

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 28864 of 2014 (G)

PETITIONER(S) :

ROOPESH NARAYAN,
AGED 40 YEARS, S/O. V.N.RAMA MURTHY,
IX-D CORNISH CASTLE, R.C.ROAD,
NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT.

BY ADVS.SRI.SANTHARAM.P
SMT.REKHA ARAVIND

RESPONDENT(S) :

1. KERALA STATE CIVIL SUPPLIES CORPORATION (KSCSC) ,
REPRESENTED BY ITS MANAGING DIRECTOR,
MAVELI BHAVAN,
MAVELI ROAD, GANDHI NAGAR, KOCHI-682 020.
2. MANAGER (PURCHASE) ,
KSCSC, MAVELI BHAVAN, MAVELI ROAD,
GANDHI NAGAR,
KOCHI-682 020.

BY SMT.MOLLY JACOB, SC, SUPPLYCO,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1 : COPY OF THE RELEVANT PAGES OF THE PURCHASE ORDER NO.13381 DTD.6.7.2013.
- EXT. P2 : COPY OF THE RELEVANT PAGES OF PURCHASE ORDER NO.13403 DTD.8.7.2013.
- EXT. P3(1-9): COPIES OF 8 BILLS ISSUED BY THE PETITIONER.
- EXT. P4 : COPY OF THE REPRESENTATION GIVEN TO THE RESPONDENT CORPORATION BY THE PETITIONER DTD.14.5.2014.
- EXT. P5 : COPY OF THE COMMUNICATION DTD.11.9.2014.
- EXT. P6 : COPY OF THE DEMAND DRAFT DTD.9.9.2013.
- EXT. P7 : COPY OF THE ORDER IN ANTICIPATORY BAIL APPLICATION (BA NO.8152/13) .
- EXT. P8 : COPY OF THE DEMAND DRAFT DTD.21.12.2013 FOR AN AMOUNT OF RS.2,50,000/-.
- EXT. P9 : COPY OF THE RECEIPT DTD.23.12.2013 ISSUED BY THE CORPORATION.
- EXT. P10: COPY OF NOTICE DTD.7.10.2014 ISSUED BY TAMIL NADU MERCANTILE BANK LIMITED.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 28864 of 2014

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Dated, this the 5th day of February, 2015

JUDGMENT

Non-disbursement of the due amount to the petitioner in respect of various supplies effected to the respondent Corporation, apart from the deposit effected by the petitioner towards security, bank guarantee and EMD, totalling an amount of Rs.56,79,504/- made the petitioner to approach this Court seeking for a direction to be issued to the respondents to effect disbursement without any further delay.

2. According to the petitioner, the supply was being effected promptly, though there was occasional lapse, not because on the fault on the part of the petitioner. It is further stated that bank guarantee was arranged by one of the friends of the petitioner, who in fact cheated him and on coming across the fact that there was some foul play in executing the bank guarantee, the petitioner replaced the same by way of Ext. P6 demand draft. However, without appreciating the facts and circumstances in appropriate manner, a criminal case was caused to be registered against the petitioner at the

instance of the respondent Corporation. It is stated that the petitioner stands released on anticipatory bail.

3. The respondents have filed a detailed statement pointing out the facts and figures. Particulars of the different purchase orders (as many as 12 in numbers) have been given in the said statement, wherein it is contended that some supply was never effected in respect of the purchase orders, while there was short supply in respect of others. In respect of some purchase orders, there was total short supply and the same was liable to invite penalty as per terms of the agreement. The delay in effecting the supply on time is also projected as a ground with regard to the right of the respondents to impose 'delay cut' on the payment due. The liability to effect prompt supply is sought to be evaded by the petitioner, when the respondents took further steps to invoke the 'bank guarantee' furnished by the petitioner through the Calicut City Co-operative Bank, when it was informed by the Branch Manager that they had never issued any such bank guarantee and that the petitioner was never a customer of the said bank. It was on realizing that the bank guarantee furnished by the petitioner was a fabricated one, involving offence of forgery, Crime No. 1229

of 2013 was registered for offences under Sections 406, 420, 468 and 471 of IPC. Because of the course of action pursued by the petitioner, a penalty of Rs. 34,24,449/- is imposed upon the petitioner. The total amount to be given to the petitioner is shown as Rs. 55,17,948/- (as given in page 3 of the statement).

4. When the matter came up for consideration on 19.12.2015, the following interim order was passed :

"In view of the admitted fact by the second respondent that the amount due to them by way of loss is only Rs.34,24,449/- out of the total amount claimed by the at Rs.55,17,948/-, the respondent shall release the admitted amount due to the petitioner within a period of four weeks."

The learned standing counsel for the respondent Corporation submits that, the interim order passed by this Court has already been complied with and that admitted/undisputed amount has already been released to the petitioner. The question with regard to the eligibility of the petitioner or as to the rights and liberties of the corporation to appropriate the concerned extent of amount as now retained, has to be adjudicated on the basis of evidence to be

let in. Such exercise cannot be pursued in a writ petition filed under Article 226 of the Constitution of India. Without prejudice to the rights and liberties of the parties concerned to pursue such an exercise, the writ petition stands disposed of. It is made clear that this Court has not expressed anything with regard to the merits of the case.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd