



GOVERNMENT OF KERALA

Public Works Department - Judgment in WP(C) 40250/2023 of Hon'ble High Court of Kerala filed by M/s.Malabar constructions- Complied with - Orders issued.

PUBLIC WORKS (G) DEPARTMENT

G.O.(Rt)No.665/2024/PWD Dated, Thiruvananthapuram, 02-07-2024

Read 1 Representation of the petitioner dated 17.11.2023.

2 Judgment of the Hon'ble High Court dated 12.12.2023 in
WP(C) No. 40250/2023 filed by M/s Malabar Constructions
3 GO(Rt)No.49/2023/PWD dated 14.09.2023

4 Letter No.CEPWD/11435/2022-C6(W)-RD dt.19/02/2024 of
the Chief Engineer (Roads), PWD, Thiruvananthapuram

ORDER

M/S. Malabar Constructions filed WP (C) No. 40250/2023 seeking direction to the respondents to execute the closure agreement in the work improvements to Kurumali-Thottipal-Mulanghu Road at Ch.0/000 to 5/730 - Budget Work, to close the agreement dated 26.3.2022 by releasing all payments due to him including the admitted bill amount and all securities also to cancel the order issued by Superintendent Engineer to extent imposing the fine and liquidated damage of Rs. 1 Lakh, at the earliest.

2. As per Judgement read as second paper above, the Hon'ble High Court directed Secretary, PWD to take up Ext.P14 representation of the petitioner and dispose of the same, after affording their authorised official, an opportunity of being heard and advertng specifically to Ext.P13 order of the Government, thus culminating in an appropriate order and necessary action thereon within a period of one month from the date of receipt of a copy of this judgment.

3. The judgment dated, 12/12/2023 read 2nd above received in Government on 09/01/2024. The Ext.P14 representation was not

received in PWD in Government. An extension of time period of 3 months granted by High Court of Kerala from 09.02.2024. Ext.P14 is the representation dated. 17.11.2023 submitted by the petitioner to the Chief Secretary, Government of Kerala. Any how the copy of the Ext P14 is obtained from the WP©. As authorised the Deputy Secretary to Government, PWD heard the petitioner on 17/04/2024, 11.30 am as he failed to attend the hearing on 27.03.2024. The officials concerned from the office of the Superintending Engineer; O/o the Executive Engineer attended the hearing on 27.03.2024.

4. The petitioner at the time of hearing reiterated the points that they had already mentioned in Ext-P14. On executing the agreement on 26/03/2022, the contract work for effecting "Improvements by providing BM and BC to Kurumali-Thottipal-Mulanghu Road at km 0/000 to 5/730" was awarded to M/s.Malabar Constructions. However, during the smooth progress of the work, the authority seeking the Contractor's consent in permitting the KWA to implement the JJM project, by trenching the road handed over to him. In response to the request the contractor company informing that if the work of the KWA, would not cause any obstruction, in executing the work comprised in agreement, the petitioner company had no objection in executing the work of KWA, in the road handed over to them. As on now, 85% of the work of KWA for implementing the JJM project has been completed. However, not even a single restoration work, by providing GSB and WMM, has been done by the KWA, Therefore, he had been prevented from executing the BM and BC. However, not even a 1M³, restoration work has been done by the KWA so far. KWA has already executed 85% of its work, but without doing any restoration work. For executing the restoration work, the required fund was duly deposited by the KWA. But the required restoration works have not been got done by the PWD so far. It was informed that a further period of 1 year shall be required for executing the restoration works of the trenches made by KWA, by providing good quality GSB and WMM. In other words, in order to execute the BM and BC, they have to wait for another season, until the restoration works are over. However, the Superintendent Engineer by imposing the fine and liquidated damage of Rs.1 lakh, for extending the time of completion up to 03.07.2023. The Superintendent Engineer has no such jurisdiction, to impose the fine unilaterally. In the above circumstances the petitioner would-proposed to make use of the privilege conferred upon the Contractor to get relived from the agreement on executing the closure

agreement. Hence the petitioner requested the Government to issue suitable order to close the agreement by releasing all payments due to him including the admitted bill amount and all securities, on cancelling the order of the Superintendent Engineer to the extent imposing the fine and liquidated damage of Rs.1 lakh.

5. At the time hearing on 27/03/2024 the representatives from the Public Works Department submitted a report in which it is reported that M/s. Malabar Constructions executed the agreement for the above work on 26/03/2022 and site was handed over to the contractor 04/04/2022 with the time of completion of 12 months. But the contractor failed to commence the work in time and commenced the work only on 04/06/2022 (after two months of SHO) after receiving the notice from the AE. Even through the work was started on 04/06/2022. the contractor could not achieve sufficient progress as per the agreement. Several communications were sent to the contractor to speed up the work. Although, the time of completion had been elapsed on 03/04/2023, the physical progress attained by that time was only 20%. Due to rain and damages caused by Kelithod Bridge, further 60 days of work also delayed. Hence Extension to TOC had been granted by the SE up to 03/06/2023 without imposing fine. During the extended period also, the contractor failed to carry out any work in the site. Hence, a hearing had been conducted with contractor on 17/05/2023 by the Executive Engineer to resume the work and directed to complete the work urgently. 1st Extension recommended to Malabar Construction till 03/06/2023 without imposing fine. But at that time also the contractor did not carry out any work on the site. Due to the irresponsibility of the contractor, several complaints have been received and instructions has been given to the contractor to resume the work immediately. It was forced to recommend extending the completion period of the work till 03/07/2023 with imposing fine (2nd Extension), as the contractor was not ready to restart the work within the extended time frame. Subsequently, it was recommended to extend the time of completion of the work without imposing fine on 03/10/2023 and 31/12/2023 (3rd and 4th Extension) as the delay occurred due to the digging for pipe laying work by Kerala Water Authority. Due to the delay and irresponsibility of the contractor, the road surface had been damaged. Hence the authorities were forced to extend the work up to 03/07/2023 with imposing fine as per the PWD Manual. In the meantime, permission for road cutting related to JJM work had been granted in March 2023, with the consent of the contractor

and the work was started in June 2023. Subsequently, it was recommended to extend the TOC up to 03/10/2023 to 31/12/2023 without imposing fine, as the delay occurred due to the digging for pipe laying work by Kerala Water Authority. The contractor delayed starting the construction of drains and culverts as per the agreement schedule which wasn't obstructed by the JJM cutting. **If the contractor had completed the work on time as per the agreement, the Kerala Water Authority would not have been given permission to lay the pipe. Due to the delay and irresponsibility of the contractor, the road surface has been severely damaged, and several accidents had occurred.** Since the required progress as per agreement was not shown from the part of the contractor, it was recommended to terminate the contract at his own risk and cost.

6. Despite strict instructions given to the contractor to keep the road surface pot-hole free, he had not taken any action. The progress of the work is only 27%, even though 20 months had elapsed after the site has been handed over to the contractor. The two culverts at Pallam and Mulangu junction have been partially demolished for the reconstruction. **Even after more than one month, the contractor has neither completed RCC work where the steel reinforcement has already been provided for the culvert construction nor ready to place the PCC for the culvert bed.**

7. The list of works done by the contractor in the site it is as follows.

Completed 9 culverts 2500m retaining wall. 2 cross drains and 200m drain,

8. Considering all these facts and PWD norms and regulations as per the agreement and PWD Manual, the Superintending Engineer requested to take necessary action for terminating the contractor from the above work at his own risk and cost for arranging the balance work on a war footing basis.

9. Government after examining all the reports and the statements submitted during the hearing it is understood that the contention raised by the petitioner deserves no merit and the request of the petitioner is rejected. Ext.P14 representation submitted by the petitioner is disposed as stated above.

10. The direction contained in the judgment dated 12/12/2023 of the

Hon'ble High Court in the WP (C) No. 40250/2023 is complied with accordingly.

(By order of the Governor)
K BIJU I A S
SECRETARY

To:

The Advocate General, Ernakulam. (with covering letter)
M/S Malabar Constructions 2nd Floor ,Mechery Tower ,South Chalakudy Thrissur 680307
The Chief Engineer (Roads), Thiruvananthapuram.
The Superintending Engineer (Roads& Bridges), Central Circle, Aluva.
The Executive Engineer, Roads Division, Thrissur
The Accountant General (A&E/Audit), Kerala, Thiruvananthapuram.
Stock File/Website

Forwarded /By order

Section Officer