



## GOVERNMENT OF KERALA

### Abstract

Local Self Government Department- Judgement of the Hon'ble High Court of Kerala dated 26.06.2023 in WP(C) No.20751/2023 filed by Sri. Rejimon A.T. - Complied with – Orders issued.

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### **Local Self Government (DD)Department**

G.O.(Rt)No.623/2024/LSGD Dated,Thiruvananthapuram, 16-03-2024

- Read:-
- 1.Appeal dated 19.06.2023 filed by Sri. Rejimon A.T before the Standing Empowered Committee (Ext. P14)
  - 2.Judgement dated 26.06.2023 in WP(C)No.20751/2023 filed by Sri. Rejimon A.T
  - 3.Letter No.KSRRDA/9/2023-B dated 11.07.2023, 23.08.2023 & 08.11.2023 from the Chief Engineer, KSRRDA
  - 4.G.O.(Rt)No.1850/2023/LSGD dated 19.09.2023.
  - 5.Submission of Sri. Rejimon A.T dated 20.10.2023
  - 6.Consolidated Minutes of the Standing Empowered Committee meetings held on 11.10.2023, 14.11.2023 & 30.01.2024

### **ORDER**

As per the judgement, read as 2nd paper above, the Hon'ble High Court had directed the 2nd respondent (Chairman, Standing Empowered Committee) to consider and pass appropriate orders in Ext.P14, after giving an opportunity of hearing to the petitioner and also directed to defer further proceedings based on Ext.P13 until final orders are passed in Ext.P14.

2) Based on the judgement, the Chief Engineer, KSRRDA had reported that the work of PMGSY-III- 2021-22 (Batch-1) Package No. KR1396 MRL02-PGM Road-Mala Block, Thrissur District including Maintenance for Five years after construction was awarded to Sri.Rejimon A.T, PWD Contractor at 7.9 % above estimate rate and agreement for the work was executed as per, Agreement No. 14/CE-KSRRDA/2022-2023 dated 13/04/2022, with time of completion of 12

months from the date of execution of the agreement. After initiating the work, two part bills amounting ₹40,36,366/- had been sanctioned to the contractor. As the contractor failed to complete the work in time, notices were issued by the the Chief Engineer for explaining the reason for delay in executing the work. The contractor requested for rescheduling the price of the construction materials for further continuation of work and as he fails to give satisfactory explanation for the delay, the Chief Engineer, as per order No.109/DB3/2021-22/KSRRDA dated 07.06.2023 (Ext P13), had terminated the work with risk and cost of contractor. Bank guarantee was also recouped and Executive Engineer PIU had been directed to prepare revised estimate for the balance work. Against the termination order, Sri. Rejimon A.T. filed WP(C) No.20751/2023 before the Hon'ble High Court and also filed Ext. P14 petition before the Standing Empowered Committee (SEC) with a request to set aside Ext. P13, since there was escalation in the price of construction materials and transportation cost.

3) In accordance with the direction of Hon'ble High Court, as per the judgment read as 2nd paper above, Standing Empowered Committee (SEC) was constituted as per Government order read as 4th paper above. The SEC heard Sri. Rejimon A.T on 11.10.2023. The Petitioner informed the Committee that, even though the agreement was executed on 13.04.2022, the authorities did not take steps to remove KSEB electric posts and KWA pipe lines from the roads in time and this caused difficulties in executing the work. The Chief Engineer, KSRRDA denied the claim of the contractor. However, the SEC discussed for a practical solution and decided to give the petitioner one more chance to complete the work. Therefore the Standing Empowered Committee instructed the petitioner to submit willingness statement and a detailed program chart for timely execution of the work with in 15 days, for considering the same in the next Standing Empowered Committee meeting.

