

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 30696 of 2014 (J)

PETITIONER :

**NASARUDEEN A. R.,
REVIVE CONSTRUCTION COMPANY (INDIA) PVT. LTD.
KILIMANOOR P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.AJITH KRISHNAN

RESPONDENTS :

- 1. THE STATE OF KERALA
REPRESENTED BY SECRETARY, PUBLIC WORKS DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE CHIEF ENGINEER,
PUBLIC WORKS DEPARTMENT, NATIONAL HIGHWAYS,
PUBLIC OFFICE, THIRUVANANTHAPURAM-33.**
- 3. THE SUPERINTENDING ENGINEER,
NATIONAL HIGHWAY SOUTH CIRCLE, PMG PATTOM ROAD,
THIRUVANANTHAPURAM-33.**
- 4. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, NATIONAL HIGHWAYS DIVISION,
PMG JUNCTION, THIRUVANANTHAPURAM-695033.**
- 5. THE ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.**

BY GOVERNMENT PLEADER SRI. K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE AGREEMENT AND ACCEPTED LETTER ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- P2: COPY OF THE LETTER DTD.28/5/2014 ISSUED BY THE 2ND RESPONDENT TO THE 1ST AND 5TH RESPONDENTS.
- P3: COPY OF THE REPRESENTATION DATED 25/8/2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.30696 of 2014

Dated this the 8th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i) Issue a writ of mandamus or writ of similar nature or order of direction commanding the respondents to release Letter of Credit and to disburse the Cheque amount of ₹1,46,91,111/- (Rupees One crore forty six thousand ninety one thousand one hundred and eleven only) to the petitioner with respect 1st Part bill amount of the work of Traffic Congestion at Kazhakkuttom Jn.- Improvement work from km.549/500 to 552/00 and providing drainage facilities forthwith;

ii) Issue a writ of mandamus or writ of similar nature or order or direction commanding the respondents to pay the interest at the rate of 15% on the amount due to the petitioner from February, 2014 forthwith;

iii) issue such other reliefs as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The case of the petitioner is that, the petitioner was awarded an emergency work of NH47 (66) to abate the traffic congestion at Kazhakkuttom Junction and for providing drainage in respect of the Sector 549/500 to 552/00. It is stated that, the work was completed by the petitioner within time in June, 2014 and submitted the 1st Part bill in January, 2014 for a sum of

₹1,46,91,111/- (Rupees One crore forty six thousand ninety one thousand one hundred and eleven only), after deducting the statutory recoveries. The total bid amount is nearly ₹3,32,16,523/- (Rupees Three crores thirty two lakhs sixteen thousand five hundred and twenty three only). It is stated that, the respondents 2,3 and 4 have already approved the Part bill and the 2nd respondent has requested the 1st and 5th respondents to release the Letter of Credit. The amount is still to be disbursed to the petitioner and since the work was done by the petitioner arranging finance from different corners, the petitioner is finding it extremely difficult in effecting repayment of the borrowed amount, despite the lapse of several months after completion of the work. The money to be repaid to the Bank and other creditors involves with huge interest. The petitioner has already moved the concerned authorities by way of Ext.P3, which has not yielded any positive result. Reference is also made to Ext.P2 proceedings bearing No.F1-3032-2014 dated 28.05.2014 of the Chief Engineer, addressed to the respondents 1 and 5.

3. Heard the learned Government Pleader as well, who

submits with reference to the contents of the statement dated 30.12.2014 that, there is no dispute with regard to the figures covered by the Part bill and as to the course and events. But 'Clause 56' of the relevant agreement executed between the petitioner and the Department will show that the payment will be made only according to the availability of budget provision and allotment of funds with the Divisional Officer in charge under the respective Head of Account in which the work is sanctioned and arranged and also subject to the seniority of such bills. No claims for the interest or for damages whatsoever shall be made for the belated settlement of claims of bills and no such claim will be admitted by the Government. It is stated that, seniority with regard to the payment to be effected among the contractors has to be maintained and that the same will not be violated under any circumstances.

4. After hearing both the sides, the writ petition is disposed of, directing the 1st respondent to take further steps, passing appropriate orders on Ext.P3 in accordance with law, also in the light of the contents of Ext.P2 and such other relevant materials.

This shall be done as expeditiously as possible, at any rate, within 'one month' from the date of receipt of a copy of this judgment, for settling the grievance of the petitioner.

Petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 1st respondent, for further steps.

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

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