



GOVERNMENT OF KERALA

Abstract

Health and Family Welfare Department - Government Medical College, Kasargode - Execution of construction works of the Hospital Block - Judgment of the Hon'ble High Court in WP(C).No.19539/2025 - Complied with - Orders issued.

HEALTH AND FAMILY WELFARE (P) DEPARTMENT

G.O.(Rt)No.43/2026/H&FWD Dated, Thiruvananthapuram, 03-01-2026

Read 1) Order dated 24.10.2025 of the Hon'ble High Court of Kerala in WP(C) No.19539/2025 filed by M/s. R R Thulasi Builders (I) Pvt Limited.

2) Representation dated 08.11.2025 from the RR Thulasi Builders (I) PVT LTD.

3) Letter No.3072:DP 653:TJ:2025 dated 06.12.2025 from the Managing Director, KITCO limited.

4) Letter No.TC/DME/Genl/151/2025 dated 16.12.2025 from the Office of the Technical Committee for DME works.

5) Letter No.PB2-748/2022/DME dated 19.12.2025 from the Director of Medical Education, Thiruvananthapuram.

ORDER

M/s.RR Thulasi Builders (I) Pvt.Ltd, Erode, Tamil Nadu approached the Hon'ble High Court of Kerala in W.P(C).No.19539/2025 praying for a direction to the respondents to

release (i) a sum of Rs.97,97,326/- towards the pending payments towards R.A.Bills 1 to 15 of the work execution of construction works of the Hospital Block for Govt.Medical College,Kasargode; (ii) a sum of Rs.1,37,55,141/- towards the pending payments towards R.A.Bill.No.16 and Final Bill after recoveries but including Extra/ Excess Quantities; (iii) the sum of Rs. 1,24,39,192/- being withheld amount for R.A.Bill.Nos.1 to 16; (Security Deposit @ 2.5%); (iv) Refund a sum of Rs.2,20,51,066/- being 2.5% of the amount paid by the Petitioner towards performance guarantee in the form of DD; (v) to return a sum of Rs.2,20,51,066/ being 2.5% of the amount paid by the Petitioner towards performance guarantee; (vi) to release a sum of Rs.7,62,63,164/- towards interest for the delayed payments of all the R.A.Bills and Final Bill, (vii) to release a sum of Rs.52,17,579/-towards interest for the delay in refund of payments for deducted in excess security deposit from R.A.B.Bill 2nd to 11th and (vii) to pay the differential GST amount of 6%.

2) During the pendency of the above Writ Petition, KITCO Ltd., the Project Management Consultant (PMC) Government of Kerala, Health and Family Welfare Department and the company entered into a supplementary cum foreclosure tripartite agreement dated 11.08.2025, to the main Contract Agreement dated 06.08.2018. Pursuant to the said agreement, KITCO Ltd., and the Government released the payments claimed by the petitioner firm in Clause i to v, in the above Writ Petition.

3) As per the Order read as 1st paper above, the Hon'ble High Court has recorded and ordered as below;

"..2. Sri. V.P. Sen gottuvel, the learned Senior Counsel appearing for the petitioner on the instructions of Adv. R. Harishankar submits

that all that remains for adjudication is the claim for interest and also a claim on account of differential rate of G. S. T.

3. Learned Government Pleader appearing for respondent Nos. 1 to 3 would submit that as per the instructions received by him, only the claim for interest remains to be adjudicated. It is submitted that the question as to whether the petitioner is to be paid any interest is pending decision at the level of the Government. It is submitted that the Director of Medical Education has taken the stand that the petitioner is not entitled to payment of interest. It is submitted that the Government will take a decision on the claim of the petitioner for interest within a short time.

4. Learned Senior Counsel appearing for the petitioner points out that even in Ext. P43 agreement, the claim for interest was left open to be adjudicated in this writ petition. Learned Senior Counsel also placed for my consideration the judgments of the Supreme Court in Dr. Poomima Advani and another v. Government of NCT and another, 2025 SCC OnLine SC 419 and Rajesh Monga v. HDFC Ltd. and others, (2024) 5 SCC 299 to justify the claim of the petitioner for pa,y,pnt<interest. It is submitted that when money due to the petitioner had been paid belatedly, the petitioner is entitled to claim interest on the said sum.

