



GOVERNMENT OF KERALA

Abstract

Public Works Department - Judgment dated 23/05/2025 of the Hon'ble High Court of Kerala in WP(C) No. 19220/2025 filed by Sri. Sasidharan Nair.J, Contractor - Complied with - Orders issued.

PUBLIC WORKS (E) DEPARTMENT

G.O.(Rt)No.568/2026/PWD Dated, Thiruvananthapuram, 18-05-2026

- Read
1. G.O (P) No. 3/2017/PWD dated 09/08/2017.
 2. Circular No. 90/2017/Fin dated 14/12/2017.
 3. G.O (P) No. 2/2018/PWD dated 27/01/2018.
 4. Circular No. 18/2019/Fin dated 01/03/2019.
 5. Agreement No. 126/EE/TVM/2019-20 dated 11/02/2020.
 6. Letter No. D3/1521/2021 dated 13/07/2021 of the Assistant Executive Engineer, PWD Building Sub Division.
Order No. AB4/D2/10660/2019 dated 04/08/2022 of the
 7. Executive Engineer, PWD Building Division, Thiruvananthapuram.
 8. Judgment dated 11/10/2022 in WA No. 1233/2021.
Representation by Sri. Sasidharan Nair.J dated 05.03.2024
 9. preferred before the Executive Engineer, PWD Building Division, Thiruvananthapuram.
Letter No. CEPWD/4754/2024-FB7-BL dated 07/03/2024 of
 10. the Chief Engineer, PWD Building Division, Thiruvananthapuram.
Letter No. AB4/D2/10660/2019 dated 26.03.2024 of the
 11. Executive Engineer, PWD Building Division, Thiruvananthapuram.
 12. Representation by Sri. Sasidharan Nair.J dated 16/05/204 preferred before the Chief Secretary. Government of Kerala.
 13. Letter No. D1/60/2024/PWD dated 07/05/2024.
 14. G.O (Ms) No. 43/2024/PWD dated 30/08/2024.
 15. Letter No. D1/60/2024/PWD dated 28/11/2024.
 16. Judgment dated 23/05/2025 in WP(C) No. 19220/2025.
Representation dated 28/05/2025 submitted by Sri. Sasidharan

17. Nair.J, Poudikonam, Thiruvananthapuram.

ORDER

Sri. Sasidharan Nair.J, licensed PWD Contractor, filed WP(C) No. 19220/2025 before the Hon'ble High Court seeking relief against the demand of GST for the work 'PH Lab OP Extension - Construction of new hall with GI Sheet roof behind OP Building', which was tendered in the pre-GST era with service tax specifically stipulated.

2. As per the order read as 16th paper above, the Hon'ble High Court disposed of the WPC directing the 1st respondent (Secretary, Public Works Department) to consider Ext.P16 representation, taking note of Exts.P12 to P14 also within a period of one month, after affording an opportunity of hearing to the petitioner.

3. Accordingly, a hearing was conducted on 05.08.2025. The main grievance presented by the petitioner during the hearing was that the tender being pre-GST, GST liability should not be fastened on him and cited the letter read as 11th paper above to support his claim.

4. As per existing GST system, the tax liability on goods and services arises as per the 'time of supply' of the said goods/services. Tax on supply of services including construction work is payable at the 'time of supply' as determined under Section 13 of the CGST/SGST Act. Such time of supply is determined on the basis of the date of issue of invoice by the contractor, date of service rendered, or date of receipt of payment by the contractor. If the 'time of supply' so determined falls within the GST period, the concerned registered supplier (herein contractor) is liable to file the return applicable to the said supply and pay the tax to the government in due time. Also the awarding departments (here Public Works Department) who are the recipients of the said service, can be decided, whether the tax should be included in the bill and paid along with the contract amount, subject to the

terms of the contract between the contractor and the awarding department related to the relevant construction work and the documents attached to the respective departments.

