

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. 36218 of 2015 (B)

PETITIONER(S) :

**JOBY KURIAN,
GOVERNMENT CONTRACTOR, KADAVANATTIL HOUSE,
PADINJAREKKARA P.O., VALLAKOM, VAIKOM,
KOTTAYAM DISTRICT, PIN-686 146.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.P.TABHILASH**

RESPONDENT(S) :

**1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

**2. EXECUTIVE ENGINEER,
P.W.D. (ROADS DIVISION), KOTTAYAM-686 001.**

BY SR.GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-12-2015, ALONG WITH W.P(C).NO.36220 OF 2015 AND
W.P.(C).NO.36266 OF 2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE CHECKLIST-GENERAL BILL MAINTAINED AT THE OFFICE OF THE 2ND RESPONDENT DETAILING THE PAYMENT DUE TO THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE SELECTION NOTICE NO. AB4(2) 3467/2015-16 DATED 18-11-2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE SELECTION NOTICE NO. AB4(2) 3650/15-16 DATED 18-11-2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE SELECTION NOTICE NO. AB4(2) 3548/15 DATED 18-11-2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE SELECTION NOTICE NO. AB4(2) 3547/15 DATED 20-11-2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE SELECTION NOTICE NO. AB8(2) 807/15 DATED 16-11-2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P7: TRUE COPY OF G.O.(P)NO. 429/15/FIN. DATED 28-09-2015 ISSUED BY THE GOVERNMENT.

EXHIBIT P8: TRUE COPY OF THE REPRESENTATION DATED 27-11-2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P9: TRUE COPY OF THE RELEVANT PORTION OF G.O.(P)NO.84/97/PW & T DATED 19.08.1997 PERTAINING TO CLAUSE (XV) (PERFORMANCE GUARANTEE).

EXHIBIT P10: TRUE COPY OF G.O.(P)NO.47/2003/PWD DATED 06.08.2003 ISSUED BY THE GOVERNMENT.

EXHIBIT P11: TRUE COPY OF G.O.(P)NO.95/2004/PWD DATED 01.10.2004 ISSUED BY THE GOVERNMENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.36218, 36220 and 36266 of 2015

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Dated this the 8th day of December, 2015

J U D G M E N T

The petitioners have been selected for award of the work. As per selection notice, they have to furnish security deposit as well as performance guarantee. The petitioners are entitled for more amount in respect of other work. In that view of the matter the petitioners has produced necessary certificate to evidence the same. In that view of the matter the amount payable by the petitioners towards the security deposit and additional performance guarantee shall be adjusted from the amount due to them.

2. The petitioners have another challenge in this case regarding insistence of additional performance guarantee for the entire amount of difference between the estimated amount and the quoted amount. The petitioners submit that the initial 10% of the difference has to be excluded while calculating the

additional performance guarantee and only liable to furnish bank guarantee for the remaining amount.

3. This Court in W.P.(C).No. 36209 of 2015 has directed that the Government to clarify as to whether the contractor has to furnish performance guarantee for the entire amount of the difference or only for the amount after excluding initial 10%.

4. Therefore this Court is of the view that if the Government clarifies that the initial 10% has to be excluded, necessarily that shall be given to the petitioners and any adjustment is to be made based on the above clarification, necessarily shall be given to the petitioners. Subject to the above conditions, the petitioners are permitted to execute agreement. The time for execution of agreement without fine is extended by two weeks from the date of receipt of the copy of this judgment.

The writ petition is disposed of, as above.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE