

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 32929 of 2014 (M)

PETITIONER/PETITIONER:

JOSEPH KRISHNAN AGED 48 YEARS
S/O.VELAYUDHAN, 582/X, DEVARAYAM KOTTAI
MENON PARA, PALAKKAD

BY ADVS.SMT.JEENA JOSEPH
SRI.G.D.PANICKER
SMT.BEENA P.JOSEPH

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA,
REP BY THE SECRETARY TO PUBLIC WORKS (H) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. THE ASSISTANT EXECUTIVE ENGINEER
LOCAL SELF DEPARTMENT , CHITTUR BLOCK PANCHAYATH
SUB DIVISION, NATTUKAL P O, PALAKKAD.
PIN-678554
3. SECRETARY
CHITTUR BLOCK PANCHAYATH, NATTUKAL P O, PALAKKAD,
PIN-678554.
- 4.THE SECRETARY,
LOCAL SELF GOVERNMENT (FM) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, PIN-695001.

R2 BY SENIOR GOVERNMENT PLEADER SRI.E.M.ABDUL KHADIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- P1:- A TRUE PHOTOCOPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND THE 3RD RESPONDENT ON 22/11/2011
- P2:- TRUE PHOTOCOPY OF THE GOVERNMENT ORDER(RT)1151/2011/PWD DTD 3/9/2011
- P3:- A TRUE PHOTOCOPY OF THE JUDGMENT DTD 16/11/2011 IN WPC NO 27073/2006
- P4:- A TRUE PHOTOCOPY OF THE ORDER IN THIS REGARD BY THE IST RESPONDENT DTD 13/12/2010
- P5:- A TRUE COPY OF THE JUDGMENT DTD 20/11/2013 IN WPC NO 455/2013
- P6:- A TRUE PHOTOCOPY OF THE RESOLUTION OF THE CHITTOOR GRAMA PANCHAYATH, DTD 25/6/2013
- P7:- A TRUE COPY OF THE LETTER NO.C-86/2013 OF THE 3RD RESPONDENT DTD 7/1/2014
- P8:- A TRUE PHOTOCOPY OF THE ORDER OF THE IST RESPONDENT GO(RT)NO 491/2014/LSGD/21/2/2014
- P9:- A TRUE PHOTOCOPY OF THE ORDER GO(MS)NO 68/2012/PWD DTD 28/9/2012
- P10:- A TRUE PHOTOCOPY OF THE REPRESENTATION DTD 10/3/2014
- P11:- A TRUE PHOTOCOPY OF THE JUDGMENT DTD 14/8/2014 IN WPC NO 7122/2014
- P12:- A TRUE PHOTOCOPY OF THE ORDER DTD 29/10/2014 ISSUED BY THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A.TO JUDGE

SJ

ANU SIVARAMAN, J.

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W.P.(C).No.32929 of 2014

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Dated this the 19th day of November, 2015

JUDGMENT

1. This writ petition is filed by a Government contractor challenging Ext.P12 order passed by the 2nd respondent as also seeking directions to the effect that the petitioner is entitled to the consideration of his claim for settlement of bills on the basis of Ext.P2 Government Order revising the PWD rates for Government contracts. The petitioner had entered into Ext.P1 agreement with the 3rd respondent for the construction of the out-patient block of the Government Hospital, Kozhinjanpara in Palakkad District. It is stated that the rates mentioned therein were on the basis of Schedule of Rates 2010 which came into effect on 14.5.2010. The tender for the work was invited on 13.06.2011. By Ext.P2 order dated 03.09.2011, the Government further revised Schedule of Rates 2010 with effect from the date of the said order, allowing 15% increase in civil items and 10% increase in electrical items on Schedule of Rates 2010. At paragraph 5 of Ext.P2 order, it is provided as follows:-

“5. It is also ordered that tenders of works based on SoR 2009 and SoR 2010 may be accepted as per the delegation of powers vide G.O.(P)No.379/2011/Fin. dated 2.9.2011 by the competent authority, after bringing the estimates to “Revised SoR 2010”.

2. The petitioner contends that in the case of revision of labour rates in KSEB contracts at par with the PWD rates, this Court had, by Ext.P3 judgment, directed the KSEB to award the rates fixed by the PWD, irrespective of the terms of the contract. The petitioner also claims that 5% overhead charges have been directed to be paid by the Government to Government contractors which has also not been paid in this case. When the bills were not paid on the revised Schedule of Rates 2010, the petitioner approached this Court and by Ext.P5 judgment, this Court after considering the recommendations made by the Panchayat, directed the Government to consider his claim for settlement of bills on the basis of the revised Schedule of Rates 2010. However, by Ext.P8 Government Order dated 21.02.2014, the claim of the petitioner was rejected by the Government. Thereafter also, the petitioner preferred several

representations before the 2nd and 3rd respondents and approached this Court. By Ext.P11 judgment, there was a direction to the 2nd respondent to consider his claim. This has also now been rejected by Ext.P12 order dated 29.10.2014. The main reason stated in Ext.P12 for rejection of the request made by the petitioner is that his representation had earlier been rejected by the Government and further that the rates were revised on 03.09.2011 and the petitioner had entered into the agreement dated 22.11.2011, and therefore he would not be entitled to claim anything over and above the contracted rates.

3. Heard Smt.Jeena Joseph, learned counsel for the petitioner and the learned Senior Government Pleader appearing for the respondents. It is the specific case of the petitioner that Ext.P2 order by which the rates were revised contained the specific provision that further tenders should be accepted by competent authorities only after bringing the estimates to revised Schedule of Rates 2010. This was circulated among the officers of the Government who were well aware of the

revision of the rates. The agreement having been entered into on 22.11.2011, it is the case of the petitioner that the agreement should have been entered into only after effecting the revision to bring the rates on par with the revised Schedule of Rates 2010. The petitioner claims that signing of the contract without making such provisions amounted to defrauding him and he was thus unable to complete the work. He further states in Ext.P10 that he had brought these facts to the notice of all the concerned authorities who had agreed to do the needful for settling of the bills at the revised rates. The Block Panchayat had, by Exts.P6 and P7, specifically recommended the revision of rates in respect of the contract entered into by the petitioner to bring it on par with Ext.P2 Government Order. However, while considering Ext.P10 representation, the 2nd respondent has stated that Ext.P1 agreement was signed on 22.11.2011 in which the petitioner had agreed to execute the work at 0.5% below the estimated rate based on Schedule of Rates, 2010 and according to this agreement condition, there is no possibility for enhancing the rate. It is further stated that the revised Schedule of Rates

had come into force on 03.09.2011 and the tender having been conducted on 13.06.2011, the petitioner would not be entitled to the rates as per the revised Schedule of Rates.

4. Having considered the contentions advanced from either side, I find that Ext.P2 dated 03.09.2011 provided for further revision of the Schedule of Rates 2010 with immediate effect. This revision of rates was to apply to all works which were in contemplation. The petitioner had undertaken the contract at 0.5% below the estimated rates. I am of the opinion that the estimated rates, in the above circumstances, can only mean the estimated rates as applicable at the time of the signing of the contract. The agreement having been entered into on 22.11.2011, the petitioner would be entitled, on the basis of the clear stipulation in paragraph 5 of Ext.P2 Government Order, to payment on the basis of the revised schedule of rates which was available as on the date of the agreement. The petitioner would therefore be entitled to claim amounts on the basis of revised Schedule of Rates dated 03.09.2011 in respect of the agreement entered into by him on 22.11.2011. The

petitioner would also be entitled to the overhead charges which have been ordered in Ext.P4 dated 13.12.2010 which was also prior in point of time to the execution of agreement by the petitioner.

In the above circumstances, this writ petition is disposed of directing the 2nd respondent to consider the revised bills to be submitted by the petitioner, in accordance with what is stated above and to take immediate steps for making payments as directed above on the basis of the revised Schedule of Rates 2010 with 0.5% overhead charges, within a period of three months from the date of receipt of a copy of this judgment.

The writ petition ordered accordingly.

Anu Sivaraman, Judge

sj20/11

The figure '0.5%' occurring in the 6th line of the last paragraph of the judgment dated 19.11.2015 in W.P.(C).No.32929/2014 (M) is corrected and substituted as '5%' as per order dated 14.01.2016 in I.A.No.249/2016.