

Sibi N.K vs Superintending Engineer,

Sibi N.K vs Superintending Engineer,

SooperKanoon Citation : sooperkanoon.com/1442648

Court : Kerala

Decided On : Feb-11-2022

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/1240/2022

Appellant : Sibi N.K

Respondent : Superintending Engineer,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY,
THE 11TH DAY OF FEBRUARY 2022 / 22ND MAGHA, 1943
PETITIONER: SIBI N.K AGED 44 YEARS S/O. KUMARAN WORKS
CONTRACTOR, NADUPARAMBIL HOUSE, VELANCODE P.O.,
KOZHIKODE DISTRICT, PIN-673580. BY ADVS. K.V.PAVITHRAN
M.P.JAYANANDAN RESPONDENTS:

1 SUPERINTENDING ENGINEER, PUBLIC WORKS DEPARTMENT,
NORTH CIRCLE, PWD COMPLEX, MANANCHIRA, KOZHIKODE, PIN-
673001. 2 THE EXECUTIVE ENGINEER, PUBLIC WORKS
DEPARTMENT, ROADS DIVISION, VELLIMADUKUNNU, KOZHIKODE-

673018. 3 THE ASSISTANT EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, ROADS SUB DIVISION, KOYILANDI, KOZHIKODE DISTRICT, PIN-673305. 4 THE ASSISTANT ENGINEER, PUBLIC WORKS DEPARTMENT, ROADS SECTION, BALUSSERY, KOZHIKODE DISTRICT-673308.

5 THE CHIF ENGINEER, PUBLIC WORKS DEPARTMENT, ROADS DIVISION, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001. 6 THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001. SMT.PARVATHY KOTTOL GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of February, 2022 The petitioner, who has entered into an agreement with the 1st respondent, is before this Court seeking to set aside Ext.P9 order, terminating Ext.P1 contract and seeking to direct the 1st respondent to allow 30 days time to complete the remaining minor works.

2. The petitioner states that he was entrusted with the

work of improvements to Balussery Town (KTMAE Road) on SH 34, KM 15/700 to 16/500 in Kozhikode District. An agreement was entered into on 01.11.2018. The work had to be completed within nine months. The total contract amount was Rs.2,57,25,182.14.

3. The petitioner submits that though the work

commenced from 09.11.2018, it could not be completed before the stipulated date 08.08.2019, due to factors like landslide, etc. The standing trees were to be removed, electricity lines and Transformers had to be shifted. These works were not carried out. Therefore, the petitioner could not proceed with the work expeditiously. In the meanwhile, the Covid-19 pandemic spread. That is also a

reason for non-completion of the work within the stipulated time.

4. The petitioner states that the incessant rains also obstructed the work. In the meanwhile, the respondent extended the period of contract imposing a fine on the petitioner. A Supplemental Agreement was entered into on 02.11.2021. The time was extended up to 30.11.2021.

5. The petitioner has been requesting the respondents

to take steps to shift the electricity lines and remove trees standing in the alignment. The respondents did not do anything in this regard. According to the petitioner, the obstructions were removed only in May, 2020. After removal of obstructions, the petitioner has carried out almost 90% of the works. Various proposals with regard to the work are yet to be approved. The petitioner submitted Ext.P5 Part Bill for Rs.1,61,68,115/-.

6. While so, the 1st respondent issued Ext.P7 letter

dated 14.12.2021 to the petitioner requiring to resume the work and complete the same immediately. The petitioner submitted Ext.P8 reply dated 16.12.2021 in which the petitioner explained the circumstances which caused delay. The petitioner also pointed out the inaction in settling of the issues raised by the

petitioner. However, the 1st respondent issued Ext.P9 order

dated 28.12.2021 terminating the contract. The petitioner submitted Ext.P10 letter to the 1st respondent requesting to reconsider the termination, taking into consideration the fact that hardly 5% of work is remaining to be done. Ext.P10 did not yield any reply. The petitioner is hence before this Court.

7. The 1st respondent contested the writ petition by filing a Counter Affidavit. The 1st respondent pointed out that even though the petitioner was selected for the work as per Ext.R(1)

(a) notice dated 19.09.2018, the petitioner turned up to execute the agreement only on 01.11.2018, almost after a period of one month. The progress of the work

site was not at the desired

level. As per the agreement, the work was handed over to the petitioner on 09.11.2018, immediately after executing the agreement. The work had to be completed by 08.08.2019.

