

Green Method Engineering (P)Ltd vs the State of Kerala

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Court : Kerala

Decided On : Jan-12-2024

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/6231/2022

Appellant : Green Method Engineering (P)Ltd

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 12TH DAY OF JANUARY 2024 / 22ND POUSHA, 1945 WP(C) NO. 6231 OF 2022 PETITIONER: GREEN METHOD ENGINEERING (P)LTD, REPRESENTED BY ITS EXECUTIVE DIRECTOR, DAVIS M.V., ATC BUILDING, MOOLEPADOM NAGAR ROAD, H.M.T. JUNCTION, KALAMASSERY, KOCHI, PIN-683104. BY ADV C.V.MILTON RESPONDENTS:

1 THE STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, MUSEUM, 695001. 2 THE

SUPERINTENDENT, GENERAL HOSPITAL, ERNAKULAM-682035. 3 HINDUSTAN PREFAB LIMITED, REPRESENTED BY ITS REGIONAL IN CHARGE (SZ), TC 24/656 (FF), THYCAUD, THIRUVANANTHAPURAM, PIN-695014. ADDL.R4 KERALA STATE POLLUTION CONTROL BOARD REPRESENTED BY ITS SECRETARY. (ADDL. R4 IS SUO MOTU IMPEADED AS PER ORDER DATED 15.11.2022 IN WP(C) NO. 6231/2022) BY ADVS. M.A.ASIF NAVEEN T P S APPU-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, which is a Company, asserts to have completed the construction of a Sewage Treatment Plant (STP) for the General Hospital, Ernakulam, as per the contract entered into by them with the 3rd respondent.

2. They submit that, as evident from Ext.P13 letter issued by

the 2nd respondent - Superintendent of the General Hospital, Ernakulam, a further amount of Rs.9,27,498/- was due to them under the contract; and thus pray that the respondents be directed to honour the same, without any avoidable delay.

3. It is on record that the petitioner had earlier approached

this Court impelling an analogous relief, by filing W.P.(C) No.5503 of 2016, which was disposed of through Ext.P10 judgment. Through this judgment, the Pollution Control Board (Board for short) was directed to consider the petitioners claim and take a final decision in accordance with law.

4. The petitioner says that, pursuant to the afore directions,

the Board has now issued an order dated 20.11.2023, a copy of which has been produced on record as Ext.R4(d), wherein, their claim has been rejected solely

saying that supporting documents had not been produced by them. They contend that this is illegal and unlawful because, when the Superintendent of the General Hospital has already certified that the work has been completed and that they are entitled to the amount in question, the stand of the Pollution Control Board is

improper, particularly when, even going by the Administrative Sanction of Rs.1 Crore, the additional amount, admittedly along with the original bill sum, would still fall less than that. He thus prayed that the respondents be directed to honour the afore amount, without any further delay.

5. Sri. M.A. Asif - learned counsel appearing for the 3rd

respondent, submitted that a counter affidavit and an additional counter affidavit have been filed on behalf of his client, wherein, it has been explained that the petitioner was entrusted with the work in question, pursuant to Ext.R3(a) contract. He pointed out that, as per the contract, the Project Management Charges (PMC) at the rate mentioned in Ext.P13 has been fixed and he pointed out to Clause 5 thereof in substantiation. He also conceded that, as is evident from Ext.R3(b), the total amount, including cost of additional work, comes

to Rs.86,93,720/-, along with the PMC of Rs.6,83,778/- and applicable taxes; pointing out this, in any case, is less than Rs.1 crore, which was the original sanctioned amount by the Board. He argued that, therefore, it was for the Pollution Control Board to have acceded to the request of the Superintendent of General Hospital, Ernakulam, namely Ext.P13, which is the same as Ext.R3(b).

6. Sri. T. Naveen - learned Standing Counsel for the Pollution

Control Board, in response, however, submitted that, whatever be the contentions of the petitioner or the 3rd respondent now, his client can authorize payments only if it is validly proven. He maintained that neither the petitioner nor the 3rd respondent have produced any document before his client to establish that additional works had been done; and that PMC charges were authorised. He thus prayed that this writ petition be dismissed.

7. I have evaluated and considered the afore rival submissions very intently.

8. It is without doubt, as is expressly admitted, that the

construction of the 'STP' was done by the petitioner on behalf of the General Hospital, as contracted by them with the 3rd respondent. It is also without contest that this arrangement was done as per the stipulations of the Pollution Control Board, who was the Nodal Agency.

9. The controversy arose because the Pollution Control Board honoured only an amount of Rs.84,50,000/-, but has refused to

accede to the further claims made by the petitioner, though recommended by the 2nd respondent in Ext.P13 [same as Ext.R3(b)]. As seen above, the Pollution Control Board takes the stand that none of the relevant documents were produced before them. However, going by Ext.P13 [same as Ext.R3(a)], the Superintendent of the General Hospital clearly states that additional works were completed by the petitioner for the effective functioning of the 'STP', as per the minutes of the meeting of the members of the Hospital Committee and that of the Pollution Control Board. These aspects have not been controverted by the Pollution Control Board, although they contend that there is nothing to show that an additional expenditure had been

incurred. Pertinently, after asserting as afore, for some reasons, the 'Board' have refused to even acknowledge Ext.P5 - which is a certificate again issued by the Superintendent of the General Hospital, certifying that the additional work had been done and that the total cost of the project had been escalated because of the same, costing Rs.2,43,720/-.

10. Coming to the 'PMC' charges, though Ext.P13 also certifies

that the same is eligible to the petitioner and though the 3rd respondent affirms this in their counter pleadings, averring that, as per Clause 5 of Ext.R3(a) agreement, the said amount has been deducted from the bills of the petitioner, the Pollution Control Board has again disregarded this and says that they will not honour it. This is particularly when the Administrative Sanction originally granted is conceded to be Rs.1 crore.

11. I am, therefore, of the firm view that Ext.R4(d) order now issued by the 'Board' cannot find favour in law, as it does not meet the requirements that were ordered by this Court in Ext.P10

judgment.

12. When I say so, am fully aware that Ext.R4(d) has not been

specifically challenged by the petitioner in this Writ Petition because, it has been produced by the Pollution Control Board, pending this lis, through their counter pleadings.

13. I, therefore, asked Sri.T.Naveen - learned Standing Counsel

for the Pollution Control Board, whether his client would be willing to reconsider the matter, especially because the controversy does not relate to the petitioner per se, but is really involving them and other Public Authorities like respondents 2, 3. This is more so because, if the petitioner had indeed completed the additional work and the PMC been deducted from their bills by the 3 rd respondent, certainly they have to be compensated suitably by one of the Authorities.

14. Sri.T.Naveen responded to this saying that, if this Court is

only directing his client to reconsider the matter, then it can be done de hors Ext.R4(d); but prayed that no affirmative declarations be made in this judgment, either with respect to the additional bill or the PMC, since his client may take the stand that, at least the latter among them is not binding on them, because it is subsequent to an agreement between the petitioner and the 3rd respondent. He added that the burden of this, perhaps, may have to be borne by the 3 rd respondent and that these are issues which can be considered, after hearing all sides.

15. As I have already said above, Ext.P10 judgment of this

Court directed the Pollution Control Board to consider all aspects in its proper perspective. I am afraid that I cannot find Ext.R4(d) proceedings to have been

issued in compliance with the spirit and intent of this Court. In the afore circumstances, I allow this Writ Petition, to the limited extent of directing the competent Authority of the Pollution Control Board to rehear the authorised official of the petitioner, as also respondents 2 and 3 and to act in terms of Ext.P10 judgment, adverting to Exst.P5, P13, R4(a) and every other document that may be produced before them, but de hors Ext.R4(d). A final order in this regard shall be issued as expeditiously as is possible, but not later than four months from the date of receipt of a copy of this judgment; and all amounts found eligible thereafter, if any, shall be disbursed within a period of two months thereafter.

Sd/- bpr/RR DEVAN RAMACHANDRAN JUDGE APPENDIX OF WP(C) 6231/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE TENDER NOTICE NO. NIT NO.HPL/NIT/TVM/132/2011-12 DATED 28.3.2012. Exhibit P2 TRUE COPY OF THE LETTER OF AWARD NO. HPL/CE/LOA/2012-13/112/314 DATED 6.6.2012. Exhibit P3 TRUE COPY OF THE AGREEMENT DATED 15.9.2012 BETWEEN THE PETITIONER AND THE 3RD RESPONDENT. Exhibit P4 TRUE COPY OF THE COMPLETION CERTIFICATE DATED 29.8.2013 ISSUED BY THE 3RD RESPONDENT. Exhibit P5 TRUE COPY OF THE COMPLETION CERTIFICATE DATED 18.3.2014 ISSUED BY THE 2ND RESPONDENT. Exhibit P6 TRUE COPY OF THE HANDING OVER CERTIFICATE DATED 1.9.2014.

Exhibit P7 TRUE COPY OF THE LETTER NO.HPL/K/RI/2014 Exhibit P8 TRUE COPY OF THE LETTER DATED 2.3.2015

SENT TO THE 3RD RESPONDENT. Exhibit P9 TRUE COPY OF THE COMMUNICATION NO.HPL/PM/EKM/15-16 DATED 1.12.2015 SENT TO THE REGIONAL IN CHARGE (SZ). Exhibit P10 TRUE COPY OF THE JUDGMENT IN WP(C) NO.5503/2016 DATED 16.9.2021. Exhibit P11 TRUE COPY OF LETTER NO.PCB/HO/EE4/WP(C) GENERAL/2021 DATED 3.12.2021 OF POLLUTION CONTROL BOARD. Exhibit P12 TRUE COPY OF ORDER NO. PCB/HO/EKM/ICO/421/2010 DATED 22.1.13 OF POLLUTION CONTROL BOARD. Exhibit P13 TRUE COPY OF LETTER NO.C3-1743/2014 DATED 11.3.2014 SENT BY THE 2ND RESPONDENT TO PCB. RESPONDENT

EXHIBITS Exhibit-R3(a) True copy of the consultancy agreement executed between the 2nd and the 3rd respondents on 16.11.2011. Exhibit-R3(b) True copy of the letter No.C2-1390/2011 dated 05.06.2012 issued by the 2nd respondent to the additional 4th respondent. PETITIONER EXHIBITS Exhibit P14 PROCEEDINGS NO.KSPCB/1477/2023-SEE-1 DATED 20.11.2023 RESPONDENT EXHIBITS Exhibit R4(a) True copy of the Proceedings No. PCB/HO/EKM/ICO/421/2010 dated 3-10-2012 issued by the Pollution Control Board. Exhibit R4(b) True copy of the Proceedings No. PCB/HO/EKM/ICO/421/2010 dated 22-1-2013 issued by the Pollution Control Board. Exhibit R4(c) True copy of the Proceedings No. PCB/HO/EKM/ICO/421/2010 dated 26-11-2013 issued by the Pollution Control Board. Exhibit R4(d) True copy of the Proceedings No. KSPCB/1477/2023-SEE-1 dated 20-11-2023 issued by the Pollution Control Board.

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