



GOVERNMENT OF KERALA

Abstract

LSGD - Pradhan Mantri Gram Sadak Yojana (PMGSY- 2008-2009 (Phase VII) Package No. KR 13-30 Pazhayannur Block, Thrissur District - Judgment in WP(c) No.30351/2016 filed by Sri.Roy Mathew - Direction of the Hon.High Court - Complied with - Orders issued.

LOCAL SELF GOVERNMENT (DD) DEPARTMENT

G.O.(Rt)No.

3771/2017/LSGD Dated, Thiruvananthapuram, 23/11/2017

- Read: 1 Representation dated 16.2.2015 submitted by Roy Mathew, Contractor, Parnplaniyil House, Bharananganam P.O., Pala, Kottayam District.(Exhibit-P27 in the WP(c) No.30351/2016.
- 2 Judgment dated 07.03.2017 in the WP(c) No.30351/2016 filed by Sri.Roy Mathew.
- 3 Letter No.ENG6/2728/13-30/TSR/KSRRDA dated 09.08.2017 from the Chief Engineer, KSRRDA.

ORDER

The following three roads were Sanctioned by Government of India under Pradhan Mantri Gram Sadak Yojana (PMGSY- 2008-2009 (Phase VII) Package No. KR 13-30 Pazhayannur Block, Thrissur District.

1. Cheruthurity-Ayyappaseanpady Road
2. Kochappanpady - Kulambu Road,
3. Ventokumpadaparambu - Kuzhikalakulambu Road.

Construction cost for the above package works is Rs. 274.94 lakh/- and Maintenance cost is Rs. 41.89 lakh/-. Original DPR was prepared with SOR 2008. This package was awarded to the contractor Sri. Roy Mathew at 10% above estimate rate and Accepted PAC is Rs. 3,46,06,536.00/-. Contractor kept agreement on 23-07-2009 with a time of completion of 12 months from the date of order to start the work. Site was handed over on 23-07-2009 and initial level was approved on 31-10-2009.

There occurred delay in completing the three works under this package is as detailed below.

Ventokumpadamparambu-Kuzhikala kulambu Road

The issue on availability of land required was settled in a meeting held on 05-01-2013.

Pipe line works were completed on 31-12-2013.

Electric post of KSEB were shifted on 15-04-2013.

Decision taken to avoid lime stabilization. On this account delay was up to 31-12-2013.

Kochappanpady-kulambu Road

Problem regarding the surrender of prescribed land width was settled on 21-01-2012.

BT work has been completed without shifting the post. Other posts were shifted on 31-12-2010.

Due to delay in office work shifting of pipe lines could not be done since pipes were beneath the BT surface.

Cheruthuruthy-Ayyappaseanpady Road

Electric post of KSEB were shifted on 31-10-2010.

Consequent on the delay occurred, the Contractor filed his grievances before the Standing Empowered Committee for the works under PMGSY, requesting enhancement of rate. The Committee heard the grievance of the appellant and respondent on 23-10-2014. Based on the facts and evidences the appeal was disposed on 20/01/2015 vide Ext.P26, as follows.

"No rate enhancement is allowed as such the work namely Cheruthuruthy Ayyappaseanpady Road & Kochappanpady- Kulambu Road were already completed in this package. One of the roads in this package Ventokumpadamparambu- Kuzhikalakulambu Road is

not completed fully. The present stage of the work is formation, GSB,G2 and side protection work partially over. G3 tarring and furniture works remain incomplete. In the above circumstances the committee allowed to enhance the rate for the balance work at 2012 SOR subject to the approval by the Finance Department. The estimate amount for balance work as per the agreed SOR 2008 (without tender excess 10% above) Rs. 49,16,036/- and this estimate prepared as per SOR 2012 became Rs. 80,62,298/-. Hence the additional amount required approximately Rs. 31,46,262/- without tender excess."

The contractor then submitted Ext.P27 Representation before Government against the decision taken by the Standing Empowered Committee and requested to sanction the total sum of Rs.1,87,28,780/- for the work executed after the expiry of the extended time of completion as per the agreement dated 27/7/2011. He has then filed WP(C)No. 30351/2016 before Hon'ble High Court seeking appropriate direction to the first respondent to consider Ext.P27 and other related reliefs.

As per the judgment read above, the Hon'ble High Court has directed the Ist respondent (Secretary LSGD) to attain finality Ext.P27 after providing an opportunity of hearing to the petitioner or any other interested persons. The petitioner's counsel Adv. Babu Joseph was heard on 12/6/2017 on behalf of the petitioner as directed by Hon'ble High Court. His arguments are as follows:-

"Current schedule of rate may be paid for the works executed after 22/07/11 (The original date of completion). As per the impugned decision of the Empowered Committee, enhancement is sanctioned for the works executed after the decision dated 20/01/15. Contractor is entitled for rate enhancement at the rate adopted by the PWD/LSGD at the time of executing the work after the original time of completion, since the contractor

is not responsible for delay in executing the work."

In the letter read above, the Chief Engineer, KSRRDA has reported that as per the agreement condition in clause 13.4, the rates once fixed will not be changed. The contractor filed his grievances before the Standing Empowered Committee as per clause 24.1, 24.2, 24.3 and the Committee decided that no enhancement of rate is allowed as such the work viz Cheruthuruthy - Ayyappaseanpady road and Kochappanpadi-Kulambu Road were already completed in this package. The extension was granted on condition that no enhanced rate of compensation will be allowed for the work to be done during the extended period. Government of India will not sanction any amount over and above the original estimate cost. Both works namely Cheruthurithy - Ayyappaseanpady Road and Kochappanpadi-Kulambu Road were physically completed within the time limit extended. So the contractor has no right to claim rate enhancement for the above two works. Besides the construction of Ventokumpadamparambu- Kuzhikalakulambu was not fully completed at the time of the Standing Empowered Committee meeting held on 23/10/2014. Hence the Committee decided to enhance the rate for the balance work at SoR 2012 subject to the final approval of Finance Department.

Government have examined the matter in detail and are pleased to order as follows:-

Since the Standing Empowered Committee held on 23/10/2014 have considered all relevant aspects of the issue, the decision taken by the Committee in Ext.P 26 is upheld. No rate enhancement will be allowed for the works namely Cheruthuruthy-Ayyappaseanpadi Road and Kochappanpady-Kulambu road already completed under the package. Enhancement of rate for the balance work of Ventokumpadamparambu- Kuzhikalakulambu Road at 2012 SOR is allowed.


The Chief Engineer, KSRRDA shall prepare revised estimate for the balance work of Ventokumpadampambu-Kuzhikalakulambu Road at 2012 SOR and submit detailed proposal to Government, including cost of additional financial commitment on account of the proposed rate revision for issuing revised administrative sanction.

The direction of Hon'ble High Court in the judgment read above is complied with accordingly.

By order of the Governor
T K JOSE
PRINCIPAL SECRETARY

To:- Advocate General,
Ernakulam. (with C/L).
The Chief Engineer
KSRRDA.
Sri.Roy Mathew
Padappaniyil House, Bharananganam.P.O,
Pala, Kottayam-686 578.
The Accountant General(Audit/A&E), Kerala, Thiruvananthapuram.
Director, IKM, Thiruvananthapuram.
Stock File/Office Copy.

Forwarded/By order


Section officer