

Ruby Soft Tech vs State of Kerala

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Court : Kerala

Decided On : Feb-02-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/25960/2017

Appellant : Ruby Soft Tech

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY,
THE 2ND DAY OF FEBRUARY 2024 / 13TH MAGHA, 1945 WP(C) NO.
25960 OF 2017 PETITIONER/S: RUBY SOFT TECH DE NOVO
GARTEN, T.C 14/473(3),N.R.A 55PALAYAM, VIKAS BHAVAN
P.O,THIRUVANANTHAPURAM 695 033,REPRESENTED BY ITS
PROPRIETRIX, ROOBY JOHN BY ADVS. SRI.M.R.ANISON
SMT.V.BHARGAVI PANANGAD SMT.K.P.GEETHA MANI
SMT.P.A.RINUSA RESPONDENT/S: 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,KERALA
PUBLIC WORKS DEPARTMENT,GOVERNMENT
SECRETARIAT,THIRUVANANTHAPURAM 2 THE CHIEF ENGINEER
OFFICE OF THE CHIEF ENGINEER,PWD ROAD AND

BRIDGES,PUBLIC OFFICE, MUSEUM P.O,THIRUVANANTHAPURAM
695 003 3 THE CHIEF EXECUTIVE ENGINEER KERALA ROAD FUND
BOARD, T.C 4/1654.MAYOORAM, NO.7BELHAVEN GARDENS,
KAWDIAR P.O, THIRUVANANTHAPURAM 695 003 4 THE
ADDITIONAL CHIEF SECRETARY, VIGILANCE AND ANTI-
CORRUPTION BUREAU, THIRUVANANTHAPURAM. [SUO MOTO
IMPLEADED AS PER JUDGMENT DATED 02-02-2024 IN WPC
No.25960/2017] BY ADVS. GOVERNMENT PLEADER ADVOCATE
GENERAL OFFICE KERALA SRI. K.V. MANOJ KUMAR, SC, KRFB
SRI.V. RAJASEKHARAN NAIR, SC, KERALA ROAD FUND BOARD

OTHER PRESENT: SRI. K V MANOJKUMAR (SR GP) THIS WRIT PETITION
(CIVIL) HAVING COME UP FOR ADMISSION ON 02.02.2024, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: W.P (C) No.25960/2017 -2-

JUDGMENT

In the year 2015 the petitioner, a proprietary concern was awarded the consultancy work of 4 major PWD works under the District Flagship Infrastructure Project. According to the petitioner, though the work was completed as contemplated and the bills for the same were submitted, the petitioner has not been paid any amount. The petitioner therefore approached this court seeking the following reliefs;

(a) issue a writ of mandamus or other appropriate writ order or direction directing the respondents to disburse the amount due to the petitioner as per Ext.P4 to P6 bills and Ext.P7 letter within a stipulated time;

b) issue a writ of mandamus or other appropriate writ order or direction directing 1st respondent to disburse amounts covered by Ext.P4 to P7 bills with 18% interest from the date of completion of those works till date of payment;

On 13-10-2017 this court passed the following order

The petitioner is relying the amounts due to the petitioner for carrying out a project analysis and preparation of Project Report including site survey and soil investigation works, structural design of multi-storied buildings having various type of foundation, analysis etc. cost The petitioner submits that four works as sanctioned by the Government by Ext.P3 have been awarded to the petitioner. The petitioner is claiming almost Rs.3,29,68,182/- for submission of Project Reports of the four works. 2. It is seen from the Counter Affidavit of the respondent/Chief Engineer that those are admitted by respondents 2 & 3. However, it is not clear as to how the work was awarded to the petitioner merely on an administrative sanction as per Ext.P3. The Chief Engineer shall place on record the full details on the manner in which the work was awarded to the petitioner.

Post after three weeks. Thereafter when this matter was taken up for consideration before this court on 29-11-2017, this court directed as follows; W.P (C) No.25960/2017 -3-

The petitioner was before this Court, seeking disbursement of the amounts due to the petitioner as per Ext.P4 to P7 bills with 18% interest from the date of completion of the work awarded. The petitioner contended that the four works awarded were under the "District Flagship Infrastructure Projects" aimed at infrastructure development in every district. The works awarded were the following:

(i) Kumbidi Kuttippuram Engineering College Thrithala

V.K Kadavu - Pattambi Chenganamkunnu Shornur Road including bridge at Pattambi. Rs.1,02,08,185/- (Rupees One crore two lakhs eight thousand and one and eight five only).

