



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Judgment dated 21/12/2021 in WP (C) 12276/2021 filed by Sri. Paulson Chacko, A class Contractor in Kerala Water Authority, Mulavarickal house, Piraroor, Kalady, Ernakulam before the Honourable High Court - Complied with - Orders Issued.

LOCAL SELF GOVERNMENT (DC) DEPARTMENT

G.O.(Rt)No.182/2023/LSGD Dated, Thiruvananthapuram, 21-01-2023

- Read 1 Judgment of the Honorable High Court dated 21/12/2021 in WP (C) 12276/2021 filed by Sri.Paulson Chacko, Ernakulam
- 2 Minutes of the meeting dated 11/12/2015 convened by Secretary, LSG (Urban Affairs) Dept.
- 3 Judgment dated 8/5/18 in WP(C)32319/16 filed by Sri.Paulson Chacko, Ernakulam
- 4 Judgment dated 29/11/2018 in WA No1873/18 and WA No 2052/18 filed by the State of Kerala and Sri.Paulson Chacko respectively
- 5 Representation dated 17/12/2018 from Shri Paulson Chacko(Ext P15).

6 G.O. (Rt.) No. 466/2019/LSGD dated 28/02/2019

7 Order dated 20/12/22 of the Hon,ble HC in CC(C) No.2578/22 filed by Sri.Paulson Chacko

8 Letter No SMMU/299/22-AO dated 20/12/22 from the Mission Director,AMRUT

9 Letter No. KWA/CE/CR/JNNURM/2559/2015 dated 22/12/2022 and 10/01/2023 from Chief Engineer, KWA

ORDER

Vide judgment dated 21/12/21 in the W.P(C) No 12276/21 filed before the Hon.ble HC by Sri.Paulson Chacko, A class contractor, KWA residing at Ernakulam, the first respondent the Secretary, LSGD was directed to consider Exbt P15 representation expeditiously as possible at any rate within three months from the date of receipt of a copy of the judgment. Before passing final orders in Exbt P15, the first respondent was directed to give an opportunity of hearing to the petitioner or his authorized representative and other affected parties if any. The first respondent was also directed to consider the applicability of Exbt P7 and Exbt P16 while considering the Exbt P15 representation.

The case is as follows:-The petitioner in the W.P(C) No 12276/21 an A class contractor of KWA was awarded the work "Strengthening of the distribution network in Kochi - Replacment of old damaged 700mm premo pipe from port Bristo road to east end of Mattancherry Bridge using 700mm DI K9 pipes and 700mm HDPE pipe(package no: KCH-WS-02.C) under KSUDP. The above work was successfully completed by the petitioner, and letter of completion dated 28/06/2014 was issued to the petitioner. At the time of considering the bill module submitted by the KWA, dispute arose in respect of payment of balance amount spent by the petitioner for the purchase of 1200mm MS casing pipe procured as per item no:8 of the accepted schedule of

work (Exhibit P3) and in respect of the extra dismantling work of the existing PSC pipe under the railway culvert. For the extra dismantling work done by the petitioner (as reported by the petitioner he has done additional 46 metres dismantling work beyond the accepted quantity of 30 meters) the petitioner claimed the same rate as per the Exbt P3 accepted schedule .

Due to the non-payment of the amount claimed by the petitioner, he filed WP(C)32319/16 before the honorable High court. As per the judgment read as (3) above, the respondents were directed to effect payment to the petitioner towards procurement of 1200 mm casing pipe in tune with Clause 8 of Exbt P3 within a period of three months. Regarding the claim of the petitioner for the extra dismantling work done by him, the petitioner is free to approach the civil court as the work involves disputed question of fact .

. The State of Kerala filed WA No 1873/18 challenging the direction of the learned single judge and the petitioner filed WA No 2052/18, against the rejection of the claim submitted by the petitioner to apply the same rate for the extra dismantling work. By the common judgement read as (4) above, the Honourable Division bench confirmed the judgment of the learned single judge leaving it open for the contractor to make representation to the authorities for fixing a separate rate for the additional works done by him .The declaration of the learned single judge for payment towards procurement of 1200 mm casing pipe was held to be the correct decision based on the recommendation of the competent authorities .The said judgment was complied with as per G.O read as (6) above by which the APM, JNNRUM Project circle, Kochi and the Secretary ,Kochi Municipal Corporation were directed to effect the balance payment to

the petitioner(60% of the cost of the procurement was already paid to the petitioner) towards the procurement of 1200 mm MS casing pipe after verifying the admissibility of the claim of the petitioner .The CE, KWA was also directed to examine and certify the admissibility of the claim of the petitioner for fixing new rate for the extra dismantling work carried out by the petitioner and furnish report to Government.

By the Exhibit P15 representation dated 17/12/18 submitted by the petitioner before the Secretary,LSGD ,he had requested to fix a rate suitably which may not be below the rate fixed in the BOQ for the extra dismantling work carried out by him, after obtaining an additional certificate from the appropriate authority.Exbt P16 is a copy of the General conditions of contract and as per Clause 36 1A of the general conditions,"in the case of an admeasured contract,if the final quantity of the work done differs or is expected to differ from the quantity in the BoQ,no change in the rate or price for that item contained in the contract shall be considered unless such item accounts for an amount more than 10% of the contract price and actual quantity of work executed under that item exceeds the quantity set out in the BoQ by more than 25%.As per the Exbt P7 minutes of the High level meeting dated 11/12/15,it was decided to apply the same price to the extra item as that in the BoQ after getting a certificate from the APM to this effect.

In obedience to the judgment dated 21/12/2021 in WP (C) 12276/2021,a hearing was conducted by the Joint Secretary,LSGD with the petitioner and other affected parties on 17/12/22 .By the argument note submitted by the petitioner at the time of the hearing it is submitted that the additional work undertaken by the petitioner is similar to the item No 7a in the BoQ quoting the Exbt P9 certificate issued by the APM,JNNRUM Project . Hence he has furnished the

claim for additional works carried out by him either at the rate mentioned in 7a of the BoQ or at a modified rate by fixing a separate rate. He had further requested not to put him to financial injury or loss after carrying out an extra work for the successful completion of the project.

As part of the hearing, the Mission Director, AMRUT had requested Government to take a suitable decision regarding the claim put forward by the petitioner based on the details to be furnished by the CE, Central Region, KWA as per letter read as (8) above. The CE, KWA has as per letter read as (9) above informed that the approved quantity of dismantling work done by the petitioner as per BoQ is only 12 metres which is under the railway culvert and hence the extra quantity of dismantling work of 64 metre is to be paid at the separate rate approved by the KSUDP ie:- Rs 1757.00 per metre. The total financial commitment in this regard comes to Rs 112448/-. As suggested by the CE, KWA the amount is to be met from the AMRUT Mission fund or from the Kochi Corporation.

Meanwhile the petitioner initiated CC proceedings and the Hon,ble HC has by order dated 20/12/22, directed the personal appearance of the Principal Secretary (LSGD) before the court on 3/1/23.

In the above circumstances, Government have examined the Exbt P15 representation submitted by Sri Paulson Chacko, Ernakulam before the Secretary, LSGD considering the applicability of Exbt P7 and Exbt P16 and after offering a hearing to the petitioner and other affected parties. As per the BoQ, the item No.7a is "Dismantling the existing PSC pipe under the railway culvert and cleaning the railway culvert of all soil sand etc for enabling the laying of MS casing pipe for HDPE pipeline, rate to include for all sundry works such as removing temporarily the existing concrete slabs of valve chambers, drains

wherever necessary and repositioning the same after backfilling the newly laid pipeline". Based on the reports of the Project Director, KSUDP, the Mission Director AMRUT , Chief Engineer, KWA and all connected records it was found that the approved quantity of extra dismantling work done by the petitioner as per the BoQ is only 12 metres out of the total 76 metres claimed by him . Hence the request of the petitioner as per the Exbt P15 representation , for getting the same rate of BoQ item 7a for the extra dismantling work carried out by him in connection with the work "Strengthening of the distribution network in Kochi-replacement of old damaged 700mm premo pipe from port Bristo road to east end of Mattancherry Bridge", doesn't deserve consideration and hence rejected.The Mission Director, AMRUT will take necessary action for payment of the 64 metre extra dismantling work carried out by the contractor at the rate approved by the KSUDP ie:- Rs 1757.00 per metre amounting to Rs 1,12,448/- (One lakh twelve thousand four hundred and forty eight rupees only) .

8. The Judgment of the Honorable High Court read as (1) above is complied with accordingly.

(By order of the Governor)
SHEEJA.R.S.
JOINT SECRETARY

To:
Director of Urban Affairs
Advocate General, Ernakulam (With C/L)
Mission Director, AMRUT
Managing Director, Kerala Water Authority
Chief Engineer, Central Region KWA
The Principal Accountant General (Audit 1/Audit 2)
The Information Officer, (Web & New Media) I&PRD
Executive Director, Information Kerala Mission
Stock File/Office Copy

Forwarded /By order



Section Officer