

Heather Constructions vs the State of Kerala

Heather Constructions vs the State of Kerala

SooperKanoon Citation : sooperkanoon.com/1553759

Court : Kerala

Decided On : Nov-15-2022

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/32682/2022

Appellant : Heather Constructions

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY,
THE 15TH DAY OF NOVEMBER 2022 / 24TH KARTHIKA, 1944 W.P.(C)
NO.32682 OF 2022 PETITIONER: HEATHER CONSTRUCTIONS,
CONTRACTORS & ENGINEERS, REPRESENTED BY ITS MANAGING
PARTNER, S M RAJEEV, HAVING ITS REGISTERED OFFICE AT
ANUGRAHA, T.C.9/1775(2), PATTANIKKUNNU LANE,
SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010.

BY ADVS. V.G.ARUN (K/795/2004) V.JAYA RAGI R.HARIKRISHNAN
(KAMBISSERIL) NEERAJ NARAYAN AVANEETH S.R.
RESPONDENTS: 1 THE STATE OF KERALA REPRESENTED BY

CHIEF SECRETARY, THIRUVANANTHAPURAM - 695 001. 2 THE FINANCE DEPARTMENT (INDUSTRIES AND PUBLIC WORKS-B), REPRESENTED BY SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 3 HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY, THIRUVANANTHAPURAM - 695 001. 4 WAPCOS LTD. REPRESENTED BY ITS REGIONAL MANAGER, HAVING ITS REGISTERED OFFICE AT 5TH FLOOR, KAILASH 26, K.G.MARG, NEW DELHI. -2- 5 KERALA INFRASTRUCTURE INVESTMENT FUND BOARD (KIIFB) 2ND FLOOR, FELICITY SQUARE, M.G.ROAD, STATUE, THIRUVANANTHAPURAM - 695 001 REPRESENTED BY ITS JOINT FUND MANAGER.

R1-R3 SRI. RIYAL DEVASSY, GOVERNMENT PLEADER R4 SRI. THANKAPPAN M.K. R5 SRI.C.CHANDRASEKHARAN NAIR, SC, KIIFB THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.11.2022, ALONG WITH WP(C).32678/2022, DELIVERED THE FOLLOWING: -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 15TH DAY OF NOVEMBER 2022 / 24TH KARTHIKA, 1944 WP(C) NO. 32678 OF 2022 PETITIONER: M/S. HEATHER CONSTRUCTIONS, CONTRACTORS & ENGINEERS, REPRESENTED BY ITS MANAGING PARTNER, S M RAJEEV, HAVING ITS REGISTERED OFFICE AT ANUGRAHA, T. C 9/1775 (2), PATTANIKKUNNU LANE, SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010.

BY ADVS. V.G.ARUN (K/795/2004)(K/795/2004) NEERAJ NARAYAN V.JAYA RAGI R.HARIKRISHNAN (KAMBISSERIL) AVANEETH S.R. RESPONDENTS: 1 THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM - 695 001. 2 THE

FINANCE DEPARTMENT, (INDUSTRIES AND PUBLIC WORKS -B), REPRESENTED BY SECRETARY, THIRUVANANTHAPURAM-695 001. 3 HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY, THIRUVANANTHAPURAM-695 001. -4- 4 KITCO LTD, REPRESENTED BY ITS MANAGING DIRECTOR, W. R HARINARAYANARAJ, HAVING ITS REGISTERED OFFICE AT FEMITH'S, PB NO. 4407, PUTHIYA ROAD, NH BYPASS, VENNALA, KOCHI - 682 028. 5 KERALA INVESTMENT AND INFRASTRUCTURE DEVELOPMENT FUND BOARD, REPRESENTED BY ITS JOINT FUND MANAGER, 2ND FLOOR, FELICITY SQUARE, M.G. ROAD, STATUE, THIRUVANANTHAPURAM 695 001. R1-R3 SRI. RIYAL DEVASSY, GOVERNMENT PLEADER R4 SRI. ABRAHAM P.MEACHINKARA R5 SRI.C.CHANDRASEKHARAN NAIR, SC, KIIFB THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.11.2022, ALONG WITH WP(C).32682/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -5-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 15TH DAY OF NOVEMBER 2022 / 24TH KARTHIKA, 1944 WP(C) NO. 32679 OF 2022 PETITIONER: M/S. HEATHER CONSTRUCTIONS, CONTRACTORS & ENGINEERS, REPRESENTED BY ITS MANAGING PARTNER, S M RAJEEV, HAVING ITS REGISTERED OFFICE AT ANUGRAHA, T. C 9/1775 (2), PATTANIKKUNNU LANE, SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010.