5. Having heard the learned Senior Counsel appearing for the petitioner, the learned Government Pleader appearing for respondent Nos. 1 to 3, and the learned counsel appearing for the 4th respondent, I am of the view that since the petitioner's claim for interest is pending before the Government, the competent authority must be directed to consider the said claim after affording the petitioner an opportunity of hearing. Having perused the judgments of the Supreme Court in Poornima Advani (supra) and Rajesh Monga (supra), I am of the view

that the competent authority of the Government must be directed to keep in mind the principles laid down in the aforesaid decisions while considering the claim of the petitioner for payment of interest. Since it is pointed out that the petitioner also has a claim for differential GST, I deem it appropriate to direct that it is open to the petitioner to raise such a claim before the competent authority of the Government by filing a suitable representation. If such a representation is filed within a period of one week from today, the competent authority, while considering the claim of the petitioner for interest, shall also take a decision on the claim for differential GST. The competent authority shall endeavour to pass orders within a period of two months from today, after hearing the petitioner and the 4th respondent."

4) In pursuance of the order of the Hon'ble High Court of Kerala, M/s.RR Thulasi Builders submitted a representation vide reference 2nd cited with respect to **Claim Nos.vi and viii**, made in the above Writ Petition, by enclosing a cumulative statement on Interest on Delayed Payment of R.A.Bills and Final Bill and Differential G.S.T amount of 6 % and further requested the Government of Kerala, to pay the following claims:

(a) A sum of **Rs.7,92,01,038.00l-** towards cumulative interest for the delayed payments of all the R.A.Bills and Final Bill as shown in Annexure - 2 Series - Statement on Interest Calculation upto 22.09.2025, Details of Total Abstract - Bill Wise, and copies of Certified RA Bill Nos.1 to 16, Final Bill Certification; and

(b) Pay the differential GST amount of 6% (Rs. 6,70,685/-), as shown in Annexure - 3 - GST Invoice and Difference in GST Bill Calculation.

5) Accordingly the representatives of the Petitioner M/s.RR

Thulasi Builder (1) Pvt. Ltd, the 2nd respondent Director of Medical Education and 4th respondent M/s.KITCO Ltd., the Project Management Consultant were heard in person on 02/12/2025. During the hearing, the petitioner firm submitted a detailed statement regarding their claims. Subsequently, as per per written explanation dated 11/12/2025, the petitioner has informed as follows:-

" We submit that during the hearing, without prejudice to our right to claim payment of interest @18% on delayed payment of R.A.Bills and Final Bill pending before the Hon'ble High Court of Kerala at Ernakulam in W.P(C).No.19539/2025, we suggested to the Additional Secretary that the rate of interest can be considered @ 10% from due date till the date of actual payment, which is found in another similar contract executed by us to the same department namely construction of a New Hospital Block for Taluk Hospital at Punalur vide Agreement dated 10.04.2018. In the said Agreement, Clause.7 deals with delayed payments and the relevant clause reads as follows:

"In case of delay in intermediate bills after 45 days of submission of bill by the contractor provided the bill submitted by the Contractor found to be in order, a simple interest @10% per annum shall be paid to the contractor from the date of expiry of prescribed time limit which will be compounded on yearly basis."

In the above circumstances to resolve the issue, we propose 10% interest on all the payments on delayed payment of R.A.Bills and Final Bill, from the due date till the date of actual payment, as shown by us in the working sheet on the interest for the delayed period. We would make this proposal without prejudice to our rights with respect to the payment of interest on delayed payment of R.A.Bills and Final Bill pending before the Hon'ble High Court of Kerala at Ernakulam in

W.P(C).No.19539/2025 subject to the outcome of this proceedings.

Hence, we request you to consider our proposal and decide the claims made by us."

6) Hence the remarks on the petitioner's claim was sought for from DME and KITCO. As per the reference 3rd, 4th and 5th paper above, the KITCO, Technical Committee for DME works and the DME have submitted their report. The MD,KITCO informed that, as for the claim of additional GST component, the rate quoted by the contractor is including all taxes, duties, etc. including 12% CST applicable for work contract at the time of tendering, The rate of GST for work contract of Government works revised to 18% with effect from 18.07 .2022. But as per the clause I .17 (NIT), the claim for any extra taxes shall not be entertained in any case whatsoever once the tenders are opened. Therefore, the additional 6% shall be applicable only subject to the approval of DME/Government. As per the letter read as 4th paper above, the Technical Committee for DME works reported that the request of the contractor M/s R R Thlasi builders for the interest on the delayed payments amounting to Rs.7,92,01,038/- may be decided at the Government level. It was also intimated that the GST claim of the contractor may be considered genuinely since any court of law will set aside the argument of the PMC M/s KITCO that the contract conditions does not allow the increase in taxes in any case whatsoever. The DME clarified that the Department was of the opinion that the extra tax paid by the contractor may be reimbursed. However, on the interest part the Department was of the opinion that the interest on the delayed payment cannot be considered. The Department has taken all efforts to release the funds as and when funds were received from the Government.

7) Govt. have examined the matter in detail on the basis of the claims of the petitioner, the reports from the Technical Committee for DME works, DME and KITCO and the observations of the Hon'ble High Court.

8) Regarding various stages of execution of the work in question, the Director of Medical Education informed that construction of hospital block of Govt Medical College, Kasaragod was a NABARD assisted Project and hence reimbursement claims for the works done were submitted to Govt. as and when the PMC submitted the reimbursement claims. To prepare the reimbursement claim the PMC had to calculate the expenditure made by the contractor and make sure that the contractor has incurred the amount claimed by the contractor. The NABARD projects worked in a reimbursement basis and some procedural delay occurred before getting the fund sanctioned. Earlier payment method for NABARD was as follows:-

9) The implementing agency (in this case M/s KITCO) after examining the bills/claim of the contractor prepare a reimbursement claim for the period of work done and submit the reimbursement claim to the client department. The department after verifying the correctness of the claims submit the same for the approval of Government and then the Government after verifying the correctness of the claims forward the same to NABARD for reimbursing the amount. NABARD after verifying the correctness sanctions the loan amount and then the Government sanctions the loan amount to the implementing department. On receipt of funds from Govt, payment to the petitioner would be sanctioned based on the vetting report from the Technical Committee for DME Works and the recommendations from the Special Purpose Vehicle for the project.

10) Accordingly, payment has been released to the petitioner by preparing bills in accordance with the availability of funds and submitting the same to treasury for encashment. In each fund release to the petitioner, payment has been released only after effecting statutory recoveries such as Income Tax, GST and Labour Welfare Cess and security deposit up to certain extend.

11) As per G.O (Rt) No. 1879/2015/H&FWD Dtd, 22/06/2015 an

amount of Rs.5,82,00,000/- was sanctioned by the Government as the mobilization advance for the Civil works pertaining to the Construction of Hospital Block of GMC Kasargode. The same was credited to the bank account of the PMC shortly. Hence at the start of the civil works enough funds were available with the PMC for settling the primary bills.

12) At the beginning the project was considered as a deposit work and enough funds were deposited to the PMC in advance as mobilization advance. Subsequently Government decided to streamline the fund sanction to the construction works and issued G.O.(P) No.88/2018/H&FWD dated, 11.06.2018 in which it is detailed as below.

'The procedure now to be followed for accredited agencies acting as PMC would be that the centage charges would be paid directly from the Consolidated Fund to the Account of the MC / accredited agency while the payment to contractor would be made by the concerned Department directly from the Consolidated Fund to the contractor's Bank Account by submission of bill based on the advice of the accredited agency.'

13) Hence from the issuance of the said Government order payments needed to be sanctioned to the contractor directly. Some procedural delay happened for the transition of the payment method. However honest steps were taken by the department to release the payment to the contractor in a timely manner. A detailed annexure describing the submission of reimbursement claims fund sanction order, fund release order etc were also detailed in the report of the DME.

14) In view of the above, the DME reiterated that all the possible steps were taken to release the payment to the contractor as and when the funds were received from the Government. Hence it was requested to consider the request of the contractor for the release of additional GST paid by the contractor and to take appropriate decisions on the request of the contractor for the interest on delayed payments.

15) As per Order read as 1st paper above, the Hon'ble High Court also directed to keep in mind the principles laid down by the Hon'ble

Supreme Court decisions in Dr.Poornima Advani and another v. Government of NCT and another, 2025 SCC online SC 419 and Rajesh Monga v. HDFC Ltd. and others (2024) 5 SCC 299, while considering the claim of the petitioner for payment of interest.

