

G.V.Davis vs the Superintending Engineer

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SooperKanoon Citation : sooperkanoon.com/1404094

Court : Kerala

Decided On : Dec-04-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/37111/2023

Appellant : G.V.Davis

Respondent : The Superintending Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 4TH DAY OF DECEMBER 2023 / 13TH AGRAHAYANA, 1945 PETITIONER: G.V.DAVIS AGED 65 YEARS S/O. G.O VARGHESE GOPURATHINGAL HOUSE, KARUKUTTY, ANGAMALY P.O, ERNAKULAM DISTRICT., PIN - 683576 BY ADVS. V.RAJENDRAN (PERUMBAVOOR) N.RAJESH GOPAKUMAR P. JERRY JAISON RESPONDENTS: 1 THE SUPERINTENDING ENGINEER PWD ROADS, CENTRAL CIRCLE ALUVA, PIN - 689101 2 THE EXECUTIVE ENGINEER PWD ROADS, ERNAKULAM, PIN - 682021 3 THE ASSISTANT EXECUTIVE ENGINEER PWD ROADS SUB DIVISION, ALUVA., PIN - 683101 4 THE

ASSISTANT ENGINEER PWD, ANGAMALY, PIN - 683572 SRI K V MANOJKUMAR-SR GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner impugns Exts.P11 and P15 orders issued by the 1st respondent -f19+ Public Works Department (PWD); and argues that they are illegal and unlawful because the contract, under Ext.A1 Agreement, cannot be cancelled at his risk and cost, so as to forfeit the Security Deposit, since there are no faults that can be attributed to him in any manner whatsoever.

2. The petitioner says that, after the contract was entered into, there was acute shortage of materials, which is compounded by the fact by the Kerala Water Authority (KWA) had to lay pipelines, subsequent to which, COVID-19 pandemic disruption occurred and that he became afflicted by a cardiac issue. He says that all

these factors stood against him; and was, therefore, unable to complete the work, which has now led to the impugned Exts.P11 and P15 orders. He conceded that the work has now been rearranged to another contractor and therefore, pleaded that the contract between him and the PWD be directed to be cancelled by its competent Authority, but without any risk and cost being attached to him. He says that he has already preferred Ext.P13 representation before the 1st respondent for this purpose; and prays that same be directed to be taken up and disposed of, without any avoidable delay, because he will be able to convince the said Authority about the veracity of the afore extenuating circumstances.

3. Sri.K.V.Manoj Kumar - learned Senior

Government

Pleader

appearing

for

petitioner, says that, normally, when a work is not completed by a contractor as per the Agreement, it will entail its cancellation at his risk and cost, because the rearrangement and the consequent completion of the same, would otherwise, create unnecessary burden on the department. He submitted that, however, since the petitioner says that he has preferred Ext.P13 representation before the 1st respondent, the said Authority is willing to hear him and take a

decision thereon, adverting to the
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declarations in his favour.

4. When I consider and evaluate the afore submissions, it is without doubt that the petitioner himself admits that he could not complete the work, but cites specific reasons for such. Though this Court may have some empathy for the petitioner, it would not be possible for me

to take any conclusive decision on the facts

stated by him, since it will require assessment of factual circumstances and materials, which cannot be done under Article 226 of the Constitution of India.

5. I am, therefore, of the firm view that the 1st respondent must take up Ext.P13 representation and hear the petitioner, before a final decision on the imposition of risk and cost against him is taken.

In the afore circumstances, I allow this writ petition and direct the 1st respondent to take up Ext.P13 representation of the petitioner and afford him an opportunity of being heard; thus culminating in an appropriate order and necessary action on his claim, qua risk and cost not being attached to him. The afore shall be done as expeditiously as is possible; but until such time as resultant

order communicated to the petitioner, all

further action to recover any amounts from him or to attach risk and cost responsibility on him,

pursuant to Exts.P11 and P15, shall

resultant to the afore directions. Sd/- DEVAN RAMACHANDRAN JUDGE SAS
APPENDIX OF WP(C) 37111/2023 PETITIONERS EXHIBITS: Exhibit P1 TRUE
COPY OF THE RELEVANT PAGES OF AGREEMENT NO. 146/SECCA/2019-
2020 DATED 18.02.2020. Exhibit P2 TRUE COPY OF COMMUNICATION
BEARING NO. A2- 3RD RESPONDENT TO THE 2ND RESPONDENT. Exhibit P3
TRUE COPY OF ORDER NO. DEA-11050/2018 DATED 27.01.2021 ISSUED BY
THE 1ST RESPONDENT. Exhibit P4 TRUE COPY OF COMMUNICATION
BEARING NO. A2- 2ND RESPONDENT TO THE 1ST RESPONDENT . Exhibit P5
TRUE COPY OF THE ORDER BEARING NO.DEA- RESPONDENT Exhibit P6
TRUE COPY OF SUPPLEMENTAL AGREEMENT NO. II DATED 30.03.2022 TO
THE MAIN AGREEMENT NO. 146/SECCA/2019-20 DATED 18.02.2020 Exhibit
P7 TRUE COPY OF DISCHARGE SUMMARY ISSUED FROM THE
DEPARTMENT OF CARDIOLOGY, LISIE MEDICAL INSTITUTION DATED
02.02.2014 Exhibit P8 TRUE COPY OF THE MEDICAL REPORT ISSUED FROM
THE LISIE HOSPITAL, ERNAKULAM. Exhibit P9 TRUE COPY OF COMPLETION
CERTIFICATE DATED 28.07.2022 ISSUED BY THE 4TH RESPONDENT .
Exhibit P10 TRUE COPY OF COMMUNICATION BEARING NO. 68/18-

19/RD/2018/11050 DATED 18.01.2023 ISSUED BY THE ASSISTANT
ENGINEER, PWD, ANGAMALY TO THE PETITIONER . Exhibit P11 TRUE COPY
OF THE ORDER NO. DEA-11050/2018 DATED 21.03.2023 PASSED BY THE
1ST RESPONDENT. Exhibit P12 TRUE COPY OF COMMUNICATION BEARING
NO. 68/18- 19/RD/2018/11050 DATED 10.02.2023 ISSUED BY THE ASSISTANT
ENGINEER, PWD ANGAMALY TO THE 3RD RESPONDENT . Exhibit P13 TRUE
COPY OF REPRESENTATION DATED 12.05.2023 SUBMITTED BY THE
PETITIONER TO THE 1ST RESPONDENT . Exhibit P14 TRUE COPY OF
COMMUNICATION BEARING NO.FCR/4104/94 DATED 22.7.2023 ISSUED BY
THE 1ST RESPONDENT TO THE PETITIONER . Exhibit 15 TRUE COPY OF
COMMUNICATION BEARING NO.DEA- PETITIONER .