4) The Contractor furnished his reply as per letter read as 5th paper above and the next meeting of the SEC held on 14.11.2023, discussed the arguments of the petitioner. The Contractor requested to revoke the termination order of the contract and to release the Bank guarantees, since the entire process was done without the consent of the SEC. But the Chief Engineer denied the arguments and pointed that, if any contractor violates the agreement conditions which caused loss to the exchequer, the agreement authority had the right to terminate him from the work and hence his argument that the contract was terminated illegally with risk and cost is entirely groundless. After that, the SEC

discussed the matter and decided not to accept the arguments submitted by the Contractor, since he had not furnished his willingness statement or detailed programme chart as directed in the previous SEC meeting. The SEC also directed, the Chief Engineer, KSRRDA to produce the copies of all communications regarding the removal of electric posts and KWA pipelines, before the Committee, for scrutinizing the same in the next meeting and to determine whether the proposed site had been fully handed over to the Contractor in time by the Department.

5) In the next meeting of the the SEC held on 30.01.2024, after scrutinizing all the connected documents, the Non-official Member informed that as per Clause 24-2 Dispute Redressal System incorporated in the Accepted Agreement by both parties, "Either party will have the right of appeal against the decision of the competent authority to the Standing Empowered Committee within 90 days of decision of the competent Authority if the amount appealed against exceeds 0.20 (Zero point Two Zero) percent of the initial contract price" and hence this dispute should have been submitted to the Standing Empowered Committee. But the Chief Engineer pointed that the claim of the petitioner was not valid in this case and if he had any grievance on the actions of the Chief Engineer/other officials of KSRRDA, at any stage, he should have been approached the Standing Empowered Committee for redressal of the same. The SEC discussed the matter and observed that the contractor failed to approach SEC at any stage for redressal of grievances before the issuance of Ext. P13. Also the petitioner denied the direction of the SEC meeting held on 11.10.2023, to submit willingness statement and a detailed programme chart for timely execution of work. From this, it is clear that, he is not interested to resume the subject work and therefore the argument of the Contractor to quash Ext. P13 does not merit consideration. Therefore the Standing Empowered Committee arrived at a final decision, with dissent note of the Non-official Member, to reject the request of the Contractor in Ext.P14 and to upheld the order No.109/DB3/2021-22/KSRRDA dated 07.06.2023 (Ext. P13) of the Chief Engineer, which terminated the work with risk and cost of the contractor.

6) Government have examined the matter in detail and accepted the final decision of the Standing Empowered Committee as per the Minutes read as 6th paper above. Government are, therefore, pleased to issue the following directions;

a)Ext. P14 Petition of the Contractor is rejected and the Chief Engineer, KSRRDA is directed to continue the further proceedings based

on Ext. P13.

b)The Chief Engineer,KSRRDA is directed to take urgent steps to submit proposal for Revised Administrative Sanction to Government for the balance work of the road in Package No. KR1396 MRL02-PGM Road - Mala Block, Thrissur.

7)The judgement read as 2nd paper above is thus complied with.

(By order of the Governor)  
MILAN ELIZABETH GEORGE  
UNDER SECRETARY

The Advocate General, Kerala, Ernakulam (with C/L)  
The Chief Engineer, KSRRDA, Thiruvananthapuram  
Sri. R. Murukeshan(Chief Engineer (Rtd.)), T.C 39/1632-1, Kalyan Hospital Theragam Road, Manacaud P.O, Thiruvananthapuram  
Sri.Rejimon A.T, Arampillil House, Mangattur, Kolenchery P.O, Ernakulam  
The Principal Accountant General(Audit),Kerala,Thiruvananthapuram  
The Accountant General (A&E), Kerala, Thiruvananthapuram  
Web & New Media, I&PRD  
✓ The Director, Information Kerala Mission, Thiruvananthapuram  
Stock File

Forwarded /By order  
Signed by

Nisam N

Date: 16-03-2024 11:34:50

Section Officer

Copy to: Private Secretary to Hon'ble Chief Minister  
Private Secretary to Hon'ble Minister for LSGD