16) Hence, applicability of the said Supreme court judgments in the case on hand has also been examined as detailed below:-

(i) Judgment in Dr.Poornima Advani and another v. Government of NCT and another

In this case the Hon'ble Supreme Court has elaborately addressed whether a party is entitled to the refund and, importantly, the payment of interest on the refunded stamp duty when the original e-stamp paper is lost before its intended use.

The Appellants (Dr.Poornima Advani and her husband) initially sought a refund of stamp duty on an e-stamp paper that was misplaced and never used for executing the intended property transaction. Although the High Court of Delhi ordered a refund of the principal amount, it did not award interest. The Supreme Court was thereafter called upon to decide if the Appellants were entitled to interest on that refunded amount in light of constitutional and equitable principles.

The Hon'ble Supreme Court examined the High Court of Delhi's decision that partially allowed the Appellants writ petition by ordering a refund of the principal stamp duty but denied interest. The Court held that, although there is no explicit provision in the relevant statute addressing interest on refunds of lost e-stamps, the constitutional principle of fairness, the doctrine of restitution, and precedents governing interest indicate that a party is entitled to be compensated by way of interest for deprivation of the use of its lawful money.

Consequently, the Supreme Court ruled in favour of awarding interest to the Appellants.

On analysis, it is seen that the Judgment rests on both constitutional and equitable grounds. The Court emphasized that collecting or retaining tax without authority of law is impermissible. Where the taxable event has not occurred, or the state's entitlements have not accrued, the monies belong to the taxpayer. The Court found that existing statutes on stamp duties do not specifically prohibit refunds when stamp papers are lost. It reasoned that a revenue authority's power must be reconciled with the constitution, thus allowing refunds even outside express statutory clauses if consistent with equity and fairness.

The Supreme Court's judgment firmly establishes that in scenarios where a stamp paper, including an e-stamp paper, is lost and never used, the citizen is entitled not only to the refund of the stamp duty but may also claim interest for the period during which the refund was unduly withheld.

The said judgement is not related to the adherence of conditions in the agreement arrived to by the parties concerned in respect of the execution of a civil work. The genesis or further developments of the case explained in the Supreme Court case cannot be equated or considered similar to that of the petitioner's case. The issue of refund of stamp duty in the cases where the e-stamp paper is lost is in now way related to the claim of the petitioner for interest of delayed payments.

In the instant case, the petitioner has alleged that there was inordinate delay in release of payments by the respondents in the above Writ Petition for the work executed by the petitioner, in pursuance of

the conditions in the agreement dated 06/08/2018 (Ext. P3 in the W/P) entered into by them with M/s.KITCO, the Projects Management Consultant (PMC). According to the Petitioner, as per clause 2.34.03 of the general conditions of the contract, the Respondents 1 to 3 being the client/owner under the contract and Respondent 4 being Accepting Authority/Consultant ought to make payments of RA Bills within 30 days of the presentation by the contractor. Hence the petitioner originally claimed interest @18% per annum towards delayed payment for each RA Bills from the respective due dates for payment and subsequently, the interest claimed was reduced to 10% , as per written statement dated 11-12-2025.

It is significant to note that the Agreement does not expressly provide for any interest on delayed payments, though it is stipulated that payments of RA Bills shall be made to the contractor within 30 days of the presentation by the contractor. Also there is no precedent of allowing such interest by the Govt. / Department in any health sector related projects such as KIIFB, NABARD, Central Assistance and Plan Fund projects. The Hon'ble Supreme Court of India has issued several directions reinforcing the principle that parties to a contract cannot impose or be bound by extraneous conditions or actions that fall outside the agreed-upon terms. The parties are bound by the terms and conditions they mutually and voluntarily agree upon. A party cannot avoid contractual obligations or modify agreed-upon terms, as terms of the contract are paramount. The Hon'ble Supreme Court consistently upholds the principle of the finality and sanctity of contractual terms.

In view of the above, the said SC judgment is not applicable to the petitioner's case.

(ii) *Rajesh Monga v. HDFC Ltd. and others (2024)5 SCC 299:*

*The Supreme Court of India's decision in **Rajesh Monga v. Housing Development Finance Corporation Limited (2024 INSC 162)** addresses the critical issue of interest rate adjustments in home loan agreements. This case involves Rajesh Monga, the appellant, who sought redressal against Housing Development Finance Corporation Limited (HDFC Ltd.) and its representatives. The crux of the dispute revolves around the appellant's claim that HDFC unilaterally increased the interest rate on his home loan from the promised 7.25% per annum to as high as 10.5% without any corresponding change in the Reserve Bank of India's (RBI) Prime Lending Rate (PLR).*

The National Consumer Disputes Redressal Commission (NCDRC) had previously dismissed the appellant's complaint, holding that he was bound by the terms and conditions of the loan agreement signed in 2006. The appellant appealed this decision to the Supreme Court, asserting that the representations made by HDFC's employees constituted unfair trade practices under the Consumer Protection Act.

Upon reviewing the case, the Supreme Court upheld the NCDRC's decision, ruling in favour of the respondent, HDFC Ltd. The Court held that the appellant had willingly entered into the loan agreement, which explicitly outlined the terms related to the adjustable interest rate. The Court found no evidence of misrepresentation or coercion on HDFC's part and concluded that the interest rate adjustments were in line with the contractual agreement and the policies governing such financial instruments.

The Court emphasized that upon signing the loan agreement, the

appellant was bound by its terms, including the provisions for adjustable interest rates. The Court found insufficient evidence to classify HDFC's actions as unfair trade practices. The appellant had the opportunity to clarify concerns before signing the agreement, and post-agreement adjustments aligned with the contractual terms, not with arbitrary or deceptive practices. Consequently, the Court concluded that HDFC acted within its contractual rights and policies, and there was no violation warranting consumer protection relief.

This judgment unequivocally emphasizes that parties should be cautious about relying on pre-contractual representations over written agreements. This judgment reinforces the primacy of signed contractual terms over prior communications unless explicitly stated otherwise.

The above judgment of the Hon'ble Supreme Court also seems not favourable to the petitioner's case and rather has no application in this case. The facts and circumstances involved in the case in which the said judgment was passed is in no way similar to the petitioner's case.

17) It is significant to note that in the written submission/representation filed before the Government, the petitioner has only produced copies of the aforesaid Supreme Court judgments, but not adduced any explanation regarding the applicability/justification of the said judgments in the claim of the petitioner for payment of interest. Though the petitioner was represented by their legal counsel and General Manager in the personal hearing, no explanation in the aforesaid matter or their eligibility for the claimed interest were offered by them. They only produced a statement containing their claims and tabular details of the interest calculation as claimed.

18) The procedures as reported by the DME and stated above have to be followed in the payment of bills and earnest action was taken by the Respondents to clear the bills within the stipulated time. As per the report of the DME, from the issuance of G.O (P) No.88/2018/H&FWD dated 11/06/2018, payments needed to be sanctioned to the Contractor directly. Some procedural delay happened for the transition of the payment method. However honest steps were taken by the Department to release payments to the contractor in a timely manner. The DME has informed that the interest on delayed payment cannot be considered. It is true that as per clause 2.34.03 of the general conditions of contract, payments of RA Bills shall be made within 30 days of presentations by the Contractor. However, there is no explicit provisions in the agreement for payment of interest for delayed payments. It is pertinent to note that in the statement dated 11-12-2025 furnished by the petitioner and mentioned herein above, it was stated that another similar contract was executed by them for the construction of a New Hospital Block for Taluk Hospital at Punalur and in the said Agreement, Clause.7 deals with delayed payments and the relevant clause reads as follows:

"In case of delay in intermediate bills after 45 days of submission of bill by the contractor provided the bill submitted by the Contractor found to be in order, a simple interest @10% per annum shall be paid to the contractor from the date of expiry of prescribed time limit which will be compounded on yearly basis."

It is evident that the said clause deals with payment of interest on delayed payments. The petitioner has no case that such a clause included in their agreement in the present case. In the absence of such explicit clause for interest on delayed payments, the petitioner is not entitled to

claim such a benefit, in contravention to the contractual obligations. The claim in the above statement for interest at the rate of 10 % instead of 18% is also inadmissible. It is also significant to note that clause 2.31.06 of the general conditions of the contract deals with Liquidated Damages and as per the provisions of the same, the contractor is bound to pay liquidated damages calculated @ 0.1%, if the contractor fails to maintain the required progress as per the conditions of contract or to complete the work etc. In the instant case, though liquidated damages were liable to be recovered from the contractor, the supplementary cum foreclosure tripartite agreement dated 11.08.2025, to the main Contract Agreement dated 06.08.2018 was executed by the DME without claiming the liquidated damages.

19) As stated above, some delay occurred as procedural/administrative formalities have to be followed for disbursement of bill amounts. In any of the Government works, there is no precedent of allowing such interest by the Govt. / Department in any health sector related projects such as KIIFB,NABARD, Central Assistance and Plan Fund projects which are being executed on the basis of agreements with similar conditions as in Ext. P3 agreement. If the interest in delayed payment is sanctioned in a particular case, the similarly situated contractors will also claim such payments and it will pave way for huge financial loss to the State exchequer.

20) According to the reports of the Technical Committee for DME works and the DME, the request of the contractor for the release of additional GST paid by the contractor may be considered. However, since the amount of Rs. 6,70,685/- claimed as differential GST was not confirmed by the DME, as per e-mail dated 30-12-2025, the DME was requested to verify and confirm the amount.

21) As per e-mail message dated 03-01-2026, the DME has clarified that as per the RAB 16 & final submitted by the PMC the final works value is Rs.1,25,19,469.68/- . The PMC has calculated the GST as Rs.22,53,504.54/- in the final bill amount. The above said amount is the 18% GST of the work value. Hence the PMC has considered 18% GST in the final bill. Hence the final bill amounted up to Rs.1,47,72,974/- (including 18% GST). The Technical Committee has calculated the final bill as Rs. 1,47,72,974/- . In this connection M/s R R Thulasi builders have remitted an amount of Rs.22,53,504.54/- as the GST. While recommending the final bill for payment KITCO has unintentionally calculated GST at the rate of 18% and DME & TC for DME works done the payments as per the final bill submitted by the PMC. Hence the DME has reported that the request for GST rate increment has already been done by the PMC unintentionally and as per the recommendation of the PMC the department has released the GST at the rate of 18%. Hence no more GST increment or additional GST shall be considered from the part of the Government. The DME has also forwarded the necessary documents/records.

22) In view of the above, the Government have arrived at the following conclusions :

" The petitioner in W.P(C) No.19539/2025, viz. M/s.RR Thulasi Builders (I) Pvt. Ltd is not entitled for payment of interest on delayed payments in view of the terms and conditions of the Ext P3 contract executed between them and KITCO on 6/8/2018. Also,as clarified by the DME and the Technical Committee for DME works, the claim of differential GST amount of ₹6,70,685/- cannot be approved, as GST was calculated and disbursed @ 18% itself instead of 12%."

23) In view of the facts and circumstances aforesaid, Government are pleased to dispose of the claims of the petitioner in WP(C) No. 19539/2025 ,viz, M/s.RR Thulasi Builders (I) Pvt. Ltd. related to the work execution of construction works of the Hospital Block for Govt.Medical College,Kasargode submitted as per statements dated 8-11-2025 and 19-12-2025, by rejecting the claim of ₹7,92,01,038/- towards cumulative interest for the delayed payments of all the RA Bills and Final Bill, calculated @ 18 % pr annum and also rejecting the subsequent request of the petitioner to allow interest for delayed payments @10%. The claimed amount of ₹6,70,685/- towards the difference in GST also stands rejected, since GST has already been calculated and disbursed at the rate of 18% instead of 12%.

24) The Order of Hon'ble High Court read as 1st paper above is complied herewith accordingly.

(By order of the Governor)

SUBHASH R
ADDITIONAL SECRETARY

To:

The Director of Medical Education, Thiruvananthapuram
The GM-Projetcs, M/S R.R.Thulasi Builders India PVT.Ltd, Sakthi Mahal, No. 63, Perundurai Road, Erode, Tamil Nadu, Pin-638011.

The Managing Director, KITCO limited

The Advocate General , Kerala, Ernakulam (With C/L)

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

Information Officer, Web & New media

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Section Officer

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