5. The gist of this case is as follows:

(i) Vide Agreement read as 5th paper above, the work - 'PH Lab OP Extension – Construction of New Hall with GI Sheet Roof behind OP Building,' was awarded to Sri. Sasidharan Nair.J, a licensed PWD Contractor. The site was handed over on 20/02/2020 with a stipulated completion time of four months up to 19/06/2020. The tender and agreement were executed under the pre-GST Service Tax regime. This factual position is recorded in the pleadings in WP(C) No. 19220/2025. As per the PWD Notice Inviting Tender and the provisions of the PWD Manual, it is expressly stipulated that the quoted rate shall be inclusive of all taxes, duties and levies prevailing at the time. This clause expressly allocates the commercial risk of any tax regime changes, including the subsequent introduction of GST to the contractor, and this contractual allocation of risk is binding on the contractor. The stipulation regarding inclusion of all taxes and catering for changes in tax pattern is also as per Clause 3.3.5 and 34.1 of Instructions to Bidders in the Standard Bidding Document approved vide Govt. Order read as 1st paper above as amended by Govt. Order read as 12th pa8(a) per above.

(ii) During execution, when approximately 80% of the work was completed, the work was obstructed by an overhead LT electrical line of KSEB passing over the site. Following an RTI application dated 13/01/2021 and subsequent action by KSEB, the Assistant Executive Engineer, PWD Buildings Sub Division, vide letter read as 6th paper above, confirmed that

shifting of the electrical post was initiated and that work could be resumed thereafter. Due to this obstruction and also on account of the COVID-19 pandemic and lock-down restrictions, the Executive Engineer, PWD Buildings Division, Thiruvananthapuram, vide Order read as 7th paper above, granted an extension of time up to 20/06/2022 without fine. Critically and expressly, this order recorded that the contractor shall not be entitled to any extra claims, enhanced rates or compensation.

(iii) A Supplemental Agreement was executed extending the completion period to twenty-eight months and one day, and the work was completed on 15/06/2022. By executing the Supplemental Agreement and accepting the conditions in the extension order, the contractor is contractually bound by and legally estopped from disputing the “no extra claims and no compensation” condition and from raising any subsequent monetary claims, including claims for GST reimbursement for work performed during the extended period.

(iv) After completion, the CC First and Final Bill for ₹ 9,12,729/- was checked by the Chief Engineer (Buildings), and vide letter read as 9th paper above, remarked that payment should observe GST Rules. The contractor submitted representations including Ext. P16 read as 10th paper above, contending that the pre-GST status of the tender exempts him from GST liability and seeking reimbursement. Thereafter, the contractor approached the Hon’ble High Court by filing WP(C) No. 19220/2025. The Hon’ble High Court, vide judgment dated 23/05/2025 read as 14th paper above, directed the Secretary, PWD, to consider Ext. P16 representation, specifically taking note of Finance Department circulars marked as Exts. P12 to P14 read as 11th, 2nd and 4th paper above respectively and to pass a reasoned decision after granting a personal hearing. The Court did not grant any substantive

relief on entitlement to GST and limited its directions to procedural consideration only.

6. Thus statutory GST liability rests with the contractor and that reimbursement is not a statutory right. Based on Circulars read as 2nd and 4th paper above, vide letter read as 13th paper above, conveyed to the Chief Engineer (Bridges) that GST amount may be allowed over and above the contract amount at the time of bill passing and that GST shall be added based on the rate applicable at the time of supply, irrespective of whether GST was included or excluded in the estimate stage. However, the said letter was a subordinate administrative communication addressed only to the Chief Engineer (Bridges) and not to the Buildings Wing concerned with the subject work, which was issued without considering the binding Govt. Order read as 3rd paper above and also the binding judgments of the Hon'ble High Court governing GST liability in pre-GST tenders.

7. On further examination Govt. letter read as 13th paper above, reviewed and cancelled the earlier communication read as 11th paper above. The said letter records that, based on Govt. Order read as 3rd paper above, binding judgment dated 20/03/2019 in WP (C) No. 27226/2018 and judgment dated 11/10/2022 in WA No. 1233/2021 read as 8th paper above, and settled law declared by the Hon'ble Supreme Court, the earlier letters issued by Public Works (D) Department were found to be inconsistent with binding Government policy and judicial pronouncements.

8. The Govt letter read as 13th paper above, categorically clarifies that in pre-GST tenders, the contractor has contractually accepted liability for all present and future taxes, and that any loss arising due to change in tax regime, including introduction of GST, is to be borne by the contractor. The

said letter further records that the legal position has been conclusively settled by the Hon'ble High Court of Kerala and that appeals against the said judgments have not been admitted by the Hon'ble Supreme Court.

9. Accordingly, Government cancelled the letter read as 11th paper above and has directed that GST and tax related matters shall be governed strictly by Govt Order read as 3rd paper above and contract conditions. The letter also directs that any GST amounts allowed or any action initiated based on the cancelled letters shall be withdrawn and that such amounts, if already paid, shall be recovered. It is further clarified that no wing of Public Works Department shall allow GST reimbursement contrary to the binding Government Order and judicial precedents.

10. Thus the Govt. letter read as 13th paper above is a valid, binding, corrective and a clarificatory communication, restoring and reaffirming the correct legal and policy position and rendering Ext. P12, read as 11th paper above inoperative and unenforceable.

11. The Apex Court in various orders have categorically held that executive instructions or circulars that are contrary to binding statutory provisions or binding Government Orders are unenforceable and cannot confer any legal or vested right upon any party. Applying this principle, Ext. P12 read as 11th paper above being contrary to Govt. Order read as 3rd paper above, could not and did not create any enforceable right in favour of the contractor for claiming GST reimbursement and that the corrective Govt. letter read as 13th paper above is binding and operative.

12. Exts. P13 and P14 read as 2nd and 4th papers above, are procedural circulars providing guidance on GST processing. These circulars do not

confer any substantive right to GST reimbursement and cannot over ride the Parent Agreement, Supplemental Agreement, Clauses of the NIT, Govt. Order vide read as 3rd paper above, or binding judicial precedents.

13. The legal position on this issue is conclusively settled by binding judicial precedents. In WP (C) No. 27226/2018 dated 20/03/2019, the Hon'ble High Court held that in pre-GST tenders, additional tax liability arising due to a change in tax regime is a commercial risk of the contractor when contract conditions require the contractor to bear present and future taxes. This principle has been fully affirmed by the Hon'ble High Court in the judgment, read as 8th paper above, wherein the Division Bench held that implementation of GST is not a prejudicial act of the tender inviting authority, and that a change in tax regime does not entitle the contractor to reimbursement or compensation. The Court categorically ruled that even if there is enhanced tax liability, it is inconsequential since the liability is always on the bidder, and also noted that the GST regime permits availment of Input Tax Credit which often offsets the increased tax rate. Appeal against this judgment has not been admitted by the Hon'ble Supreme Court, rendering it binding law. The Apex Court in *Syndicate Bank Vs R. Veeranna*, reported in (2003) 2 SCC 50, has further held that subsequent statutory or financial changes do not automatically entitle a party to relief unless the contract specifically so provides, and this principle has been relied upon by the Division Bench in WA No. 1233/2021.

14. It is also a settled principle of contract law that the application of the principles of natural justice cannot be read into or used to override the express terms of the contract, particularly where the contract, through Clause 3.3.5 and 34.1 of Instructions to Bidders in the Standard Bidding Document, expressly allocates present and future tax liabilities to the contractor.

Accordingly, equitable considerations or invocation of natural justice cannot be used to defeat or dilute the clear contractual allocation of tax risk in the present case. Further, by accepting the extension order and executing the Supplemental Agreement, the contractor is contractually bound and legally estopped from raising any monetary claims, including GST reimbursement, contrary to the agreed “no extra claims and no compensation” condition.

15. In view of the existing orders in force, binding judgment dated 20/03/2019 in WP (C) No. 27226/2018 and judgment read as 8th paper above, corrective and binding Govt. letter read as 13th paper above cancelling Ext.P12, read as 11th paper above and express “no extra claims and no compensation” condition in the extension order and Supplemental Agreement, the claim for GST reimbursement raised by the contractor is not admissible in law or on facts. Accordingly, the prayer in the WP(C) No. 19220/2025 filed by Sri. Sasidharan Nair.J, Contractor, Poudikonam, Thiruvananthapuram is found devoid of any merits and is hereby rejected.

15. The Judgment dated 23/05/2025 in WP(C) No. 19220/2025 is complied accordingly.

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

To:

The Advocate General, Kerala (With covering letter)

The Chief Engineer, Public Work (Building Division) Department,
Thiruvananthapuram.

The Principal Accountant General (Audit/A&E), Kerala,
Thiruvananthapuram.

Taxes Department (as per remarks in B1/179/2025/TD dated 19/01/2025)

The Information & Public Relations (Web & New Media) Department.

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Section Officer

PA to Secretary, Public Works Department
PA to Additional Secretary, Public Works Department