

Cods Constructions vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1695231

Court : Kerala

Decided On : Nov-03-2021

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/23991/2021

Appellant : Cods Constructions

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
WEDNESDAY, THE 3RD DAY OF NOVEMBER 2021/12TH KARTHIKA,
1943 WP(C) NO. 23991 OF 2021 PETITIONER: M/S.CODS
CONSTRUCTIONS, PADINJAREVEETIL BUILDING, KAKKOOR P.O.,
KOOHATTUKULAM-VIA, ERNAKULAM DISTRICT, PIN 686 662,
REPRESENTED BY ITS MANAGING PARTNER, ALIAS P BABY, AGED
22 YEARS, S/O.LATE P.J. BABY, PADINJAREVEETIL HOUSE,
KAKKOOR P.O., KOOHATTUKULAM-VIA, ERNAKULAM DISTRICT,
PIN 686 662. BY ADV. BABU JOSEPH KURUVATHAZHA
RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, DEPARTMENT OF PUBLIC

WORKS, GOVERNMENT SECRETARIAT, THIRUVANTHAPURAM 695 001. 2 CHIEF ENGINEER, PUBLIC WORKS DEPARTMENT (BUILDINGS), PUBLIC OFFICE BUILDING, MUSEUM, THIRUVANTHAPURAM 695 033.

3 SUPERINTENDING ENGINEER, PUBLIC WORKS DEPARTMENT (BUILDINGS), CENTRAL CIRCLE, THRISSUR 680 001. 4 EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT (BUILDINGS DIVISION), PAINAVU, IDUKKI, PIN 685 603. 5 ASSISTANT EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT (BUILDINGS SUB DIVISION), THODUPUZHA, 6 ASSISTANT ENGINEER, PUBLIC WORKS DEPARTMENT (BUILDINGS SECTION), THODUPUZHA, 7 GEOLOGIST, MINING & GEOLOGY DEPARTMENT, MINI CIVIL STATION, THODUPUZHA, 8 VILLAGE OFFICER, THODUPUZHA VILLAGE, THODUPUZHA P.O., 9 PRINCIPAL, DIET, THODUPUZHA, THODUPUZHA P.O., SMT.PRINCY XAVIER SR.G.P. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 3rd day of November, 2021 The petitioner who is a Contractor having 'A' Class registration, is before this Court seeking to direct the 3 rd respondent to consider and dispose of Ext.P9 application with notice to the petitioner forthwith. The petitioner has also sought such other incidental and consequential reliefs.

2. The petitioner states that after Executing Ext.P2

agreement, the contract work of Construction of Retaining Wall for DIET Lab U.P. School, Thodupuzha was awarded to the petitioner and the site was handed over to the petitioner on 05.01.2021. The petitioner was required to complete the work by 04.01.2022 as per the agreement. For commencing the work of Construction of Retaining Wall, removal of excess quantity of earth from the site is necessary. The

petitioner submitted applications for transit passes to the 7th respondent. The 4th respondent Executive Engineer also issued Ext.P11 communication to the District Collector. The 4th respondent also stated that effective steps should be taken to get transit passes so that the petitioner can commence the work as per schedule. There was no positive results.

3. In the circumstances, the petitioner submitted

Ext.P9 representation to the Superintending Engineer, PWD requesting that the petitioner may be permitted to execute the closure agreement for discharging M.s.Cods Construction from the agreement, on releasing the security deposit and performance guarantee forthwith. Alternatively, the petitioner requested that he may be permitted to execute a supplementary agreement, permitting the petitioner to execute the work at the estimate rate, on condition that time extension may be given upto 05.01.2023 and to do the needful to get the transit passes issued from the Geologist within 15.11.2021.

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

5. The petitioner was awarded the work and the site

was also handed over to the petitioner for commencing the work of construction of Retaining Wall. In spite of the earnest effort, the petitioner could not obtain transit passes to remove the earth. Ext.P11 communication by the Executive Engineer addressed to the District Collector would also show that in spite of request made by the Executive Engineer to the Geologist, the Geologist has not issued requisite transit passes and therefore the Executive Engineer requested the District Collector to take appropriate steps to cause issuance of the transit passes so that the petitioner can complete the work as agreed.

6. In view of the facts of the case, this Court is of

the considered opinion that since the petitioner could not get transit passes arranged for commencement of the work, the 3rd respondent should consider Ext.P9 application submitted by the petitioner seeking to execute closure

agreement or alternatively to execute fresh supplemental agreement at the estimate rate. Accordingly, the 3rd respondent is directed to consider Ext.P9 representation submitted by the petitioner with notice to the petitioner within a period of two months. The writ petition is disposed of. Sd/- N. NAGARESH JUDGE
ncd/05.11.2021 APPENDIX OF WP(C) 23991/2021 PETITIONER'S EXHIBITS
Exhibit P1 TRUE COPY OF THE SELECTION NOTICE DATED 6.11.2020 ISSUED BY THE 3RD RESPONDENT Exhibit P2 TRUE COPY OF THE AGREEMENT DATED 28.12.2020 EXECUTED BETWEEN THE PETITIONER AND THE 3RD RESPONDENT Exhibit P3 TRUE COPY OF THE PROFORMA ENCLOSED ALONG WITH EXT. P2 AGREEMENT Exhibit P4 TRUE COPY OF THE REPRESENTATION DATED 22.3.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT Exhibit P5 TRUE COPY OF THE REPORT DATED 7.7.2021 OF THE 5TH RESPONDENT Exhibit P6 TRUE COPY OF THE LETTER DATED 22.7.2021 OF THE 4TH RESPONDENT FORWARDED TO THE 3RD RESPONDENT Exhibit P7 TRUE COPY OF THE CERTIFICATE DATED 18.8.2021 ISSUED BY THE 8TH RESPONDENT Exhibit P8 TRUE COPY OF THE LETTER DATED 26.8.2021 OF THE 6TH RESPONDENT FORWARDED TO THE 9TH RESPONDENT Exhibit P9 TRUE COPY OF THE REPRESENTATION DATED 27.8.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT Exhibit P10 TRUE COPY OF THE LETTER DATED 2.9.2021 OF THE 9TH RESPONDENT, FORWARDED TO THE 7TH RESPONDENT Exhibit P11 TRUE COPY OF THE LETTER DATED 30.9.2021 OF THE 4TH RESPONDENT FORWARDED TO THE DISTRICT COLLECTOR, IDUKKI