(ii) Kuruthikalam - Velliyamattom - Thodupuzha - Njarukutty - Vannappuram - Cheruthany road Rs.1,17,81,581/- (Rupees One crore seventeen lakhs eighty one thousand five hundred and eighty one only).

(iii) Enath - Elamkulam - Chandanappally - Vallikkodu

Vakayar - Konni - Thannichodu - Chittar - Anamuzhi- Plappally (75 km). - Rs.98,79,240/- (Rupees Ninety eight lakhs seventy nine thousand two hundred and forty only). iv) Palleppady Thammanam Chakkaraparambu (NH Bypass) including Land Acquisition Rs. 11,99,176/-(Rupees Eleven lakhs ninety nine thousand one hundred and seventy six only).

2. The work awarded to the petitioner of the above projects was of

Consultancy viz: feasibility study, design, and preparation of Detailed Project Report (DPR). The total amounts due in all the works together would come to Rs.3,29,68,182/-. The writ petition, coming up for hearing on 13.10.2017, this Court noticed the huge amounts demanded for mere preparation of project report, the admission of the amounts by the 2nd respondent and the reliance placed on a mere administrative sanction at Ext.P3. There was nothing produced to indicate a notification having been issued inviting tenders from the public and the award having been made to the lowest tender. The Chief Engineer was hence directed to place on record the full details of the manner in which the work was awarded.

3. The Chief Engineer, PWD (Roads & Bridges), Thiruvananthapuram

has filed a statement dated 15.11.2017. Annexure R2(a) is the administrative sanction for 21 projects as submitted by the Kerala Road Fund Board [KRFB] to be implemented at a total estimated cost of Rs. 3,771.46 crores. Annexure R2(b) is a direction from the PWD to initiate immediate action for preparation of DPR's and Annexure R2 (c) accorded sanction to the KRFB to meet the cost of preparation of DPR's by the Agencies indicated against each project. The agencies as seen from Annexure R2(c) are the PWD (NH), PWD (R&B) and the KSCC Ltd.

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4. The statement then goes on to submit that the KRFB having requested

the 2nd respondent to prepare the DPR, necessary instructions were issued to the concerned officers. It is also stated that the Executive Engineers, Roads Division, Ernakulam, Idukki and Palakkad and the Superintending Engineer, Roads & Bridges, South Circle Thiruvananthapuram had arranged the respective works of DPR through the consultants empanelled as per Annexure R2(d).

5. It is to be noticed with some emphasis that such an empanelment has

been made when the PWD itself has a design and investigation wing, which has to take up such works and prepare the DPR. The sanction accorded for preparation of DPR was through the specified agencies as noticed above, who further outsourced work to private consultancies said to have been empanelled by the Government, when there is a dedicated wing within the PWD for design and investigation. Curiously enough the various officers; sitting at Ernakulam, Idukki, Palghat and Thiruvananthapuram zeroed in on the petitioner's consultancy who was entrusted the works in the four districts lying across the length of the State.

6. The procedure for award as stated by the Chief Engineer is more

curious. With respect to the work at Ernakulam; being the Pulleppady-Chakkaraparambu road, it is stated; two consultancies alone made their quotes viz; Esteem Developer's Pvt. Ltd. and Ruby Soft Tech, the latter of whom is the petitioner herein. The work is said to have been awarded by Annexure R2(e) to the petitioner since their quote was the lowest and was at the estimated rate. However, nothing is forthcoming as to whether any public notice was issued and how the quotes were invited. There is also no details of the estimated rate, how it was arrived at and by whom. Annexure R2(f), (g) and (h) are the awards made to the petitioner of the

works in the other three districts; the provocation for which and the manner of identifying the petitioner's particular consultancy are not revealed. Presumably when the petitioner's quote was lowest at Ernakulam they were invited to take up the other works also. At whose instigation is the relevant question. In this context pertinent is the fact that the work at Ernakulam; wherein atleast it is stated that there were two quotes, had the lowest estimated cost, negligible in so far as the cost at other districts are concerned. While Ernakulam had an estimated cost of only about Rs.12lakhs, the other works together had a cost of more than Rs.3crores.

7. This Court is appalled at the manner in which the DPR for four

projects have been prepared with an expenditure of more than 3 crores, wherein a consultancy has been picked and chosen without any transparency and throwing to wind all norms regulating such an award. It cannot also be ignored that the same was done when there was a dedicated wing in the PWD itself for preparation of such DPR. In such circumstance, this Court would direct the Chief Secretary to immediately, conduct an enquiry through the PWD Vigilance Wing or the Vigilance and Anti

W.P (C) No.25960/2017 -5- Corruption Bureau order confiscation of the files relating to the awards from the four districts and file a report along with the further action proposed, within a period of two months from the date of receipt of a certified copy of this order. Post after two months.

2. The learned Senior Government Pleader would submit that

following the directions in the order dated 29-11-2017 an enquiry was conducted by the Deputy Chief Engineer (Vigilance) PWD who found that the award of work was not proper and was without complying with any tender formalities. It is submitted that even in respect of empanelled contractors a short tender had to be invited before the work was awarded. Though the learned counsel for the

petitioner submits that in emergent situations work can be awarded without a tender, it is the submission of the learned Senior Government Pleader that the work in question was not one of an emergent nature which would compel the authorities to bypass the normal method of awarding a work of such nature. The learned Senior Government Pleader submits that following the findings of the Deputy Chief Engineer (Vigilance) PWD the Government decided to conduct an enquiry by the Vigilance and Anti-Corruption Bureau (VACB). It is submitted that certain action is also contemplated / pending against various officials of the PWD. It is submitted that the report of the VACB is now before the Government and decision is yet to be taken regarding the same. It is submitted that though the petitioner has W.P (C) No.25960/2017 -6- completed the work, the question as to whether the petitioner is entitled for the payment for the same is a matter to be decided by the Government.

3. Having heard the learned counsel appearing for the petitioner and

the learned Senior Government Pleader, I am of the view that the question as to whether any payment has to be released to the petitioner for the work completed is to be taken by the 1st respondent. Since the final decision to be taken on the basis of the report of the VACB is to be taken by the Additional Chief Secretary, Vigilance Department. I suo moto impleaded the Additional Chief Secretary, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram as additional 4th respondent to the writ petition. The Additional 4th respondent shall take a decision on the report of the VACB and place the files thereafter before the 1st respondent, who shall thereafter take a decision as to whether any payment is to be made to the petitioner after affording an opportunity of hearing to the petitioner. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this

judgment.

Sd/- GOPINATH P. JUDGE AMG W.P (C) No.25960/2017 -7- APPENDIX OF WP(C) 25960/2017 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE GOVERNMENT ORDER BEARING G.O(RT) NO EXHIBIT P2 TRUE COPY OF THE ORDER BEARING G.O(RT) NO EMPANELLED CONSULTANTS EXHIBIT

P3 A TRUE COPY OF THE G.O(RT) NO 801/2015/PWD DATED 10- 06-2015
EXHIBIT P4 A TRUE COPY OF THE BILL SUBMITTED BY THE PETITIONER
DATED 22-01-2016 EXHIBIT P5 A TRUE COPY OF THE BILL SUBMITTED BY
THE PETITIONER DATED 18-12-2015 EXHIBIT P6 A TRUE COPY OF THE BILL
SUBMITTED BY THE PETITIONER DATED 24-02-2016 EXHIBIT P7 A TRUE
COPY OF LETTER ISSUED BY THE SUPERINTENDING ENGINEER (ROADS &
BRIDGES) CENTRAL CIRCLE,ALUVA DATED 23-06-2017 EXHIBIT P8 A TRUE
COPY OF ONE SUCH REPRESENTATION SUBMITTED BY THE PETITIONER
DATED 08-09-2016 EXHIBIT P9 A TRUE COPY OF THE LETTER ISSUED BY
THE SUPERINTENDING ENGINEER (ROADS & BRIDGES) CENTRAL
CIRCLE, ALUVA DATED 03-03-2017 EXHIBIT P10 A TRUE COPY OF THE
REPRESENTATION SUBMITTED BY THE PETITIONER DATED 17-04-2017

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