BY ADVS. V.G.ARUN (K/795/2004) V.JAYA RAGI R.HARIKRISHNAN (KAMBISSERIL) NEERAJ NARAYAN AVANEETH S.R. RESPONDENTS: 1 THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM - 695 001. 2 THE FINANCE DEPARTMENT, (INDUSTRIES AND PUBLIC WORKS -B), REPRESENTED BY SECRETARY, THIRUVANANTHAPURAM-695 001.

3 THE PUBLIC WORKS DEPARTMENT, REPRESENTED BY ITS PRINCIPAL SECRETARY, ROOM NO.388, FIRST FLOOR, MAIN BLOCK, SECRETARIAT, STATUE, THIRUVANANTHAPURAM-695 001. -6- 4 THE SUPERINTENDENT ENGINEER, PWD JUDICIAL BUILDING, CIRCLE, NEAR BHART MATHA COLLEGE ROAD, ERNAKULAM 682 021. R1-R4 SRI. RIYAL DEVASSY, GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.11.2022, ALONG WITH WP(C).32682/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -7-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 15TH DAY OF NOVEMBER 2022 / 24TH KARTHIKA, 1944 WP(C) NO. 32697 OF 2022 PETITIONER: M/S. HEATHER CONSTRUCTIONS, CONTRACTORS & ENGINEERS, REPRESENTED BY ITS MANAGING PARTNER, SHRI S M RAJEEV, HAVING ITS REGISTERED OFFICE AT ANUGRAHA, TC 9/1775 (2), PATTANIKKUNNU LANE, SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010.

BY ADVS. V.G.ARUN (K/795/2004) NEERAJ NARAYAN R.HARIKRISHNAN (KAMBISSERIL) AVANEETH S.R. V.JAYA RAGI RESPONDENTS: 1 THE STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM - 695 001. 2 THE FINANCE DEPARTMENT, (INDUSTRIES AND PUBLIC WORKS -B), REPRESENTED BY SECRETARY, THIRUVANANTHAPURAM-695 001. 3 THE PRINCIPAL SECRETARY, PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM-695 001. -8- 4 THE LOCAL SELF GOVERNMENT DEPARTMENT (LSGD), REPRESENTED BY PRINCIPAL SECRETARY, THIRUVANANTHAPURAM-695 001.

5 SMART CITY THIRUVANANTHAPURAM LIMITED (SCTL), REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 4TH FLOOR, FELICITY

SQUARE, OPPOSITE AG'S OFFICE, MG ROAD, NEAR STATUE, THIRUVANANTHAPURAM- 695 001. R1-R4 SRI. RIYAL DEVASSY, GOVERNMENT PLEADER SRI.K.JAJU BABU (SR.) R5 SMT.M.U.VIJAYALAKSHMI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.11.2022, ALONG WITH WP(C).32682/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -9-

