

Nebula Electricals vs Chief Electrical Engineer

Nebula Electricals vs Chief Electrical Engineer

SooperKanoon Citation : sooperkanoon.com/1742062

Court : Kerala

Decided On : May-28-2020

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/3962/2020

Appellant : Nebula Electricals

Respondent : Chief Electrical Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
THURSDAY, THE 28TH DAY OF MAY 2020 / 7TH JYAISHTA, 1942
WP(C).No.3962 OF 2020(U) PETITIONER: NEBULA ELECTRICALS
REPRESENTED BY ITS MANAGING PARTNER-K.J.RAJU,C-18,
INDUSTRIAL ESTATE, ETTUMANOOR, KOTTAYAM-686 631 BY
ADVS. SRI.P.THOMAS GEEVERGHESE SRI.TONY THOMAS
(INCHIPARAMBIL) RESPONDENTS:

1 CHIEF ELECTRICAL ENGINEER OFFICE OF THE CHIEF
ENGINEER, PWD BUILDINGS, MUSEUM P.O.,
THIRUVANANTHAPURAM-695 033 2 ASSISTANT ENGINEER, PWD

ELECTRICAL SECTION, PWD BUILDING, KANNUR P.O., KANNUR-670001 3 THE PRINCIPAL, GOVERNMENT POLYTECHNIC COLLEGE, THOTTADA P.O., KANNUR-670007 4 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, DEPARTMENT OF PUBLIC WORKS, 2ND FLOOR ANNEX I, SECRETARIAT, THIRUVANANTHAPURAM-695 001 5 ELECTRICAL INSPECTORATE, 3RD FLOOR, UNITY COMPLEX, SN PARK ROAD, KANNUR P.O., KANNUR-670001 R1, R5 BY GOVERNMENT PLEADER SMT.VINITHA

OTHER PRESENT: B VINNITHA GP THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2020, THE COURT ON 28-05-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 28th day of May 2020

1. This writ petition is filed challenging Exhibit P10 order issued by the 1st respondent terminating the agreement executed by the petitioner at the risk and cost of the petitioner and

forfeiting the security deposit to the Government. The petitioner was awarded with contract of providing USS and LT cable to various labs/blocks in the Government Polytechnic,

Kannur by Exhibit P1 work order dated 30.6.2016. Exhibit P1(a) agreement was also executed. The petitioner contends that for the execution of the work, a sub-station had to be constructed by the PWD for installation of the indoor transformer (Unitised sub-station). The 5th respondent had to accord sanction for the electrical scheme for the installation of

the USS system on the basis of the electrical safety guidelines

and specifications. It is stated that the construction of the sub-station building was completed only in May 2018 and thereafter, by Exhibit P2, the petitioner was required to

undertake and execute the awarded work. It is stated that while the sub-station work was going on, the petitioner had conducted a soil test to prepare the electrical wiring scheme for sanction from the 5th respondent. It is stated that only 8 earth electrodes and pits were provided for in Exhibit P1 work order. However, the soil test revealed high soil resistance in

the locality and it was found that 25 numbers of earth electrodes and pits were necessary to install the USS system. Exhibit P3 series of documents are relied on in support of this

contention. The petitioner thereupon intimated the 2nd respondent by Exhibit P4 letter requesting for revision of the work order, since substantial revision was required in the work. However, no reply was received. On 8.6.2018, the 1st respondent issued Exhibit P5 letter requiring the petitioner to undertake and complete the work immediately. The petitioner again informed the 1st respondent and requested necessary revisions in the work order. It is stated that Exhibit P8 show cause notice was thereafter issued to the petitioner and disregarding his replies, Exhibit P10 order was passed, terminating the contract at the risk and cost of the petitioner, which is under challenge.

2. The learned counsel for the petitioner submits that the site

was not even formally handed over to the petitioner after completion of the civil work of the sub-station and that the issue raised by the petitioner with regard to additional earth electrodes required due to the high soil resistance had not been addressed by respondents 1 or 2 at any point of time. It is stated that it was only after the space for preparing the earth pits and placing the additional earth electrodes are earmarked and the electrical plans duly approved by the 5th respondent that the petitioner would be in a position to start

the work. It is stated that all these matters had been highlighted in the requests and the reply given by the petitioner to respondents 1 and 2, but Exhibit P10 order has been passed without considering any of the same.

3. A counter affidavit has been placed on record on behalf of the

1st respondent. It is stated that though the work was awarded to the petitioner on 3.06.2016, the petitioner had failed to execute the agreement within time and it was only on paying a fine of Rs.25000/- that the agreement had been executed pursuant to Exhibit R1(b) order dated 30.9.2016. The agreement was executed on 30.10.2016 with a completion period of 75 days. It is stated that the agreement was not only for erection of transformer, but for cabling, providing sub panels and other works. It is stated that though there was some delay in constructing the shed to accommodate the transformer, there was no hindrance in executing other parts of the agreement schedule and obtaining part payments for those items. It is stated that the site is a working fully functional institution and the petitioner had been shown the details of the work to be carried out in the various buildings and the campus by the officers of the respondent. But the petitioner did not bring any materials to the site after the execution of the agreement. It is stated that the petitioner had been put on notice repeatedly as to his failure to carry out the work; but the petitioner did not take any steps to

commence the work in spite of repeated reminders. It is stated the sub-station building work was completed on 28.03.2018 and extension was granted for carrying out the work awarded to the petitioner without fine, but the petitioner did not take any efforts to even start the work. It is stated that the petitioner did not bring transformer or any materials to the site till 7.12.2019 and it was in the above circumstances that the show cause notice had been issued to the petitioner. In reply to the show cause notice, the petitioner has requested

further time upto 31.01.2020 for completing the work. But even thereafter no efforts were taken to start the work. It is stated that it was in the above circumstances that the termination order was issued.

4. A further statement has been filed by the 1 st respondent. Paragraphs 6 and 14 of the said statement which are relevant for the purposes of the case are extracted below:-

6.The statement of the petitioner that if he had installed the USS without installing additional electrodes, the whole USS could have burned out on

that day itself is not only baseless but also to mislead this Honourable Court. All the equipment in the system has its own safety arrangements or mechanism. Moreover, before the energisation and commissioning of the USS, all the safety aspects are to be verified by the department and Electrical Inspectorate. The KSEB will energise the USS only after getting necessary energisation certificate from the inspection agency, Kerala State Electrical Inspectorate.

14. The quantity of increasing electrodes happened only because

of the change in soil resistivity and this was accepted and the contractor was instructed to do the additional work as per agreement. The quantity variation arising during the execution are regularized by sanctioning of the deviation statement after the work has progressed to a substantial level, which had never happened in this case. The increase of electrodes is to increase the number of parallel path of fault current. This does not mean that it affects the system totally. The contention of the petitioner is that the change or increase of the earth electrodes will affect whole system does not hold water as the department can meet the required earth electrodes through him or other any agency and this never interferes with the agreement conditions.

5. The learned counsel for the petitioner submits that the refusal

on the part of the respondent to address the issue of extra electrodes required for the work was the reason for the petitioner being unable to carry out the work in question. It is stated that alterations in sanctioned designs, except those of a minor nature, cannot be made in the work without the approval of the sanctioning authority and that without due approval from the 5th respondent, the petitioner would have been unable to carry out the work with the extra electrodes required due to the soil resistance as evident from the soil test conducted on the site. Relying on the provisions of the CEA Safety Regulations 2010, it is contended that approval by the electrical inspectorate is required for any deviation in the work awarded and without such approval, the petitioner could not have carried out the

work.

6. I have considered the contentions advanced on either side at

considerable length. Exhibit P1 is an order dated 30.6.2016 accepting the tender submitted by the petitioner for the USS and LT cable to various labs/blocks in Government Polytechnic Kannur. The details of the work are provided therein. Exhibit P1(a) would show that the agreement was executed on

3.10.2016 for carrying out the work within 75 days. By Exhibit P2, the petitioner was informed that the civil construction work of the sub-station was complete and the petitioner was required to take immediate steps to execute and complete the work. The petitioner relies on Exhibits P3(a) and P3(b) to contend that due to the high soil resistivity, revision of the work order was required before the work could be commenced. The petitioner had informed this aspect of the matter to the 2nd respondent by Exhibit P4 letter dated

14.3.2017. The 1st respondent thereafter issued communications requiring completion of the work and Exhibit P8 show cause notice was also issued. The petitioner's reply to the show cause notice points out that more number of earth electrodes are required than what is provided in Exhibit P1 work order and that sanction for carrying out the excess quantity of work was not received from the respondents. Time was sought for till 31.1.2020. However, by Exhibit P10 dated 6.1.2020, the contract was terminated.

7. It is stated in Exhibit P10 that after the execution of the

agreement, no work had been done on the site and even after obtaining extension of time, no materials had been brought to the site. It is the case of the respondents that if the petitioner had any bona fide intention to complete the work, they would have at least have brought the materials to the site and started the work and the question of revision of the work order could have been appropriately considered by the respondents. However, it is contended that even after being informed that the sub-station work was complete, no effort was taken by the petitioner to start the work of cabling and the sub-panels and that the replies given by the petitioner

would make it abundantly clear there was no intention to start the work.

8. On a consideration of the contentions advanced, I am of the opinion that the issue falls in the realm of a factual dispute. The contention of the petitioner that sanction of the Electrical Inspectorate and a resultant revision of the work

order was required before the petitioner could start the

work is disputed by the respondents. Taking note of the specifics of the work in Exhibit P1, I am of the definite opinion that the issue would require consideration of the factual aspects of the matter which is not an exercise that can be undertaken by this Court exercising its power of judicial review. 9. In the above view of the matter, I am of the opinion that the prayers sought for in this writ petition cannot be granted. The writ petition is dismissed, however leaving open the contentions of the petitioner to be agitated in appropriate civil proceedings, if so advised. Sd/- Anu Sivaraman, Judge

sj APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE WORK ORDER NO EL2- 1648E/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 30/6/2016 EXHIBIT P1A TRUE COPY OF ARTICLE OF AGREEMENT DATED 3.10.2016 AND APPENDING CONDITIONS OF CONTRACT EXHIBIT P2 TRUE COPY OF THE INTIMATION NO.ESC-18/2013-14 ISSUED BY THE ASST. ENGINEER TO THE PETITIONER DATED 25.5.2018 EXHIBIT P3 TRUE COPY OF CERTIFICATE NO.B2272/2017/EIN ISSUED BY THE 5TH RESPONDENT DATED 25.01.2017 EXHIBIT P3A TRUE COPY OF THE CERTIFICATE NO B2- THE 5TH RESPONDENT EXHIBIT P3B TRUE COPY OF FAULT LEVER CALCULATION OF THE PROJECT KANNUR PLY TECHNIQUE COLLEGE EXHIBIT P4 TRUE COPY OF THE INTIMATION LETTER NA.AEPWD/KNR/2016-17/256 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 14.03.2017 EXHIBIT P5 TRUE COPY OF THE LETTER NO.ELS-1648 E/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 8.6.2018 EXHIBIT P6 TRUE COPY OF THE REPLY NE/PWD/CEE/2018- RESPONDENT DATED 4.7.2018 EXHIBIT P7 TRUE COPY OF THE LETTER NE/PWD/POLY KNR/19- RESPONDENT DATED 19.09.2019 EXHIBIT P8 TRUE COPY OF THE SHOW CAUSE NOTICE NO.EL.2- 1648

E/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 11.12.2019 EXHIBIT P9 TRUE COPY OF THE REPLY NO.NE/KNR POLY/CEE/19/20/92 ISSUED BY THE PETITIONER DATED 19.12.2019 EXHIBIT P10 TRUE COPY OF THE ORDER NO EL2-1648/2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 6.1.2020 EXHIBIT P11 TRUE COPY OF RELEVANT PAGE OF CODE OF PRACTICE FOR EARTHING (IS 3043-1966) PUBLISHED BY BUREAU OF INDIA STANDARDS

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