

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 37449 of 2008 (G)

PETITIONER(S):

- 1. M/S.J&B TRANSPORTS, KIDANGOOR
PO.ANGAMALI, REP. BY ITS MANAGING PARTNER, A.V.JOY.**
- 2. A.V.JOY, MANAGING PARTNER,
J &B TRANSPORTS, KIDANGOOR,
PO.ANGAMALI, ERNAKULAM.**

**BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF WATER RESOURCES, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. DISTRICT COLLECTOR, ERNAKULAM.**
- 3. REVENUE DIVISIONAL OFFICER,
FORT KOCHI.**
- 4. THE TAHSILDAR, TALUK OFFICE, KOCHI.**

BY GOVERNMENT PLEADER SMT.LILLY LESSLIE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE ACKNOWLEDGEMENT OF REGISTRATION OF FIRM, DATED 18/3/99**
- P2 : COPY OF THE AGREEMENT BY THE PETITIONERS BEFORE THE KOCHI TAHSILDAR DATED 1-4-2004**
- P3: TRUE COPY OF THE ORDER DATED 16/4/2004 ISSUED BY THE TAHSILDAR**
- P4: TRUE COPY OF LETTER DATED 24/9/04 FROM J & B TRANSPORT**
- P5: TRUE COPY OF THE LETTER DATED 10/4/2006 ISSUED BY THE PETITIONER**
- P6: TRUE COPY OF ORDER DATED 19/4/06 ISSUED BY THE DISTRICT COLLECTOR**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ANU SIVARAMAN, J.

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W.P. (C) No. 37449 of 2008

Dated this the 22nd day of September, 2015

J U D G M E N T

Petitioners are successful bidders in the tender for supply of drinking water to the drought hit areas in Kochi taluk. They stated that different rates were fixed for tanker lorries and mini lorries for the supply of drinking water in three panchayats, viz., Elamkunnappuzha, Njarakkal and Nayarambalam. Petitioners had been accordingly, supplying drinking water. By Ext.P3 order dated 16.04.2004, they were required to supply additional quantity of drinking water to meet the deficiency caused by the stoppage of supply by another tenderer. However, it is stated that for the additional supply of drinking water petitioners were told that only lesser rate would be paid. Though, several representations were made by the petitioners, it is stated that the bills due to the petitioners have remained unpaid. In the above circumstances, this writ petition is filed seeking directions to the respondents to pay the amount due to the petitioners for the work done pursuant to Ext.P2 and P3 and in accordance with Ext.P6 within a

prescribed time.

2. A counter affidavit is filed by the 2nd respondent contending that the petitioners had been engaged for supply of water under the drought relief scheme. They had also been engaged to carry out water supply under the Vypin Special Scheme as a successful bidder had stopped water supply. The rates sanctioned for the three panchayats were lower than the rates claimed by the petitioners. It is stated that the supply of water to the Vypin Island was under another scheme, which was called 'the Vypin Special Scheme'. The rates under the Vypin Special Scheme were fixed as under:

"Nayarambalam Panchayat

Tanker Lorry - Rs.875/- per trip

Mini Lorry - Rs.550/- per trip

Njarakkal Panchayat

Tanker Lorry - Rs.925/- per trip

Mini Lorry - Rs.575/- per trip

Elamkunnappuzha Panchayat

Tanker Lorry - Rs.970/- per trip

Mini Lorry - Rs.600/-per trip"

It is stated that Exts.P3 and P6 do not provide for the payment of

rates under the drought relief scheme to the petitioners. It is also stated in the counter affidavit that no agreement or contract other than Ext.P2 is subsisting between the parties. The Government contends that there is no contract to grant them higher rates than what was agreed and sanctioned to the water suppliers under the Vypin special scheme.

3. Heard Sri. Vinod Madhavan, learned counsel appearing for the petitioners and Smt. Lilly Leslie, learned Government Pleader appearing for the respondents.

4. It is the specific contention of the petitioners that they had tendered the work for supply of drinking water and had been awarded the work under the drought relief scheme where the rates for supply of drinking water were as under:

		<u>Elamkunnappuzha</u>	<u>Njarakkal</u>	<u>Nayarambalam</u>
<i>Tanker lorry</i>	-	<i>Rs.1140/-</i>	<i>Rs.1050/-</i>	<i>Rs.1000/-</i>
<i>Mini lorry</i>	-	<i>Rs.700/-</i>	<i>Rs.675/-</i>	<i>Rs.650/-</i>

Ext.P2 is the agreement entered into between the parties. The rates are mentioned therein as well. By Ext.P3, the petitioners were required to supply drinking water under the Vypin Special Scheme also, when a tenderer operating under that scheme had

ceased his operation from 16.04.2004. However, it appears that amounts due to the petitioners were not paid. Thereupon, in a meeting convened by the District Collector to resolve the issue, Ext.P6 dated 19.04.2006 was stated to have been issued to the Tahasildar stating that the work of drinking water supply in Vypin Islands should also be included in drought relief scheme and work executed accordingly. The petitioners thereafter preferred Ext.P7 representation before the Collector. But no orders were passed thereon.

5. It is clear that the petitioners were awarded the work of drinking water supply at the rates mentioned in Ext.P2. Thereafter by Ext.P3, they were required to supply water under the Vypin Special Scheme also. In the meeting convened by the District Collector, Ext.P6 decision has been reached, wherein the supply of drinking water under the Vypin Special Scheme has also been brought under the drought relief scheme. In the above circumstances, the contention raised by the petitioners is that they are entitled to get payments in terms of the rates fixed in Ext.P2. In any view of the matter, the claim relates to supply of drinking water which has been executed between 2004 and 2006.

-: 5 :-

The amounts claimed by the petitioners are still pending for payment.

6. In the above circumstances, the 2nd respondent is directed to look into Ext.P7 representation submitted by the petitioners and pass expeditious orders for disbursal of the amounts due to the petitioners for supply of drinking water with due reference to Ext.P6 decision and taking into account the specific contentions raised by the petitioners that the only agreement entered into between the parties was Ext.P2 and in view of Exts.P3 and P6 issued by the respondents, the petitioners are entitled to the rates fixed in Ext.P2 for the supply of drinking water. Orders shall be passed on Ext.P7 and amounts disbursed to the petitioners within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-
ANU SIVARAMAN,
JUDGE

DST

//True copy//

P.A. To Judge