

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 36209 of 2015 (A)

PETITIONER(S):

**GEORGE MATHEW, AGED 47 YEARS,
S/O.MATHEW, GOVERNMENT CONTRACTOR, ALUKKAI HOUSE,
MEKKAD P.O., ERNAKULAM DISTRICT, PIN 683 589.**

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

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HARBOUR ENGINEERING,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE SUPERINTENDING ENGINEER,
HARBOUR ENGINEERING SOUTH CIRCLE,
KMALESWARAM, MANACAUD P.O.,
THIRUVANANTHAPURAM - 695 009.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 36209 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE SELECTION NOTICE DATED 5.11.2015 ISSUED BY THE
2ND RESPONDENT**
- P2- TRUE COPY OF THE ACCEPTED AGREEMENT SCHEDULE FOR WORKS ISSUED
BY THE 2ND RESPONDENT**
- P3- TRUE COPY OF THE ORDER GO(P) NO.429/15 /15/FIN DATED 28.9.2015 ISSUED BY
THE GOVERNMENT**
- P4- TRUE COPY OF THE REPRESENTATION DATED 20.11.2015 SUBMITTED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT**
- P5- TRUE COPY OF THE RELEVANT PORTION OF G.O.(P) NO.84/97/PW & T
DTD.19.8.1997 PERTAINING TO CLAUSE (XV) (PERFORMANCE GUARANTEE).**
- P6- TRUE COPY OF G.O.(P) NO.47/2003/PWD DTD.6.8.2003 ISSUED BY THE
GOVERNMENT.**
- P7- TRUE COPY OF G.O.(P) NO.95/2004/PWD DTD.1.10.2004 ISSUED BY TE
GOVERNMENT.**
- P8- TRUE COPY OF G.O.(P) NO.13/03/PWD DTD.27.1.2003 ISSUED BY THE
GOVERNMENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

=====

W.P.(C).No. 36209 of 2015

=====

Dated this the 8th day of December, 2015

J U D G M E N T

The writ petitioner has been selected for award of the work of drudging Neendakara Fishery Harbour Basin. He has been asked to furnish security deposit in the form of Treasury Savings Account for Rs.7,14,000/- and performance guarantee of Rs.19,84,400/-.

2. The issue in this writ petition is only relating to the extent of performance guarantee to be furnished by the petitioner. The Government by Ext.P3 order dated 28.9.2015 ordered that if the works quoted below up to 10% of the estimate rate, no performance guarantee shall be insisted. However if the difference is between 11 to 25%, additional performance guarantee shall be insisted. The petitioner would submit that since the difference quoted by him is 18.1%, after excluding 10% he needs to furnish only additional performance guarantee to the

tune of 8.1%. Therefore the petitioner submits that the demand of performance guarantee, taking note of the difference of 18.1% is unsustainable and the demand has to be modified.

3. The petitioner in order to substantiate his contention has relied upon the directions of this Court in O.P No.16290 of 2002. Pursuant to above direction, the Government issued G.O (P) No. 47/2003/PWD dated 6.8.2003 and also another Government Order G.O(P) No.95/2004/PWD dated 1.10.2004. Therefore the learned counsel for the petitioner submits that in the light of above orders the present order has to be interpreted as to the exclusion of initial 10% for furnishing performance guarantee and only for the balance alone they need to furnish bank guarantee.

4. On the other hand the learned Government Pleader submits that the present Government order is very clear and it does not exclude any portion of the performance guarantee, if the difference is between 11% to 25%. The petitioner has to furnish performance guarantee for the entire amount of the difference of the quoted amount and estimated rate of the work.

5. This Court is of the view that in the light of earlier Government order produced as Exts.P6 and P7, the Government has to clarify what is intended in Ext.P3 order governing performance guarantee. Therefore the Principal Secretary, Finance Department, Government of Kerala should take appropriate decision to clarify whether the entire amount of difference of estimated amount and quoted amount will have to be furnished as a performance guarantee. Appropriate decision in this regard shall be taken by the Principal Secretary within four weeks from the date of receipt of the copy of this judgment.

In such a circumstance, the petitioner is permitted to execute an agreement on furnishing security deposit and additional performance guarantee as demanded. If, the Government clarifies that the performance guarantee which is to be furnished by the petitioner has to be modified, necessarily the respondent shall discharge the petitioner to the extent of performance guarantee which is furnished based on the direction of this Court. Therefore the Principal Secretary, Finance Department shall take a decision in consultation with the

Principal Secretary, PWD Department. The time for execution of agreement without fine is therefore extended by two weeks from the date of receipt of the copy of this judgment.

6. In view of the above, the Principal Secretary, Finance Department, Government of Kerala and the Principal Secretary, PWD, Government of Kerala are suo moto impleaded as additional 3rd and 4th respondents.

The writ petition is disposed of, as above.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE