

Heather Constructions vs Union of India

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Court : Kerala

Decided On : Dec-01-2020

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/10457/2020

Appellant : Heather Constructions

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
TUESDAY,THE 01ST DAY OF DECEMBER 2020/10TH
AGRAHAYANA,1942 WP(C).No.10457 OF 2020(F) PETITIONER:
M/S.HEATHER CONSTRUCTIONS, REPRESENTED BY ITS
MANAGING DIRECTOR, T.C.9/1226,MANGALAM
LANE,SASTHAMANGALAM, THIRUVANANTHAPURAM 695 010. BY
ADVS. SRI.V.G.ARUN (K/795/2004) SMT.V.JAYA RAGI
SRI.R.HARIKRISHNAN (KAMBISSERIL) SRI.NEERAJ NARAYAN
RESPONDENTS: 1 UNION OF INDIA REPRESENTED BY PRINCIPAL
SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF INDIA 110 001.

2 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY HEALTH. 3 SECRETARY, FINANCE DEPARTMENT, SECRETARIAT, TVM 695 001. 4 STATE MISSION DIRECTOR (SMD), NHM, GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM 695 035. 5 THE CHIEF ENGINEER, NHM, STATE MISSION, GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM 695 035.

6 HSCC (INDIA) LTD., DEPUTY GENERAL MANAGER, CORPORATE OFFICE E-R(A) , SECTOR -1, NOIDA (UP), 201 301. R4-R5 BY SRI.M.AJAY, SC R6 BY ADV. SMT.K.N.RAJANI :2 : R6 BY ADV. SRI.RADHIKA RAJASEKHARAN P. R6 BY ADV. SRI.K.P.SHIBU R6 BY ADV. SMT.ANILA PETER R6 BY ADV. SRI.SAJEN THAMPAN R6 BY ADV. SRI.ANIL S.RAJ BY GOVERNMENT PLEADER SMT.K.M.RASHMI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3 :

JUDGMENT

Dated this the 1st day of December, 2020 Petitioner, a Firm engaged in construction business, has undertaken a work on behalf of National Health Mission. The writ petition has been filed seeking for a direction commanding respondents 4 to 6 to effect the payment of the admitted bill amount to the petitioner within a time limit prescribed by this Court.

2. There is no dispute about satisfactory completion

of the work under Ext.P1 Award and Ext.P2 Agreement, by the petitioner. The learned counsel for the petitioner submitted that the admitted bill amount is 1,49,58,311.71. It is an admitted case that the petitioner has already received an amount of 1,25,35,757/- on 24.10.2020. According to the petitioner, the balance amount would be 27,02,251/-. As per Ext.R4(j), after making statutory deductions, the amount payable would be 15,94,809/-. :4 :

3. The learned Standing Counsel for the 6th

respondent submitted that the 6th respondent has already released an amount of 15,94,809/- due to the petitioner. The Standing Counsel further submitted that an amount of 5,52,986/- has been retained by the 6th respondent and the same can be disbursed after Electrical Inspectorate Authorities inspect the lift and grant lift operating licence. It is also submitted that an amount of 5,58,021/- has been remitted by the 6th respondent with the Department of Income Tax by effecting excess recovery from the petitioner. According to the counsel for the 6th respondent, the petitioner has already taken credit for the said amount from the Department of Income Tax. If these two amounts are taken into account, will be no substantial balance amount payable to the petitioner from the 6th respondent.

4. Counsel on either side submitted that this writ petition can be closed recording the submissions made by the counsel for the 6th respondent.

5. Accordingly, the afore submissions made by the

:5 : counsel for the 6th respondent are recorded. The 6th respondent shall release the amount of 5,52,986/- retained by them to the petitioner on receipt of lift operating licence from the Electrical Inspectorate. The 6th respondent shall also extend necessary assistance to the petitioner to get credit of the excess payment made to the Income Tax Department, if required. Writ petition is disposed of as above. Sd/- N. NAGARESH, JUDGE aks/01.12.2020 :6 : APPENDIX
PETITIONER'S EXHIBITS:

EXHIBIT P1

A TRUE COPY OF NOTIFICATION OF AWARD

ACCEPTING THE FINAL OFFER FOR A TOTAL ESTIMATED CONTRACT PRICE OF RS. 24,08,20,739 (RUPEES TWENTY FOUR CRORES, EIGHT LAKHS, TWENTY THOUSAND, SEVEN HUNDRED AND THIRTY NINE ONLY).
EXHIBIT P2 TRUE COPY OF THE FORM OF AGREEMENT DATED 03.03.2015 BETWEEN STATE MISSION DIRECTOR, NRHM GOVERNMENT OF KERALA FOR THE CONSTRUCTION OF 100 BED MCH BLOCK AT SAT HOSPITAL, THIRUVANANTHAPURAM , KERALA UNDER NRHM AND M/S.HEALTHER COSNTRUCTIONS T.C. 9/1226, MANGALAM LANE, SASTHAMANGLAM, THIRUVANANTHAPURAM 695 010. EXHIBIT P3 TRUE COPY OF THE

COMPLETION CERTIFICATE DATED 30.06.2016 ISSUED AND SIGNED BY THE 6TH RESPONDENT COUNTER SIGNED BY SUPT/MO SUPERINTENDENT MEDICAL COLLAGE HOSPITAL, THIRUVANANTHAPURAM.

EXHIBIT P4 TRUE COPY OF THE LETTER COMMUNICATION AND MEMORANDUM OF PAYMENT BY THE 6TH RESPONDENT DATED 04.02.2019. EXHIBIT P5 TRUE COPY OF THE MEMORANDUM OF PAYMENT ISSUED BY THE 6TH RESPONDENT. EXHIBIT P6 TRUE COPY OF THE LETTER NOTIFICATION FROM HSCC TO NRHM DATED 11.06.2019 IWHT REF NO. HSCC/SAT-TVM/2016/77. :7 : RESPONDENT'S/S EXHIBITS:

EXHIBIT R6 (a) TRUE COPY AGREEMENT DATED 03.03.2015

RESPONDENT EXHIBIT R6 (b) TRUE COPY OF GCC CLAUSE 25 VIZ SETTLEMENT OF DISPUTES AND ARBITRATION BEING THE RELEVANT PAGES OF THE AGREEMENT DATED 03.03.2015 ENTERED INTO BETWEEN THE PETITIONER AND 4TH RESPONDENT REPRESENTED BY THE 6TH RESPONDENT EXHIBIT R6 (c) TRUE COPY THE CLAUSE I (F) 1 (v) AND 1(x) OF SPECIAL CONDITION OF THE CONTRACT BEING THE RELEVANT PAGES OF THE AGREEMENT DATED 03.03.2015 ENTERED INTO BETWEEN THE PETITIONER AND 4TH RESPONDENT REPRESENTED BY THE 6TH RESPONDENT. EXHIBIT R6 (d) TRUE COPY OF THE LETTER ISSUED BY THE 6TH RESPONDENT TO THE 5TH RESPONDENT DATED 11.06.2019 EXHIBIT R6 (e) TRUE COPY OF THE LETTER ISSUED BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT DATED 17.07.20-19 EXHIBIT R6 (f) TRUE COPY OF LETTER 5TH RESPONDENT DATED 14.10.2019.

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