

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 31211 of 2014 (B)

PETITIONER(S) :

K.V.PAULOSE,
KUNNEL HOUSE, KARUKAPPILLY P.O.,
KOLENCHERRY,
KUNNATHUNAD TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.K.PAUL KURIAKOSE.

RESPONDENT(S) :

1. THE EXECUTIVE ENGINEER
ROADS DIVISION, PUBLIC WORKS DEPARTMENT,
MUVATTUPUZHA,
PIN-686 661.
2. THE SUPERINTENDING ENGINEER,
ROADS AND BRIDGES, CENTRAL CIRCLE, ALUVA,
PIN-683 101.
3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS (F) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1 : TRUE COPY OF THE COMPLAINT DT.2-8-2011 MADE BY THE
PIRAVOM GRAMA PANCHAYAT.

EXT.P2 : TRUE COPY OF THE QUICK VERIFICATION REPORT DT.28-1-2013
OF THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND
ANTI CORRUPTION BUREAU, ERNAKULAM UNIT.

EXT.P3 : TRUE COPY OF THE COMPLETION CERTIFICATE ISSUED BY R2.

EXT.P4 : TRUE COPY OF THE LETTER DT.4-11-2013 OF THE CHIEF
ENGINEER, P.W.D. (DESIGN AND ADMINISTRATION),
THIRUVANANTHAPURAM.

EXT.P5 : TRUE COPY OF THE LETTER DT.14-3-2014 OF R3 TO THE CHIEF
ENGINEER (ROADS AND BRIDGES) .

EXT.P6 : TRUE COPY OF THE STATEMENT ISSUED BY PIRAVOM BRANCH OF
THE ERNAKULAM DISTRICT CO-OPERATIVE BANK LTD., SHOWING
THE INTEREST PAID BY THE PETITIONER TO THE LOAN ACCOUNT.

EXT.P7 : TRUE COPY OF THE LETTER DT.24-10-2014 ISSUED BY THE
PETITIONER TO R1.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 31211 of 2014

Dated this the 11th day of February, 2015

JUDGMENT

Non disbursement of the due amount to the petitioner in respect of the contract awarded and successfully completed well within time made the petitioner to approach this Court by filing this writ petition.

2. The case of the petitioner is that, he came to be the successful bidder in respect of the construction of a foot bridge adjacent to Piravom Bridge on 16.12.2009, to be carried out as part of development and improvement of the approach road and drainage facility to Nadakkavu-Koothattukulam road. The site was handed over to the petitioner on 3.9.2010 and revised estimate was sanctioned by the concerned Chief Engineer in this regard. After executing supplementary agreements on the relevant dates, the work was completed by the petitioner by 23.01.2013, i.e., much prior to the expiry of the time limit, which was to be over by 31.3.2013. But in the meanwhile, based on some frivolous complaint, a Vigilance Enquiry came to be

initiated. Referring to the pendency of Vigilance Enquiry, the payment due to the petitioner was kept in abeyance. In the meanwhile, several other persons who completed the work much after completion of the work by the petitioner were given payments and the petitioner suffered huge loss because of the delay in disbursing the payment. Finally, the matter was considered by the Government, who passed Ext.P5 dated 14.3.2014, addressed to the Chief Engineer (Roads & Bridges), Thiruvananthapuram, instructing to effect the payment due to the petitioner, if he is otherwise found to be eligible, since the work has been completed and no irregularities were found by the Vigilance Department.

3. A counter affidavit has been filed by the first respondent, paragraphs 3 and 4 of which are in the following terms:

"3. It is hereby submitted that a Vigilance enquiry has been ordered in respect of the above work and the Vigilance and Anti Corruption Bureau conducted a Quick Verification. After quick verification the Vigilance & Anti Corruption Bureau reported that there is no irregularity in the execution of the work.

4. The bill in respect of the work was submitted before the Assistant Executive Engineer on 25.07.2014 and the same was forwarded to me

on 06.08.2014. After verification and final bill approved and recommended for payment through EMLI system (on line Payment System) with ID No. 10063 during August, 2014 itself. The payment will be effected on the basis of seniority. No payment is made from the office of the first respondent by overlooking seniority of the petitioner(from August 2014)."

4. The learned counsel for the petitioner points out that the specific plea of the petitioner as to the overlooking of the seniority of the petitioner is not specifically answered by the concerned respondent, but for stating that, the seniority has not been overlooked from August, 2014, i.e., after verification of final bill submitted by the petitioner on 25.7.2014. The learned counsel also points out that, there was absolutely no fault or lapse on the part of the petitioner in this regard and the delay was only because of the initiation of vigilance enquiry, which however came to be concluded as evident from Ext.P5.

5. Heard the learned Government Pleader as well, who submits that, the date of seniority has to be reckoned with reference to the submission of final bill.

6. After hearing both the sides, this Court finds that, there is no dispute with regard to the factual position that the work was

completed to the satisfaction of all concerned on 23.1.2013. The Vigilance Enquiry was concluded subsequently on 28.1.2013 as evident from Ext.P5, wherein it has been conceded that, no vigilance angle is involved, instructing the concerned Chief Engineer to disburse the payment of the petitioner. This Court finds that the petitioner's seniority is eligible to be reckoned with reference to the date of completion of work as above, as he is in no way responsible for the delay.

7. In the above circumstance, there will be a direction to the respondents 1 to 3 to take further steps to cause the due amount to be disbursed to the petitioner, which shall be done at the earliest at any rate, within 'one month' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

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