

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 32308 of 2014 (K)

PETITIONER(S) :

**P.KAMMAD, AGED 52 YEARS,
S/O.LATE ALAVI, PARAMBIL HOUSE, KONDOORKARA.P.O,
VIA PATTAMBI, PALAKKAD DISTRICT-679 303.**

**BY ADVS.SRI.E.S.M.KABEER
SMT.AMINA BEEVI**

RESPONDENT(S) :

**THE ASSISTANT EXECUTIVE ENGINEER,
PWD ROADS SUB DIVISION, PALAKKAD-678 001.**

BY SR.GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE SELECTION NOTICE DATED 21.08.2013
ISSUED BY THE RESPONDENT.**
- EXT.P2: TRUE COPY OF THE REQUEST MADE BY THE PETITIONER
BEFORE THE ASST.ENGINEER, PWD ROADS SECTION NO.2,
PALAKKAD DATED 20.06.2014.**
- EXT.P3: TRUE COPY OF THE REPLY DATED 18.10.2014 ISSUED BY
THE RESPONDENT.**
- EXT.P4: TRUE COPY OF THE PETITION SUBMITTED BEFORE
THE RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 32308 of 2014

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Dated, this the 24th day of March, 2015

JUDGMENT

Non disbursement of the due amount to the petitioner, despite completion of the work allotted as per Ext.P1, made him to approach this Court.

2. The case of the petitioner is that he was required to do some work under the "Flood damage works 2013 - 14 PR works to Palakkad - Perinthalmanna Road Km. 12/800 to 19/00", which was agreed to be done on 37.95 % below the estimate rate. Pursuant to Ext. P1 work allotment, the petitioner satisfied the security deposit as well as the performance guarantee and completed work by 28.02.2014. Despite completion of the work, no measurement was taken, but for compelling the petitioner to sign measurement book, which was refused to be done. Finally, the petitioner made Ext. P2 request to the Assistant Engineer to finalize the proceedings so as to disburse the due amount, which was served to the addressee on 20.06.2014. Thereafter the petitioner was served with Ext. P3 intimation from the respondent herein, conceding receipt of the bills,

but pointing out that the petitioner had not subscribed signature to some other documents and hence requiring the petitioner to appear before the said respondent. It is stated that the petitioner appeared before the respondent and submitted Ext. P4, referring to the actual facts and figures. But nothing has transpired in the positive and hence the writ petition.

3. A statement has been filed by the respondent giving factual particulars. Paragraphs 4 and 5 of the statement are extracted below :

"4. The statement made by the contractor in para 3 is not true. Being flood damage work, to start with the work, 15 barrels of bitumen (2.340 MT) was issued to the contractor on 31.08.2013 itself. Balance bitumen 6 barrels (0.936 MT) were issued on 04.10.2013. Thus the total bitumen issued were 3.276 MT (21 barrels). But till 27.1.2.2013, petition did not turned up to execute the work.

5. The work is to be carried out through different items such as filing pot holes with 36mm metal, 12 mm metal etc. The measurements of these items were taken before actual execution of work as pre-measurement. The measurements were records in M. Book No. 13612 Page 59 to 84 by the concerned

Assistant Engineer, Roads Section No. II, Palakkad on 27 & 30/12/2013 in the presence of the petitioner. The petitioner commenced the work only on 30.12.2013 and partially completed on 08.01.2014. He was reminded several times to complete the work vide letter No. DI/FD/36/13-14, dated 10/01/2014 & 18/01/2014 respectively. But the petitioner did not make any positive attempt to complete the work. In spite, he demanded to record further measurements to meet the entire amount and argued that unless otherwise the measurements will not be accepted by him. As the chances to complete the work by the petitioner were very rare, the Assistant Engineer prepared the bill and submitted for scrutiny on 18/09/2014. "

4. The learned Government Pleader points out that work was not completed by the petitioner and he refused to sign the measurement, despite many a request made by the respondent in this regard. It is also pointed out that some additional works were conducted at the site and that there is no lapse on the part of the concerned respondent in not disbursing the due amount to the petitioner.

5. After hearing both the sides, the writ petition is disposed of, directing the respondent to finalize the proceedings based on

the measurement already taken and passing the bills to the appropriate extent. Disbursement of the amount shall be effected at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment. It is open for the petitioner to dispute correctness of the figures, if any such grievance is remaining, by way of appropriate proceedings before the appropriate forum/Court.

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

sd/-

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

kmd