IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WP(C) NO. 25295 OF 2022

PETITIONER:

RAJESH VARKEY, KARIMPANAKKAL HOUSE,
PLACHIKKARA PO, PARAPPA (VIA),
KASARGOD DISTRICT, PIN - 682312.

BY ADVS.
C.R.SIVAKUMAR
BINI.K
SMT. S.SOORYA GAYATHRY

RESPONDENTS:

1 THE STATE OF KERALA
REP BY THE ADDITIONAL CHIEF SECRETARY (FINANCE)
FINANCE (INDUSTRIES AND PUBLIC WORKS-B) DEPARTMENT
GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695001.

2 THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF PLANNING AND ECONOMIC AFFAIRS (A)
GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695001.

3 THE CHIEF ENGINEER,
PWD ADMINISTRATION (ROADS & BRIDGES)
PUBLIC OFFICE BUILDING MUSEUM (PO)
THIRUVANANTHAPURAM, PIN - 695001.

4 THE SUPERINTENDING ENGINEER,
OFFICE OF THE SUPERINTENDING ENGINEER
ROADS & BRIDGES NORTH CIRCLE
PWD ROAD DIVISION, PWD COMPLEX,
MANANCHIRA (PO), KOZHIKKODE, PIN - 673001.

5 THE EXECUTIVE ENGINEER, PWD ROAD DIVISION,
PWD COMPLEX, PULIKKUNNU KASARGOD, PIN - 671121.

*ADDL.R6. THE ACCOUNTANT GENERAL
AG'S OFFICE COMPLEX,
CANTONMENT STATION RD, STATUE, PALAYAM,
THIRUVANANTHAPURAM, KERALA - 695 001.

*(ADDL. R6 IMPLEADED AS PER ORDER DATED 10-03-2023 IN IA 1/2023 IN WP(C).

BY ADV.
SRI. K.V.MANOJ KUMAR, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The controversy in this case revolves around an amount of Rs.62,61,404/- which the petitioner claims is due to him under a contract which he has completed for the Public Works Department (PWD).

2. Interestingly, Sri.K.V.Manoj Kumar – learned Senior Government Pleader, in response to the assertions made on behalf of the petitioner by his learned counsel – Sri.Surya Gayathri, submitted that, as is evident from Ext.P8, the sole reason why his client has been incapacitated to release the said amount to the petitioner is because of an Audit Objection raised by the Office of the 6th respondent – Accountant General; and since an investigation into it is ongoing.

3. Sri.K.V.Manoj Kumar then pointed out that, as per the Audit Objection, the afore

amount is suspected to have been paid to the petitioner unauthorizedly and in excess; and therefore, that, unless the said proceedings are completed, it would not be possible for his client to pay such sums to the petitioner. He, however, added that, as far as the PWD is concerned, they have no other objection against payment because, the work has now been completed.

4. When I evaluate and consider the afore submissions, it is evident that the work in question is conceded to have been completed without any pending objections. The PWD does not raise any cause against the work completed or against the final bills submitted by the petitioner; but asserts to be incapacitated to pay on account of the factum of the inquiry being continued by the Accountant General, *qua* the Audit Objection raised.

5. Of course, the Audit Objection requires to be appropriately decided by the Accountant General, but the petitioner cannot be burdened with having to wait *ad infinitum* for such purpose.

6. I am, therefore, of the firm view that this Court will be justified in issuing orders fixing certain time lines, so that the interests of both sides will be sufficiently protected.

Resultantly, this writ petition is allowed with the following directions:

(a) The 6th respondent – Accountant General, is directed to complete proceedings on the Audit Objection against the petitioner, as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

(b) Depending upon the decision to be taken by the Accountant General as afore, or if no

decision is taken by the said Authority within the time frame fixed above, the competent Authority of the PWD will release the amount in question, or eligible portions thereof, as are entitled to the petitioner, within a period of one month thereafter.

(c) If the release of the amount is made on account of the factum that the Accountant General has not completed the inquiry within the time as afore, then the petitioner will be required to execute a simple self bond as security for the sum.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

akv

APPENDIX OF WP(C) 25295/2022

PETITIONER EXHIBITS

EXHIBIT P1	THE RELEVANT PART OF THE COPY OF AGREEMENT SE (K) 261/2015-16 DATED 15/12/2015
EXHIBIT P2	THE TRUE COPY OF THE PRELIMINARY OBSERVATION MEMO NO.10 DATED 12/07/2021
EXHIBIT P3	THE TRUE COPY OF THE GO(P)NO 375/15/FIN OF FINANCE (INDUSTRIES &PUBLIC WORKS-B) DEPARTMENT THIRUVANANTHAPURAM DATED 24/08/2015
EXHIBIT P4	THE TRUE COPY OF THE REQUEST LETTER DATED 07/06/2018
EXHIBIT P5	THE TRUE COPY OF THE REMINDER REQUEST LETTER DATED 11/09/2018
EXHIBIT P6	THE TRUE COPY OF THE ORDER OF THE 5TH RESPONDENT DATED 30/09/2021
EXHIBIT P7	THE TRUE COPY OF THE REQUEST LETTER DATED 10/11/2021
EXHIBIT P8	THE TRUE COPY OF ORDER NO E5- 842/2020 DATED 24/12/2021
EXHIBIT P9	THE TRUE COPY OF THE JUDGMENT IN W.P. (C) NO. 14889/2020 DATED 05/02/2021
EXHIBIT10	THE TRUE COPY OF CHAPTER III ITEM 311 OF A RELEVANT PART OF THE REPORT OF THE COMPTROLLER AND AUDITOR-GENERAL OF INDIA ON THE ECONOMIC SECTOR FOR THE YEAR ENDED MARCH 2018