subsequently, Ext.P5 order was passed stating that the Government had examined the matter in detail after calling for the concerned file of the Executive Engineer, PWD Roads Division, Pathanamthitta and on a detailed scrutiny of the above, it was seen that there is no record to show that any revised technical sanction has been issued to carry out the revised work and no direction in writing is also seen issued by the department officials concerned to the contractor/petitioner in the matter of deviation of work and therefore, the proposal of the Chief Engineer (R&B) for approval of the revised estimate was rejected. The petitioner has filed a separate I.A. to quash Ext.P5 also.

6. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

7. The definite case of the petitioner is that after completing the work of construction of bridge at

Manakkachira across Manimala River, the petitioner company had to get the final bill amount of ₹26,37,585.54. The letter of award of work dated 1.8.2000 is produced as Ext.P1 in the writ petition. The fact that extra items and excess quantities of agreed items had to be executed, is borne out by letter dated 12.12.2005 issued by the Assistant Executive Engineer to the 4th respondent Executive Engineer, a copy of which is produced and marked as Ext.P2. The learned counsel for the petitioner has invited my attention to the true copy of the revised estimate submitted by the Assistant Executive Engineer which is produced as Ext.P2(a), copy of the comparative statement accompanying the revised estimate which is marked as Ext.P2(b) and the copy of the revised statement data which is marked as Ext.P2(c). According to the petitioner, the said revised estimate had reached the office of the Chief Engineer (the second respondent) who in turn forwarded the same to the first respondent. The writ petition was filed as early as on 12.11.2009 and this Court was convinced of the veracity

of the petitioner's submission and issued notice to the respondents returnable within two weeks and further directed to post the matter for interim direction.

8. Though notice was served on the respondents, no follow up action was taken till 10.3.2010. In the counter affidavit filed by the 3rd respondent, the statement which was extracted aforesaid has been given. It was in this context the interim direction was given by this Court.

9. A simple glance at order dated 1.8.2011 is sufficient to make it clear that this Court had taken note of the respondent's own admission that the Chief Engineer has submitted the revised estimate to the Government and it was for want of sanction by the first respondent, the payment was not made.

10. In Paragraph-3 of the order, this Court has taken note of the fact that almost three years had already elapsed by that time after a revised estimate was submitted by the Chief Engineer to the first respondent. The petitioner points out that the petitioner company has submitted a copy of the order of the first respondent

under cover of letter dated 4.8.2011 which is produced and marked as Ext.P4. However, the efforts taken by the petitioner could not evoke any positive response. After waiting for 6½ years, the petitioner received Ext.P5 dated 8.3.2012 rejecting the proposal of the Chief Engineer for approval of the revised estimate. A glance at Ext.P5 shows that the work was done fully and the Chief Engineer had intimated that during the execution of work, there was need for the deviation of quantities of certain items, details of which were also furnished by the Chief Engineer as evident from Ext.P3. The order further shows that the revised estimate was for an amount of ₹2,42,14,389/-.

11. The learned counsel for the petitioner invited my attention to Ext.P6 which is the copy of the letter dated 2.12.2000 from the Chief Engineer, PWD (Roads and Bridges), Thiruvananthapuram to the Superintending Engineer, Roads and Bridges, South Circle, Thiruvananthapuram wherein it is stated as under:

"Under the circumstances explained by you in the reference cited, sanction is accorded for the rate of extra items, i.e."Fabricating conveying

and driving of 100 cm. dia bore hole and driving down to the required depth". The approved rate is Rs.4691/0 (Rupees Four thousand six hundred and ninety one only). The depth of easing pipe requiring for each pile should be monitored, records and submitted to the higher authorities during inspection for approval". (emphasis supplied).

12. It was pointed out that Ext.P6 was forwarded from the Chief Engineer and till that point of time, nobody had any doubt that the extra item had to be done in lieu of which extra item rate was approved. It was also pointed out that the last column in Ext.P2 revised estimate under the caption 'explanation' would show that the deviation resulting in excess in quantity has been caused. However, in spite of all these documents available on record, the Secretary to Government has issued Ext.P5 turning down the request of the petitioner. The learned counsel for the petitioner further points out that the revised estimate was for 242 crores which, if accepted as correct, the petitioner company would have received more than ₹30 lakhs and as a matter of fact, the petitioner company has raised bill amount of ₹26,37,585.54 treating the revised estimate based on an

amount of Rs.2,38,64,240.04 as could be seen from Ext.P2 (b)(vii) and tender excess at 19% after deducting part bills paid. Even though the petitioner company has demanded only lesser amount than actually due even as per the respondent's own records and in spite of the clear direction by this Court in order dated 1.8.2011, the first respondent failed to honour the request of the petitioner.

13. The learned senior Government Pleader would strenuously argue that the work was not completed by the petitioner in time and the time was granted to the petitioner without imposing fine. That itself would indicate that there was no laches on the part of the petitioner and the delay on the part of the petitioner was not wilful. Had there been any laches on the part of the petitioner, certainly, the respondent would not have extended the time for compliance.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to the relief as prayed for.

In the result, this writ petition is disposed of quashing

Ext.P5. The respondents are directed to make payment of the final bill amount of ₹26,37,585.54 or such other amount found due to the petitioner for the work of construction of bridge at Manakkachira across Manimala River within a period of two months from the date of receipt of a copy of this judgment, failing which the respondents shall pay interest at the rate of 12% per annum from the date on which the payment has become due till the date of payment.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE