

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 33949 of 2014 (P)

PETITIONER(S):

**T.J.SIMON,
CONTRACTOR, SAJ BHAVAN, LOURDPURAM,
KANJIRAMKULAM, P.O.NEYATTINKARA,
THIRUVANANTHAPURAM DISTICT.**

**BY ADVS.DEVAN RAMACHANDRAN
SRI.AJITH KRISHNAN**

RESPONDENT(S):

- 1. KERALA WATER AUTHORITY,
REPRESENTED BY MANAGING DIRECTOR, JALA BHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM.**
- 2. THE HIGH POWER COMMITTEE,
KERALA WATER AUTHORITY,
REPRESENTED BY MANAGING DIRECTOR, JALA BHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM.**
- 3. THE CHIEF ENGINEER (SR),
KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM.**
- 4. THE SUPERINTENDENT ENGINEER,
PUBLIC HEALTH CIRCLE, KERALA WATER AUTHORITY,
VELLAYAMBALAM, THIRUVANANTHAPURAM.**
- 5. THE EXECUTIVE ENGINEER,
WATER SUPPLY DIVISION, KERALA WATER AUTHORITY,
NEYATTINKARA, THIRUVANANTHAPURAM.**
- 6. THE ASSISTANT EXECUTIVE ENGINEER,
WATER SUPPLY SUB DIVISION, KERALA WATER AUTHORITY,
KANJIRAMKULAM, THIRUVANANTHAPURAM.**
- 7. THE ASSISTANT EXECUTIVE ENGINEER (TECHNICAL ASSISTANT),
KERALA WATER AUTHORITY WS DIVISION, NEYATTINKARA,
THIRUVANANTHAPURAM DISTRICT.**
- 8. THE ASSISTANT EXECUTIVE ENGINEER,
WATER WORKS (EAST) SUB-DIVISION, PTP NAGAR,
THIRUVANANTHAPURAM.**

BY ADV. SRI.JOSEPH JOHN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-03-2015 THE COURT ON 10-04-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE ORDER NO.KWA/JB/WS1/10/14/TD DTD. 30/6/2014 ISSUED BY THE 1ST RESPONDENT.
- P1(A): TRUE COPY OF THE SELECTION NOTICE NO.AB 4/KWA/WSDN/NTA/1567/13 DTD. 23/7/2014.
- P2: TRUE COPY OF THE RELEVANT PAGES OF THE AGREEMENT DATED 11/8/2014 WITH THE 5TH RESPONDENT
- P3: TRUE COPY OF THE LETTER DATED 1/8/2014 ISSUED BY THE 6TH RESPONDENT.
- P4: TRUE COPY OF THE INSPECTION REPORT DATED 9/10/2014 ISSUED BY THE 7TH RESPONDENT.
- P5: TRUE COPY OF THE CERTIFICATE FOR EXEMPTION FROM EXCISE DUTY BY THE DISTRICT COLLECTOR ON 21/8/2014.
- P6: TRUE COPY OF THE ORDER NO.AEE/KWA/KJM/ DBO-1171/14, DT. 5/11/2014 ISSUED BY THE 6TH RESPONDENT.
- P7: TRUE COPY OF THE REPORT DATED 20/11/2014 ISSUED BY THE FLUID CONTROL RESEARCH INSTITUTE, PALAKKAD.
- P8: TRUE COPY OF THE LETTER NO.KWA/PTP/AEE/ 1/2014, DT. 24/11/2014 ISSUED BY THE 8TH RESPONDENT.
- P9: TRUE COPY OF THE REPORT NO.AB 4/KWA/WSDN/NTA/1567/13, DATED 11/11/2014 ISSUED BY THE 5TH RESPONDENT.
- P10: TRUE COPY OF THE REPORT NO.KWA/PHC/TVM./D2/2125/2014 DT. 27/11/2014 ISSUED BY THE 4TH RESPONDENT.
- P11: TRUE COPY OF THE REPORT NO.KWA/CE/ (SR)/WS NTA/2897/2009 DT. 1/12/2014 ISSUED BY THE 3RD RESPONDENT.

- P12: TRUE COPY OF THE DECISION DATED 9/12/2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): TRUE COPY OF TENDER SCHEDULE.

EXT.R1(b): NEGOTIATION LETTER DTD.22.5.2014 OF THE PETITIONER.

EXT.R1(c): TRUE COPY OF THE PURCHASE ORDER DTD.12/8/2014 ISSUED BY THE PETITIONER TO M/S.BHUSHAN POWER & STEEL LIMITED.

EXT.R1(d) TRUE COPY OF THE REQUEST DTD.18.8.2014 FOR GETTING EXCISE DUTY EXEMPTION.

//TRUE COPY//

P.S.TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 33949 of 2014

Dated this the 10th day of April, 2015

J U D G M E N T

Exts.P6 and P12 issued by the 6th respondent and the 2nd respondent respectively are under challenge in this writ petition.

2. The petitioner, a contractor, who undertook several works for the respondents, was awarded the work of replacement of 160 mm PVC pipe with 150 mm GI pipe in Arikkadamukku-Mukkunnimala Road by the respondent authority as per Exts.P1 and P1(a). The petitioner alleges that as directed by the 6th respondent in Ext.P3, the petitioner supplied GI pipe with open ends for welding the joints. According to him, the pipes were supplied after the inspection and testing by the 7th respondent in Ext.P4 report. Under the supervision of respondents 3 to 7, he laid GI pipes for 400 meters. Thereafter, Ext.P6 was issued directing the petitioner to hold the work on the

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basis of some complaints. The petitioner alleges that after the issuance of Ext.P6, the pipes were tested at the Fluid Control Research Centre, Palakkad, which issued Ext.P7 report certifying that the pipes laid by the petitioner are of good quality; and the 8th respondent passed Ext.P8 approving the results shown in Ext.P7. Exts.P9, P10 & P11 reports are issued by respondents 5, 4 & 3 respectively in favour of the petitioner. The grievance of the petitioner is that ignoring all these favourable reports and without affording him an opportunity of being heard, the 2nd respondent issued Ext.P12, stating that the petitioner deviated from the original schedule and directing to lay 160mm PVC Kg pipe for 2250m of stretch. According to the petitioner, Ext.P12 is highly illegal as the same was issued in violation of Exts.P1 and P1(a), whereby GI pipe has to be replaced by PVC pipe, which is in contravention of the schedule. The petitioner points out that he has incurred expenses of ₹36 lakhs for bringing the pipes from Odisha.

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It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondents, they have admitted that the petitioner is a registered and experienced contractor under the respondent water authority. According to them, the tender for the work was approved by the authority for laying of 150mm GI pipes using threaded joints only. According to them, no officer under the respondent authority has power to change tender conditions. It was pointed out that during the course of work, a complaint was received from one Padmakumar regarding the work and based on the direction of respondents 1 and 4, the 5th respondent inspected the site on 04.11.2014 and found that the petitioner deviated from the originally approved schedule for laying of pipelines. According to them, provision for 50 welded joints was provided in the schedule for joining pipes at bends. However, the petitioner has used welded joints for the straight reaches

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as well, whereas threaded joints were proposed in the straight reaches. According to them, as there was a breach of contract, Ext.P6 was issued.

4. I have heard Mr.Devan Ramachandran, the learned counsel for the petitioner and Mr.Joseph John, the learned Standing Counsel for the respondent authority.

5. The main argument advanced by the learned Standing Counsel for the respondent authority is that the petitioner deviated from the originally approved schedule by using welded joints in straight reaches. This, according to them, was the reason for issuing Ext.P6. Admittedly, the work tendered as per Ext.P1 was for replacement of PVC pipes with GI pipes. However, by Ext.P12, replacement of damaged pipes using PVC pipes was again recommended. This is completely beyond reason and acceptable logic; so submitted the learned counsel for the petitioner.

6. It can be seen that respondents 5 and 6

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recommended that the welding of joints is more feasible and viable. The petitioner procured the pipes after getting it inspected and tested by the 7th respondent as per Ext.P4 report. He undertook and executed the work in accordance with the accepted schedule and he did not make any deviation; it was argued. However, the 2nd respondent, totally on the basis of irrelevant and extraneous materials, found that the petitioner had deviated from the original schedule. At the same time, the 2nd respondent directs laying PVC pipes in contravention of Exts.P1 and P1(a).

7. It is crucial to note that the 5th respondent is the authority, who is competent to execute the agreement and supervise the work. The 5th respondent found nothing wrong in the work executed by the petitioner. The 5th respondent also found that the welding of joints as provided under item No.5 of the accepted schedule is better, feasible and viable. He also recommended the continuance of work. Evidently, it was on the basis of

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certain complaints from some third parties without any substantive materials that respondents 1 and 2 stopped the work and directed to lay PVC pipes. When the appropriate authority has approved the work undertaken by the petitioner, respondents 1 and 2 have no authority to take a different decision taken by the 5th respondent.

8. The petitioner alleges that at the time when he had executed the agreement, the local people were protesting and agitating for the bad condition of the road due to heavy traffic of heavy metal laden lorries from the quarries in Mukkunnimala. The petitioner points out that with regard to the bad condition of the road, he consulted with respondents 5 and 6 for the purchase of GI pipes to be installed. Since there is a provision under item No.5 of Ext.P1 accepted schedule for supplying 150mm GI pipe at 70cm depth after threading, the petitioner enquired with the feasibility and viability of the above provision. In this regard, the 5th respondent replied to the petitioner that the Public Works Department has directed to lay the pipe

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at one meter depth using 150mm GI pipe in a one meter deep trench, which is time consuming and require larger threading at the joining. Therefore, the 5th respondent directed the petitioner to install pipes and join the same by welding as provided under item No.5 of Ext.P1 schedule. In this connection, the 6th respondent issued Ext.P3 letter dated 01.08.2014 stating that welding joint is better than coupler joint, and hence, directed to lay the pipeline using the welding joint to the entire length. It was on the basis of the direction of respondents 5 and 6 that the petitioner placed the orders for supply of pipes with a company at Odisha. To test the quality of the pipes, the 7th respondent visited Odisha and inspected the pipes on 09.10.2014 and issued Ext.P4, which is a detailed inspection report. The petitioner transported the pipes. As the workplace came within the constituency of the Deputy Speaker of the Kerala Legislative Assembly, there was a direction to the petitioner to complete the work at a faster pace. He undertook the work from

30.10.2014 to 04.11.2014 and laid GI pipes for more than 400 meters after welding the joints. It was at this juncture, Ext.P6 was issued to stall the work.

9. It is crucial to note that the 5th respondent submitted Ext.P9, which is a detailed report, stating that the petitioner has not deviated from the accepted schedule and that the welding joints were adopted to complete the work faster and to provide better joint strength. He has also stated that it was on the basis of the direction issued by him that the petitioner undertook work by welding the joints of the pipe as provided under item No.5 of the accepted schedule.

10. It is also relevant to note that the 4th respondent also submitted Ext.P10 report to the 3rd respondent in favour of the work being done with welded joints. The 3rd respondent also submitted a detailed report before the 1st respondent stating that there is nothing wrong in the pipes and the welded joints withstand a pressure rating of 50 bar, and therefore, the

welded joints are good enough. Ext.P11 is the report issued by the 3rd respondent recommending the 1st respondent to issue necessary direction. It was ignoring Exts.P7 to P11 and P3 that the 2nd respondent committee issued Ext.P12 order stating that both, the pipe supplied and laying for the subject work at Mukkunnimala, are not as per the tender notification and further directed to lay 160mm PVC 10 Kg pipe for 2250 meter of stretch. It is distressing to note that it is the respondents, who deviated from the work schedule mentioned in Exts.P1 and P1(a). As per Exts.P1 and P1(a), the work is mainly replacement of PVC pipes by GI pipes. Now, the 2nd respondent is directing to lay PVC pipes when the work is for replacement of PVC pipes with GI pipes. As the petitioner supplied pipes at the cost of ₹36 lakhs after inspection and verification of the respondents, he would be put to irreparable injury and loss if Ext.P12 is allowed to stand. Therefore, this Court is of the definite view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed.

- Exts.P6 and P12 are quashed.
- The respondents are directed to allow the petitioner to complete the work of replacement of 160 mm PVC pipes with 150 mm GI pipes in Arikkadamukku-Mukkunnimala Road in accordance with Exts.P1 and P3.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

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