

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 29228 of 2015 (C)

PETITIONER :

**M/S. TOMS CORPORATION,
RAMANAKKATTUKARA, KOZHIKODE
REPRESENTED BY MANAGING DIRECTOR, T. SHIBU
AGED 53 YEARS, S/O.SREEDHARAN, RESIDING AT SREE 40/7
GIRISH NAGAR, NALLALOM P.O., CALICUT-27.**

**BY ADVS.SMT.TESSY JOSE
SRI.JOHNY CHERIAN**

RESPONDENTS :

- 1. KERALA WATER AUTHORITY,
REPRESENTED BY THE MANAGING DIRECTOR, JALABHAVAN
VELLAYAMBALAM, THIRUVANANTHAPURAM P.O.,
THIRUVANANTHAPURAM DISTRICT-695001.**
- 2. THE SUPERINTENDING ENGINEER,
K.W.A., P.H.CIRCLE, MALAPARAMBA, CALICUT-673 001.**
- 3. THE EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, PROJECT DIVISION
KOZHIKODE—673 009.**
- 4. THE ASSISTANT ENGINEER NO.1,
PROJECT DIVISION, KERALA WATER AUTHORITY
KOZHIKODE-673 009.**

R1 TO R4 BY ADV. SRI.GEORGE MATHEW, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 29228 of 2015 (C)

APPENDIX

PETITIONERS' EXHIBITS :

**EXHIBIT-P1: TRUE COPY OF THE COMPLETION CERTIFICATE DATED 5.3.2014
ISSUED BY THE 1ST RESPONDENT.**

**EXHIBIT-P2: TRUE COPY OF THE "INSTRUCTIONS & SPECIAL CONDITION FOR
SUPPLY AND LAYING PIPE LINE WORK" OF THE 2ND RESPONDENT
DATED NIL.**

**EXHIBIT-P3: TRUE COPY OF THE REPRESENTATION DATED 6.4.2015 SENT
TO THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 29228 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

The writ petitioner executed the work of supply and laying pipe line of the Kerala Water Authority. One of the stipulations in the agreement is that the contractor should guarantee for satisfactory performance of pipe line completed by them for a period of 18 months, after the completion and commissioning of the pipe line.

2. Petitioner completed the work in the month of November, 2012. Petitioner approached this Court on account of delay in releasing the security deposit and retention amount.

3. The learned Standing Counsel for the Water Authority opposed the prayer. The learned Standing Counsel submits that the petitioner is entitled for release of the security deposit and retention amount only after the commissioning of the pipe line. Learned Standing Counsel further submits that the agreement is very clear that

the amount can be released only after 18 months of the completion and commissioning of the pipe line. It is to be noted that as per the agreement, the entire security deposit, including the retention amount total up to 8% of the contract value will be retained with Kerala Water Authority till the end of the guarantee period and the balance amount will be paid on satisfactory completion and commissioning of the pipe line as per the existing rule. Petitioner completed the work almost four years back. As per the terms of agreement, the Contractor should guarantee for satisfactory performance of pipe line completed by them for a period of 18 months, after the completion and commissioning of the pipe line. The 18 months period in the agreement would assume significance in this context as far as the contractor is concerned, for the release of the amount. The completion and commissioning of the pipe line would indicate that the Water Authority has to commission the pipe line as soon as its work was completed by the contractor. Otherwise, the period of 18 months would not have been prescribed in

the agreement. Therefore, it is clear that the commissioning of the pipe line ought to have been happened immediately after the completion of the work. The Water Authority, for its own reasons, delayed the commissioning of the pipe line. That cannot be pointed out against the petitioner to deny the release of the petitioner's security deposit and retention amount. If the intention of the parties was only to release the security deposit and retention amount only after the commissioning of the pipe line, there is no necessity to provide 18 months period after the completion of the contract and it ought to have been 18 months after the commissioning of the pipe line. Therefore, 18 months after the completion necessarily would take into account that the petitioner would be entitled for the release of the security deposit and retention amount.

In such circumstances, this Court is of the view that even after four years, the Water Authority could not commission the pipe line cannot be a reason to withhold the security deposit and retention

amount. Thus, there shall be a direction to release the security deposit and retention amount within two months on executing a simple bond by the petitioner.

This writ petition is disposed of as above.

sd/-

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.29228 of 2015

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