



GOVERNMENT OF KERALA

Abstract

Public Works Department – Judgment dated 02.02.2024 in WP(C) No. 4890/2024 filed by M/s Malabar Constructions – Complied with - Orders issued.

PUBLIC WORKS (G) DEPARTMENT

G.O.(Rt)No.912/2024/PWD Dated, Thiruvananthapuram, 04-09-2024

Read 1 Judgment dated 12.02.2024 in WP(C) No. 4890/2024 filed by M/s Malabar Constructions before the Hon'ble High Court of Kerala.

2 Order dated 17.07.2024 in IA No. 1/2024 in WP(C) No. 4890/2024 filed by M/s Malabar Constructions before the Hon'ble High Court of Kerala.

3 G.O(MS) No. 49/2023/PWD dated 14.09.2023

ORDER

As per the judgment dated 12.02.2024 the Hon'ble High Court of Kerala has disposed the WP(C) No. 4890/2024 filed by M/s Malabar Constructions, and directed the competent Authority 1st respondent ie, State of Kerala represented by the Secretary, Public Works Department, to take up Ext.P16 and dispose it of, after affording an opportunity of being heard to the petitioner as expeditiously as is possible, but not later than three months from the date of receipt of a copy of the judgment.

2. Copy of judgement was received in Government on 02.03.2024 and in pursuance to the said judgment, hearing was conducted on 22.04.2024. But the petitioner did not attend the hearing. Since the time limit for complying the judgment expired on 01.06.2024 extension petition was filed and as per the order, read as 2nd paper above, the Hon'ble High Court extended the time frame until 01.09.2024. One more chance was given to the petitioner for the hearing, and it was decided to conduct the hearing again on 12.06.2024. But the petitioner

informed that he could not attend that day due to health issues, and as per his request the hearing was rescheduled on 04.07.2024. Petitioner did not attend the hearing on that day also. Executive Engineer and Administrative Assistant from the O/o the Chief Engineer (Roads), Executive Engineer (Roads) Idukki and Assistant Engineer, Pallivasal were present.

3. Ext. P16 is the representation of the petitioner addressed to the 1st to 3rd respondents (Secretary PWD, Chief Engineer PWD (Roads) and Superintending Engineer PWD (Roads) Aluva respectively), wherein it is stated that the work for effecting 'Improvements to Ellackal-Madamkavala- Maryland-Anachal Ambalam road' in Idukki district was awarded to him. The major work involved in the agreement was to widen the existing road and to provide BM and BC. For the purpose of the above work, it is necessary to strengthen the trenches made by KWA for laying water supply line under the JJM and other projects throughout the entire road. He submitted a representation on 11.12.2023 before the Superintending Engineer PWD Roads Central Circle Aluva, requesting to execute the restoration works of trenches made for laying the water supply line of KWA, by providing GSB and WMM. The delay on the part of the Water Authority in effecting restoration works affects the progress of road works, where BM and BC have to be executed ultimately. The restoration works have not been done so far, and it is known that a further time of minimum one year shall be required for providing the same. As per Government Order, read as 3rd paper above, the contractors have the option to get out of the contract, on executing the closure agreement, on account of delay in restoration works of trenches made by KWA for implementing various schemes under the JJM projects. Hence the petitioner requested to relieve him from the agreement without imposing risk and cost. He has also requested to take necessary action to record the measurements of the entire works executed by him and to release the payment, including performance security and additional performance security furnished at the time of agreement.

4. The officers present in the hearing submitted a report from the Chief Engineer, PWD (Roads) and informed the following: -

The work "GENERAL-BW 2021-22 Improvements to Ellackal-

Madamkavala- Maryland-Anachal Ambalam road" was awarded to M/s. Malabar Constructions, being lowest bidder and agreement was executed on 08/12/2022. LoA (Letter of acceptance) dated 01/12/2022 was sent to the contractor. In the LoA, it was clearly mentioned that the work should be completed in all respects within seven months from the date of handing over the site (ie, before 14/07/2023). Site was handed over to him on 15/12/2022. But the contractor did not commence the work inspite of repeated notices.

5. The work site belongs to Vellathooval Grama panchayath and it was handed over to PWD for the said work on 17/05/2022, and the Road cutting was done even before the handing over of the site to PWD. The road cutting would no way affect present arranged improvement works.

6. Notice for commencement of work was given from Executive Engineer's office on 19/04/2023 and from the office of Superintending Engineer on 02/05/2023. After this, some civil works had been started, and only cross drainage works were done. By the end of tenure of work, only 15% of total work was completed. As per the request of the contractor, time of completion was extended without fine up to 14/11/2023. But during this extended period of time also, he had completed only 20% of work. Then considering the worst condition of the road, second extension up to 31/12/2023 (without fine) was recommended under Executive Engineer's own responsibility so as to complete the work within the stipulated time of completion, otherwise the contractor will be terminated at his own risk and cost.

7. During the extended time of completion up to 14.11.2023 (ie, almost one year had been lapsed) he had not raised any complaint about the work site for the smooth execution of work. The contractor did not restart the work even after extending the time of completion up to 31.12.2023 and the time of completion is extended up to 29.02.2024 with fine. The contractor vide letter dated 19/01/2024 to the office of Superintending Engineer reported his willingness to restart the work on 29/01/2024 and to complete with in 28/02/2024. But he did not restart the work. As per the request of the Assistant Engineer, PWD Roads Section, Pallivasal, the contractor submitted application to extent the time of completion up to 15/04/2024 stating continuous rain, shortage of materials due to quarry strike, obstructions due to JJM works for laying water line pipe etc. The actual time of completion of the work was up to 14.07.2023 and he submitted representation only on

12.07.2023 regarding the shortage and non-availability of materials, towards the end of the completion period of the project. The work was supposed to be completed within this period. As per agreement/ bid document, arrangement of materials, manpower and machinery are not in the purview of Public Works Department, instead it is the duty of the contractor who signed the agreement. Contractor wants to withdraw from the work without paying risk and cost amount and hence referring the Government Order, read as 3rd paper above. The JJM road cutting did not affect the work. Hence the clause regarding the termination of contractor vide the Government Order, read as 3rd paper above, is not applicable to this case. Hence the Chief Engineer, PWD (Roads) recommends to terminate the contractor from the work with his own risk & cost and blacklist him as his arguments are not at all genuine and doesn't need any consideration.

8. The Executive Engineer Idukki submitted Letter No. AEE/JJM/VTL/24/2020-21 dated 03.05.2024 from the Executive Engineer, KWA, wherein it is stated that the JJM work was started on 22.06.2023 and completed on 30.09.2023.

9. Government have examined the matter in detail and find the following:-

As per LoA the work should have been completed before 14.07.2023. Though the site was handed over to the contractor on 15.12.2022 the work was started only after 02.05.2023 and by the end of tenure of work only 15% of work has been done. The time of completion of work was extended two times without fine (upto 31.12.2023), and upto 29.02.2024 with fine. But during this extended period of time also, he had not completed the work. Thus, sufficient time was given to the petitioner for executing the work. Moreover, as per the letter of KWA and report from CE it is also evident that the JJM work was not a cause for the delay in completing the work.

10. In the circumstances the request of the petitioner for relieving him from the agreement without imposing risk and cost cannot be considered, and hence the same is hereby rejected.

11. The direction contained in the judgment read as 1st paper above is complied with accordingly.

(By order of the Governor)
A MUMTHAS BEEGOM
ADDITIONAL SECRETARY

To:

The M/s Malabar Constructions, CGP-15/752, Berka, Chengala,
Kasaragod, Kerala -671542 (office.malabar999@gmail.com)

The Chief Engineer (Roads), Thiruvananthapuram.

The Superintending Engineer (Roads& Bridges), Central Circle, Aluva.

The Executive Engineer, Roads Division, Idukki

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

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

The Finance Department.

Stock File/Website

Forwarded /By order

Section Officer