

Victory Computer Forms vs K.S.E.B. and Others

Victory Computer Forms vs K.S.E.B. and Others

SooperKanoon Citation : sooperkanoon.com/1532504

Court : Kerala

Decided On : Nov-30-2022

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/17875/2011

Appellant : Victory Computer Forms

Respondent : K.S.E.B. and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 30TH DAY OF NOVEMBER 2022 / 9TH
AGRAHAYANA, 1944 PETITIONER: M/S.VICTORY COMPUTER
FORMS, P.B.NO.50, KUNNAMKULAM - 680 503, REP.BY ITS
MANAGING PARTNER, SMT.USHA DEVIS. BY ADVS. SRI.J.JULIAN
XAVIER SRI.FIROZ K.ROBIN RESPONDENTS:

1 KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS
SECRETARY,VYDYUTHI BHAVANAM,PATTOM,
THIRUVANANTHAPURAM,PIN - 695 004. 2 THE CHIEF
ENGINEER(TECHNICAL CONTRACTS & MATERIALS),KERALA

STATE ELECTRICITY BOARD, VYDYUTHI
BHAVANAM,PATTOM,THIRUVANANTHAPURAM,PIN - 695 004. 3 THE
CHIEF ENGINEER, (SUPPLY CHAIN MANAGEMENT) KERALA STATE
ELECTRICITY BOARD, VYDYUTHI
BHAVANAM,PATTOM,THIRUVANANTHAPURAM, PIN - 695 004. 4
THE CHIEF ENGINEER, (DISTRIBUTION CENTRAL) KERALA STATE
ELECTRICITY BOARD,D.H ROAD, ERNAKULAM - 682 011. 5 THE
MANAGER, FEDERAL BANK LTD. KUNNAMKULAM
BRANCH,THRISSUR - 680 503. BY ADVS. ARUNKUMAR A., SC, KSEB
SRI.GEORGE VARGHESE MANACHIRACKEL SMT.LIZA P.CHERIAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30.11.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- W.P.(C).No. 17875 of 2011
----- Dated this the 30th day of November,
2022

JUDGMENT

The above Writ Petition is filed with the following prayers: (i) to call for the records connected with the case leading to Ext.P7, P10 and P11 and quash the original of Exts.P7, P10 and P11 by issuing a writ of certiorari.

(ii) direct the 2nd respondent to forthwith disburse the amount claimed by the petitioner as per Ext.P9 by issuing a writ of mandamus;

(iii) alternatively direct the 2nd respondent to

take a decision on Ext.P9 with notice to the petitioner and further direct the 3rd respondent not to take any further action pursuant to Ext.P10 and P11 till a decision is taken on Ext.P9 by the 2nd respondent; and

(iv) To grant such other relief's that may be deemed just and proper by this Hon'ble Court;[SIC]

2. The Petitioner entered into an agreement with

the 2nd respondent for printing and supply of 213 lakhs numbers each of spot bill form and receipt form and thereafter a purchase order was issued and it is also the case of the petitioner that the petitioner furnished security deposit of Rs.11,42,750/- and supplied the materials. As per clause 17 of Ext.P1(a), terms and conditions of supply, petitioner had to supply 25% additional quantity of the items ordered within 6 months from the date of acceptance of goods at the same rate and terms as per the purchase order. However, it is further stated that the rate will be re-fixed, if a fall in price occurs in the next bid invited during the delivery scheduled fixed for supply against additional order. As per the said clause, petitioner was asked to supply additional 25% and a supplementary agreement was executed for that purpose as per Ext.P4. It is the case of the petitioner that, in Ext.P4, it is specifically stated that the rates, terms and conditions of the existing agreement executed, the principal agreement will be followed. The second agreement was also between the 2nd respondent and the petitioner. It is the grievance of the petitioner that, after supplying almost 80% of the materials, the 2nd respondent, all on a sudden, reduced the rate of the materials vide Ext.P7 letter. It is the case of the petitioner that, Ext.P7 is issued without giving an opportunity of hearing to the petitioner. Aggrieved by Ext.P7, the petitioner submitted Exts.P8 and P9. Since there is no consideration of Exts.P8 and P9, this writ petition is filed.

3. Heard counsel appearing for the petitioner and the Standing counsel appearing for the K.S.E.B.

4. A counter affidavit is filed by the Board and a

reply affidavit is also seen filed by the petitioner. The grievance of the petitioner is that, Ext.P7 communication is issued by the Electricity Board unilaterally without giving an opportunity of hearing to the petitioner. It is also the case of the petitioner that only a copy of Ext.P7 is served to the petitioner. This writ petition is pending

before this Court from 2011 onwards. There is already an interim order staying all further proceedings pursuant to Exts.P10 and P11 recovery based on Ext.P7. That interim order is in force even now. When this writ petition came up for consideration on 30.05.2022, this Court issued a direction to the Standing counsel appearing for the K.S.E.B to get instructions as to whether any decision was taken on Ext.P8 and also to get instruction as to whether any notice was issued to the petitioner before Ext.P7 was issued. The Standing counsel submitted that Exts.P8 and P9 are not considered because of the pendency of the writ petition. A perusal of Ext.P7 will not show that it is an order passed by the Board after giving an opportunity of hearing to the petitioner. In such circumstances, without making any observation on merit, Ext.P7 can be set aside and the respondents can be directed to reconsider the matter after giving an opportunity of hearing to the petitioner, within a time frame. Therefore, this writ petition is allowed in the following manner: i) Exts.P7, P10 and P11 are quashed. ii) The 2nd respondent is directed to reconsider the matter after giving an opportunity of hearing to the petitioner and also adverting the contentions of the petitioner in Exts.P8 and P9. iii) The petitioner is free to file an additional statement also, if necessary. iv) The above exercise shall be completed by the 2nd respondent, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment. Sd/- P.V.KUNHIKRISHNAN DM JUDGE APPENDIX OF WP(C) 17875/2011 PETITIONER EXHIBITS EXHIBIT P1 PHOTOCOPY OF THE PURCHASE ORDER DATED 12.3.2009. EXHIBIT P1(A) TRUE COPY OF THE TERMS AND CONDITIONS, WHICH IS ANNEXED WITH EXT.P1. EXHIBIT P2 PHOTOCOPY OF THE AGREEMENT DATED 28.10.2008 EXHIBIT P3 A COPY OF THE PURCHASE ORDER DATED 12.3.2010 EXHIBIT P4 A COPY OF THE SUPPLEMENTARY AGREEMENT BETWEEN THE 2ND RESPONDENT AND THE PETITIONER.

EXHIBIT P5 A COPY OF THE PURCHASE ORDER DATED

OF THE PURCHASE ORDER. EXHIBIT P6 PHOTOCOPY OF THE AGREEMENT
ENTERED INTO BETWEEN THE 4TH RESPONDENT AND THE PETITIONER
ON 27.3.2010.

EXHIBIT P7 PHOTOCOPY OF THE LETTER DATED

WHICH BEARS SIGNATURE OF THE 2ND EXHIBIT P9 A COPY OF THE PETITION DATED 8.10.2010 FILED BEFORE THE 2ND

EXHIBIT P9(A) A COPY OF THE ACKNOWLEDGMENT CARD

ISSUED BY THE 3RD RESPONDENT TO THE 6TH RESPONDENT. EXHIBIT P11 A COPY OF THE LETTER DATED 27.6.2011 ISSUED BY THE 3RD RESPONDENT RESPONDENTS EXHIBITS: NIL //TRUE COPY// PA TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com