8. The 1st respondent stated that as regards cutting of

trees and shifting of electric posts, it is a paid work and it is the responsibility of the petitioner to take necessary steps in that regard. It is the petitioner who is responsible to co-ordinate with the service providers for cutting of trees, shifting of electric posts, removal of encroachments, etc. for completion of the

work. The petitioner did not follow up the matter. The respondents submitted that shifting of electrical line was completed in January, 2020 itself. Even after shifting of electrical lines in January, 2020, the petitioner resumed the work only in May, 2020, that is after about five months. The petitioner completed necessary works to start the tarring of the road on 25.05.2020.

9. The 1st respondent stated that as regards Covid-19 pandemic, the Government had issued order dated 25.04.2020

permitting completion of PWD works in compliance with the Covid-19 protocols and precautions. The local restrictions in the State were lifted by the Government on 25.05.2020. Therefore, lockdown cannot be a reason for the undue delay on the part of the petitioner to complete the work. The respondents stated that the petitioner was served with several letters pointing out the slow progress of the work. However, the letters were of no avail. In such circumstances, the respondents had to terminate the contract with the petitioner. According to the 1st respondent, more than 20% work is yet to be completed.

10. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

11. From the pleadings, it is evident that the petitioner entered into an agreement with the 1 st respondent for improvement of the road in question on 01.11.2018.

The period fixed for completion of the work was nine months. The pleadings in the case would show that Ext.R1(a) selection notice dated 19.09.2018 was issued on the petitioner. The petitioner came forward to execute the agreement only on 01.11.2018. There is a delay of merely one month even for executing the agreement. The agreement was executed after imposition of a fine of Rs.25,000/-.

12. The site was handed over to the petitioner on 09.11.2018. Hence, the work had to be completed by 08.08.2019. However, the petitioner did not proceed with the

work promptly. Going by the terms of the agreement, the petitioner is responsible to co-ordinate with service providers for cutting of trees, shifting of utilities, removal of encroachments, etc. The petitioners contention is that the hindrance free site was delayed and all permissions were received only by May,

2020. Even assuming that the delay in getting hindrance free

site was attributable to the respondents, the fact remains that the hindrance free site was available from 05.05.2020 onwards. Even thereafter, as of now, more than 19 months have elapsed. The total period for completion of the work originally allocated to the petitioner is nine months. Even after 20 months since May, 2020, the petitioner could not complete the work.

13. The counter affidavit filed by the respondents would show that electrical lines were shifted in the month of January,

2020. Even after shifting of electrical lines in January, 2020, the

petitioner did not start the surfacing work. The petitioner completed the first coat of tarring work only by 16.11.2020, that is about six months from completing that surface work. This fact reflects the slow progress of the work of the petitioner. As pointed out by the learned Government Pleader, though Covid- 19 pandemic may have marginally affected the progress of the work, the fact remains that the Government had relaxed Covid- 19 restrictions in the matter of PWD works and the lockdown restrictions were also lifted by the Government soon.

14. Exts.R1(i) to R1(o) would show that the respondents have been insisting the petitioner to resume and complete the work. However, the petitioner could not complete the work even

within the extended time. It was in such circumstances that Ext.P9 order of termination was issued to the petitioner. The original agreement was on 08.08.2019. The site was handed over on 09.11.2018. The work had to be originally completed by 08.08.2019. The petitioner was granted extension. Still the contention of the petitioner is that if he gets further time, he will

be able to complete the work. Going by the history of the progress of the work, this Court is not inclined to interfere in the matter. The writ petition is therefore dismissed. The petitioner submits that he will be able to complete the work if 15 days time is granted. The petitioner will be at liberty to approach the competent among the respondents and seek remedies in that regard.

Sd/- N.NAGARESH JUDGE spk APPENDIX OF WP(C) 1240/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF AGREEMENT DATED 1.11.2018 WITH THE 1ST RESPONDENT. Exhibit P2 TRUE COPY OF ORDER DATED 2.11.2021 GRANTING EXTENSION OF TIME OF COMPLETION. Exhibit P3 TRUE COPY OF ORDER DATED 22.10.2019 OF SOCIAL FOREST OFFICER TO CUT AND REMOVING TREES IN THE ALIGNMENT. Exhibit P3(A) TRUE COPY OF LETTER DATED 12.12.2019 OF

PUBLIC ADDRESSED TO KSEB AUTHORITIES TO KSEB AUTHORITIES TO SHIFT ELECTRICITY LINES IN THE ALIGNMENT.

Exhibit P4 TRUE COPY OF LETTER DATED 23.7.2021 OF THE PETITIONER TO THE 3RD RESPONDENT TO ALLOW PART BILL. Exhibit P5 TRUE COPY OF PART BILL, RECORDING MEASUREMENTS UP TO 16.7.2021 ONLY. Exhibit P6 TRUE COPY OF LETTER DATED 10.8.2021 THE PETITIONER ADDRESSED THE 1ST RESPONDENT. Exhibit P6(A) TRUE COPY OF LETTER DATED 23.8.2021 THE PETITIONER ADDRESSED THE 1ST RESPONDENT. Exhibit P7 TRUE COPY OF LETTER DATED 14.12.2021 OF 1ST RESPONDENT AND TYPED COPY Exhibit P8 TRUE COPY OF LETTER DATED 16.12.2021 IN

REPLY TO EXHIBIT P7. Exhibit P9 TRUE COPY OF ORDER DATED 28.12.2021 OF 1ST RESPONDENT, TERMINATING THE CONTRACT AND TYPED COPY Exhibit P10 TRUE COPY OF LETTER DATED 3.1.2022 OF PETITIONER ADDRESSED TO THE 1ST RESPONDENT. RESPONDENT'S/S EXHIBITS : NIL Exhibit R1(a) A TRUE COPY OF THE SELECTION NOTICE DATED 19.09.2018 Exhibit R1(b) A TRUE COPY OF THE AGREEMENT NO.SE(K)101/2018-19 DATED 01.11.2018 Exhibit R1(c) A COPY OF THE ACKNOWLEDGEMENT FOR HANDED OVER THE SITE TO THE PETITIONER Exhibit R1(d) A TRUE COPY OF THE MEASUREMENTS BOOK SHOWING THE DATE OF COMMENCEMENT OF WORK Exhibit R1(e) A COPY OF THE COMMUNICATION DATED 25.08.2021 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER Exhibit R1(f) A COPY OF THE LEVEL BOOK

Exhibit R1(g) A TRUE COPY OF THE GOVERNMENT ORDER

DATED 25.04.2020 Exhibit R1(h) A TRUE COPY OF THE LEVEL BOOK Exhibit R1(i) A COPY OF THE LETTER DATED 07.06.2021 FROM THE ASSISTANT EXECUTIVE ENGINEER Exhibit R1(j) A COPY OF THE LETTER DATED 23.06.2021 FROM THE ASSISTANT EXECUTIVE ENGINEER Exhibit R1(k) A COPY OF THE LETTER DATED 20.07.2021 FROM ASSISTANT EXECUTIVE ENGINEER TO THE PETITIONER Exhibit R1(l) A COPY OF THE LETTER DATED 23.07.2021 FROM ASSISTANT EXECUTIVE ENGINEER TO THE PETITIONER Exhibit R1(m) A COPY OF THE LETTER DATED 02.08.2021 FROM EXECUTIVE ENGINEER TO THE PETITIONER Exhibit R1(n) A COPY OF THE LETTER DATED 18.08.2021 FROM THE ASSISTANT EXECUTIVE ENGINEER Exhibit R1(o) A COPY OF THE LETTER DATED 26.08.2021 FROM THE SUPERINTENDENT ENGINEER TO THE PETITIONER Exhibit R1(p) A COPY OF THE NEWSPAPER REPORT PUBLISHED IN MATHRUBHUMI NEWSPAPER ON 30.08.2021 WITH REGARD TO THE CONDITION TO THE WORK Exhibit R1(q) A COPY OF THE LETTER DATED 14.12.2021 FIRN RESPONDENT TO THE PETITIONER Exhibit R1(r) A COPY OF THE LETTER DATED 27.12.2021 FROM THE EXECUTIVE ENGINEER TO THE RESPONDENT Exhibit R1(s) A COLOR PICTURE SHOWING THE PRESENT CONDITION OF HTE ROAD

