

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937**

**WP(C).No. 32109 of 2015 (K)**  
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**PETITIONER :**  
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**PIOUS ANTONY, AGED 60 YEARS,  
S/O. M.V.ANTONY, CONTRACTOR, MANNANAL HOUSE,  
MATTAKKARA P.O., KOTTAYAM DISTRICT.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA  
SRI.P.T.ABHILASH**

**RESPONDENTS :**  
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- 1. GOVERNMENT OF KERALA  
REPRESENTED BY ITS SECRETARY  
DEPARTMENT OF PUBLIC WORKS,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.**
- 2. SUPERINTENDING ENGINEER  
PWD (ROADS AND BRIDGES) SOUTH CIRCLE,  
PUBLIC OFFICES BUILDING, MUSEUM,  
THIRUVANANTHAPURAM - 695033.**
- 3. EXECUTIVE ENGINEER  
PWD (ROADS DIVISION), KOTTAYAM-686001.**

**BY GOVERNMENT PLEADER SMT.C.K. SHERIN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**bp**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXHIBIT P1: TRUE COPY OF THE CHECK LIST OF GENERAL BILL DUE TO THE CONTRACTOR, MAINTAINED BY THE FINANCE DEPARTMENT OF THE GOVERNMENT OF KERALA, DETAILING THE BILL OF THE PETITIONER.
- EXHIBIT P2: TRUE COPY OF THE SELECTION NOTICE NO.DB/12/3764/2014 DATED 30.9.2015 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P3: TRUE COPY OF CLAUSE (XV) OF GO (P) NO.84/97/PW &T DATED 19.8.97 ISSUED BY THE GOVERNMENT, PERTAINING TO PERFORMANCE GUARANTEE.
- EXHIBIT P4: TRUE COPY OF G.O.(P) NO.95/2004/PWD DATED 1.10.2004 ISSUED BY THE GOVERNMENT.
- EXHIBIT P5: TRUE COPY OF GO(P) NO.03/15/FIN. DATED 5.1.2015 ISSUED BY THE GOVERNMENT.
- EXHIBIT P6: TRUE COPY OF GO(P)NO.295/15/FIN. DATED 15.7.2015 ISSUED BY THE GOVERNMENT.
- EXHIBIT P7: TRUE COPY OF GO(P) NO.429/15/FIN. DATED 28.9.2015 ISSUED BY THE GOVERNMENT.
- EXHIBIT P8: TRUE COPY OF THE REPRESENTATION DATED 9.10.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND AND 3RD RESPONDENTS.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 32109 of 2015

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Dated this the 27<sup>th</sup> day of November, 2015

J U D G M E N T

The petitioner has been selected for award of the work as per Ext.P2 and the petitioner has to furnish security deposit as well as performance guarantee.

2. The difference of the estimated amount and the amount quoted by the petitioner is 15.12%. The petitioner would argue the performance guarantee need to be furnished only by excluding 10% of the difference.

3. The petitioner further submits that he is entitled for certain amount from the same department and that amount may be adjusted towards the security deposit and performance guarantee.

4. In regard to the petitioner's claim that 10% of the difference has to be excluded cannot be accepted now. This Court in W.P.C No.36209 of 2015 directed the Government to

take a decision in this regard. Whether the entire difference of amount or the amount after excluding 10% alone need to be furnished as a performance guarantee will have to be clarified by the Government in the light of directions in the above judgment.

5. However the petitioner will have to furnish security deposit and performance guarantee as demanded subject to clarification of the Government. If the Government clarifies that 10% will have to be excluded while reckoning the performance guarantee to be furnished by the contractor certainly that benefit shall be given to the petitioner and the petitioner shall be discharged to that extent.

In the light of facts and circumstances, the following directions are issued.

The amount payable by the petitioner as per Ext.P2 shall be adjusted from the amount due to him from the 3<sup>rd</sup> respondent. The petitioner shall given time to execute the agreement by two weeks from the date of receipt of the copy of this judgment. In the event the Government clarifies that the initial 10% of the difference of estimate rate and quoted rate will have to be

excluded for furnishing performance guarantee, the said benefit shall be given to the petitioner.

The writ petition is disposed of, as above.

Sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE