



GOVERNMENT OF KERALA

Abstract

Public Works Department – Compliance of Judgment dated 30/10/2025 in WP(C)No.39062/2022 filed by M/s Farooque Constructions before the Hon'ble High Court of Kerala – Orders issued.

PUBLIC WORKS (G) DEPARTMENT

G.O.(Rt)No.492/2026/PWD Dated, Thiruvananthapuram, 25-03-2026

Read 1 Judgment dated 30/10/2025 in WP(C)No.39062/2022 filed by M/s Farooque Constructions

2 Representation dated 24.11.2025 from M/s Farooq Constructions,

3 Letter No.CEPWD/1573/2023-C4(W)-RD dated. 17/02/2026 from the Chief Engineer, PWD(Roads), Thiruvananthapuram.

4 Letter No:SESCRD/135/2022-D-B10-PWD dated 18.11.2022.(Exbt. P3)

ORDER

In the writ petition, WP(C)No.39062/2022 filed by M/s Farooque Constructions, the petitioner alleged that he participated in the tender process for the work 'Budget work 2017- 2018 improvement to Alappuzha, Chirakkode, Kanippara-SN. Kavala' and selection notice was served to the petitioner as their proposal was accepted. However, due to financial constraints, the petitioner sought additional time, which was rejected. Subsequently, the petitioner was terminated with risk and cost for an amount of ₹1,52,69,588/-. The petitioner thereafter filed WP(C) No. 39062/2022 before the Hon High Court .

2. As per the judgment read as 1st paper above, the Hon'ble High Court has ordered that:-

(i)The petitioner shall file appropriate request in this regard before the

additional 4th respondent (Secretary Public Works Department) within a period of three weeks from the date of receipt of a copy of this judgment.

(ii) If such a request is made by the petitioner as directed above, the additional 4th respondent shall consider and take a decision on the same within a period of 4 months thereafter, after affording an opportunity of being heard to the petitioner.

(iii) Till a decision is taken as directed above, the interim order granted by this Court on 04.01.2023 will continue.

(iv) If no such request is made by the petitioner within the time granted, the respondents will be free to proceed for the recovery of the amount due.

3. As per the judgment, the petitioner submitted a representation read as 2nd paper above, requested to keep in abeyance the decision to recover risk and cost of the work from the petitioner.

4. As directed by the Hon'ble Court in its judgment and as authorised by the Secretary, PWD, Deputy Secretary, Public Works Department heard the petitioner on 05/03/2026. Sri. R. Baiju, Managing Partner, Farooq Constructions, the Executive Engineer (Communication), O/o the CE (Roads), the Executive Engineer (Roads Division, Alappuzha), and Financial Assistant, O/o the SE (Roads), were present.

5. During the hearing, the Managing Partner of M/s Farooq Constructions requested that the order imposing risk and cost on the petitioner be cancelled, contending that such imposition is not permissible as he had neither executed any agreement nor abandoned the work after execution.

6. In the report submitted by the Chief Engineer read as 3rd paper above it is stated that Administrative Sanction for the work "Budget Work -2017-18 Improvements to Ambalappuzha - Chirakode - Kanipara - SN Kavala Road in Ambalappuzha LAC" was accorded for Rs 24,12,26,840/- vide GO (Rt) No. 1889/2017/PWD dt 19-12-2017. The tender was approved for the quoted amount of Rs. 26,20,97,737.81/- against the EPAC of Rs.23,89,11,663.30/- (9.70% above EPAC) quoted by M/s. Farooq Constructions.

As per selection notice it was directed to execute the agreement with in 28 working days from the date of letter of acceptance (dated

11.7.2018) which was expired on 14.08.2018. Since the Contractor M/s Farooq Constructions had not executed agreement within time, the contractor was informed by SE , dtd 08/10/2018 that the final date of executing agreement with fine was up to 29/08/2018. Direction was also issued to the petitioner to contact SE's office within 7 days otherwise EMD would be forfeited and work would be re arranged with the risk and cost of the contractor.

But the contractor informed on 03.11.2018 that he was not willing to do the work due to delay in the payment of his other works (1) KIIFB Projects-improvements to Kalavoor Kattoor Beach road, Alappuzha and (2) Providing BM & BC to Nedumpoyil- Mananthavady Road Ch.38/000 to 81/000 (Portion Ch:50/400 to 81/000 of Thalassery Bavali Road (Balance work) Wayanad District. Then vide SE office letter dtd 05/11/2018 petitioner was again allowed another 5 days to execute agreement. The petitioner was also informed that if he failed to execute the agreement within allowed time, EMD would be forfeited and the work would be re arranged with the risk and cost of the Contractor. But vide letter dated 12/11/2018, contractor requested to relieve him from the subject work.

As per SBD condition, Clause 3.6.6, if the successful bidder fails within the specified time limit to sign the agreement, in such cases the work shall be rearranged at the risk and cost of the selected contractor. Under the above circumstances, considering all the above aspects, it was ordered that the petitioner M/s Farooq Constructions, Alappuzha to whom selection Notice No. DB6 4764/2017dated 7.7.2018 issued, is terminated and the work rearranged at the risk and cost of the contractor as per terms and condition of the SBD and preliminary agreement entered with. The EMD of the petitioner for the work was ordered to be forfeited to the Government account forthwith.

Consequently, the work was retendered and two bids were received. The tender was approved for an amount of Rs 27,73,67,325/- (ie current DSR+10%) dated 26/02/2019. Accordingly, Selection Notice was issued and agreement executed by the contractor M/s Palathra constructions Private Limited dated 06/03/2019.

Later, the Executive Engineer, Roads Division Alappuzha was directed from circle office dtd 18/11/2022 to recover the risk and cost amount of Rs 1,52,69,588/- (ie difference of Accepted PAC of Farooq constructions Rs 26,20,97,737.81/- and Accepted PAC of M/s.Palathra

constructions Private Limited Rs 27,73,67,325/-). Also vide letter No InspTech 3- 53/2022-FIN dated 2/11/2022 of CTE, it is also directed to withhold the risk and cost amount.

The petitioner after seven years reveals that he is presently undertaking more than six works totaling crores of rupees. In this context it may be noted that the bidders are bound to quote for the work only after assessing their financial capability to do the work and hence claiming after seven years that he was not in a financial status to do this work, after award of contract is not acceptable. As said in his statement, due to financial crisis by undertaking more than six works totaling crores of rupees, he is deliberately trying to pull back from this work by stating unlawful conditions. The Petitioner also informed in Expt P1 to the Department that he is ready to start the work before executing the agreement and south circle office may give permission to start the work which was against the tender conditions and against rules. Thus the petitioner had induced the 2nd respondent to do unlawful favour to the petitioner beyond the existing rules.

Expt P3 is issued only as per Bid Document rules. The Department could not wait for a long time at the will of the petitioner since it will adversely affect the interest of the public. The Selection Notice was issued to the petitioner by the 2nd respondent from SE's office on 11.07.2018 and directed the petitioner to attend south circle office within 28 working days from the date of receipt of this letter with necessary documents to execute the Agreement for the work. Since there was no response from the petitioner, another letter was issued to the petitioner from south circle office on 08.10.2018 stating that the last date to execute the agreement with fine was expired on 29.08.2018 and the petitioner was directed to contact the office within 7 days otherwise the EMD of the petitioner will be forfeited to Government and the work will be re-arranged with the risk and cost of the petitioner as per rules. Thus, the statement of the petitioner in Expt. P4 that the termination is done by only giving 5 days is not true to the facts.

From the above facts, it is clear that the claim of the petitioner that they were ready to execute the work all throughout, is absolutely against facts. Also, the contention that the risk and cost arise only when an agreement is executed is not true. As per Clause 3.6.6 of the SBD, which is submitted by the bidder at the time of tender submission, "if the successful bidder fails within the specified time limit to sign the

agreement, in such cases the work shall be rearranged at the risk and cost of the selected contractor". Also, as per the preliminary agreement submitted along with the tender it is clearly stated that "I/We further agrees that, in the case of becoming the lowest bidder in this tender and in the event of failure on part of me/us to produce any of the original documents, or submit the performance guarantee, or enter into agreement with the first part within the specified time limit, the first part may take appropriate action as provided in the bid document. Recoveries on this or any other account will be made from the sum that may be due to us on this or any or other subsisting contracts or under the Revenue Recovery act or otherwise the Government may decide". Hence the risk and cost is binding on the bidder, even if he had not executed the original agreement.

7. The Chief Engineer has also reported that the rearrangement of work has resulted in financial loss to Government and hence the risk and cost amount has to be realised from the petitioner. All the actions taken in this regard and the decision to recover the risk and cost amount are as per rules and SBD conditions.

8. Government have examined the matter in detail and has found that Ext P3, read as 4th paper above, was issued in accordance with the Bid Document rules. In the above circumstances, as per the provisions in the SBD and the recommendations and report of the Chief Engineer, the request of the petitioner to keep in abeyance the decision to recover risk and cost cannot be considered and is therefore rejected. Accordingly, the representation submitted by the petitioner, read as 2nd paper above, is hereby disposed of as stated above, and the direction in the judgment dated 30/10/2025 in WP(C) No. 39062/2022 filed by M/s Farooque Constructions, read as 1st paper above, is thus complied with.

(By order of the Governor)
SUJITHA KUMARI S S
DEPUTY SECRETARY

To:

1. The Advocate General Kerala, Ernakulam (with C/L)
2. The Chief Engineer PWD (Roads), Thiruvananthapuram.

3. M/s. Farooq Constructions, 21/BSC 2009-10, Fathima Manzil, P.H Ward Alappuzha-688001, Rep by its Managing Partner Sajeela Baiju.
- 4.The Superintending Engineer PWD (Roads), South Circle, Thiruvananthapuram.
5. The Executive Engineer, PWD Roads Division, Alappuzha
- 6.The Accountant General (A&E/Audit), Kerala, Thiruvananthapuram.
7. The Finance Department.
8. Stock File/Website.

Forwarded /By order

Section Officer