JUDGMENT

The learned counsel for the petitioners submits that, since the Government is not prepared to consider the petitioners' request for revision of rates of materials used, the petitioners intend to move for arbitration and the writ petitions may accordingly be closed with liberty to take recourse to such action. The writ petitions are accordingly closed, reserving the petitioners' right to move the appropriate forum. The petitioners are at liberty to raise all contentions before the Arbitrator or such other forum. Sd/- V.G.ARUN JUDGE bpr -10- APPENDIX OF WP(C) 32682/2022 PETITIONER'S EXHIBITS Exhibit P1 THE TRUE COPY OF THE LOA NO.WAP/KIIFB/SPV/DHC/2021/53 DATED IN FAVOUR OF THE PETITIONER. Exhibit P2 THE TRUE COPY OF THE AGREEMENT BETWEEN THE 3RD RESPONDENT AND PETITIONER DATED Exhibit P3 THE TRUE COPY OF THE ACKNOWLEDGMENT FORM FOR HANDING OVER THE WORK SITE TO THE CONTRACTOR' DATED 02/08/2021. Exhibit P4 THE TRUE COPY OF THE REPRESENTATION DATED 04/03/2022 MADE BY THE PETITIONER BEFORE THE 2ND RESPONDENT. Exhibit P5 THE TRUE COPY OF THE G.O.(RT) NO.3815/2021/FIN. DATED 30/04/2021. -11- APPENDIX OF WP(C) 32678/2022 PETITIONER'S EXHIBITS Exhibit P1 THE TRUE COPY OF THE LETTER OF AWARD

NUMBERED 4747:DP-987:SEV:2021 DATED 27.01.2021 ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER

Exhibit P2 THE TRUE COPY OF CONTRACT DATED 18.06.2021 BETWEEN THE PETITIONER AND THE 3RD RESPONDENT Exhibit P3 THE TRUE COPY OF SITE HANDING-OVER DOCUMENT NUMBERED AS QMS/FG/F/26 Exhibit

P4 THE TRUE COPY OF THE REPRESENTATION DATED 3.3.2022 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT Exhibit P5 THE TRUE COPY OF THE G.O.(RT) NO. -12- APPENDIX OF WP(C) 32679/2022 PETITIONER'S EXHIBITS Exhibit P1 THE TRUE COPY OF THE LOA BEARING NO.

F682/2009 DATED 14.02.2019 ISSUED BY THE 4TH RESPONDENT/SUPERINTENDING ENGINEER, PUBLIC WORKS DEPARTMENT, JUDICIAL CIRCLE, ERNAKULAM

Exhibit P2 THE TRUE COPY OF THE AGREEMENT BETWEEN THE 4TH RESPONDENT AND PETITIONER DATED 28.05.2019 Exhibit P3 THE TRUE COPY OF THE ACKNOWLEDGMENT FORM FOR HANDING OVER THE WORK SITE TO THE CONTRACTOR' DATED 07.06.2019 Exhibit P4 THE TRUE COPY OF THE REPRESENTATION DATED 09.03.2022 MADE BY THE PETITIONER BEFORE THE 3RD RESPONDENT Exhibit P5 THE TRUE COPY OF THE G.O.(RT) NO. -13- APPENDIX OF WP(C) 32697/2022 PETITIONER'S EXHIBITS Exhibit P1 THE TRUE COPY OF THE TENDER

NOTIFICATION NO. SCTL/PRJ/232/2019/M(PMM)/RFP-MLCP/01 DATED 29.10.2019 NOTIFIED BY THE 3RD RESPONDENT THE TRUE COPY OF LETTER OF AWARD NUMBERED SCTL/PRJ/208/2019/M(UP)/1355 DATED 15.02.2020 ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER.

Exhibit P2 THE TRUE COPY OF CONTRACT DATED 18.05.2020 ENTERED INTO BETWEEN THE PETITIONER AND THE 5TH RESPONDENT. Exhibit P3 THE TRUE COPY OF THE SITE HANDING-OVER DOCUMENT BEARING NO. SCTL/IPE/F/01. Exhibit P4 THE TRUE COPY OF THE REPRESENTATION DATED 03.03.2022 MADE BY THE PETITIONER BEFORE THE 4TH RESPONDENT. Exhibit P5 THE TRUE COPY OF G.O.(RT) NO. -14-

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