



GOVERNMENT OF KERALA

Abstract

Local Self Government Department- Judgment dated 06.09.2024 in Writ Appeal No.41/2022 filed by Sri.B Sathyaseelan & Another before the Hon,ble High Court - Complied with – Orders issued.

Local Self Government (DD)Department

G.O.(Rt)No.834/2025/LSGD Dated,Thiruvananthapuram, 27-03-2025

Read:- 1.Judgement dated 06.09.2024 in Writ Appeal No.41/2022 filed by Sri. B Sathyaseelan & another before the Hon'ble High Court.

2. Representation dated 19.09.2024 filed by Sri.B Sathyaseelan & another before the Principal Secretary, LSGD.

3. Letter No. C/2164/2024 dated 05.12.2024 from the Secretary, Block Panchayath, Vettikkavala, Kollam

4. Letter No. LSGD/PD/38457/2024-CSSB4 dated 18.12.2024 from the Principal Director, LSGD

5. Letter No.X1- COC 453/2025/2025028167 dated 21.02.2025 from the Advocate General.

6. Letter No.LSGD/PD/7649/2025-DB3 dated 18.03.2025 from the Chief Engineer, LSGD

ORDER

As per the judgement dated 06.09.2024 in WA No.41/2022 filed by Sri. B. Sathyaseelan & another before the Hon'ble High Court, the Court had directed the Secretary, Department of Local Self Government to address the remaining grievances of the appellants and to take necessary steps for closure of the work. The Court has also directed the appellants to submit fresh representation for the remaining grievances and that the Secretary shall consider and take a decision on the same after hearing the Appellants within a period of three months from the date of receipt of such a representation.

2. The brief of the case is as follows:

i.The construction work of Vendar Moozhicode road in Vettikkavala

Block Panchayat included in the NABARD RIDF Tranche 3 was undertaken by Sri.B.Sundaram, Chaithanyam, Vellam, Neduvathoor executing agreement with the Secretary, Vettikkavala Block Panchayat on 08.06.99 as per SoR 1996 estimate rate at 11% excess rate. Since the new SoR came into force on 01.07.99, the contractor demanded payment of rate as per the revised SoR. The construction cost was revised following the direction of the LBS Centre for Science and Technology. Although the third respondent the Secretary,Vettikkavala Block Panchayat proposed revision of rates in accordance with the new SoR, the same was not approved by the District Level Technical Committee (DLTC).

ii. Based on the unapproved revised estimate rate, supplementary agreement dated 04.02.02 for an amount of Rs.38,92,000/- is seen entered between the second appellant Sri Sundaran and the third respondent Secretary Vettikkavala Block Panchayat. Although the contract agreement for the work was entered with Sri. Sundaran, the second appellant in the W.A 41/22, the work was completed by Sri Sathyaseelan on 31.03.2002 based on the Power of Attorney dated 17.12.1999. Aggrieved by the inaction of the third respondent and the Project Implementing Authority (PIA) in closing the measurement book (M- book), and in preparing the final bill after completing check measurement, the petitioners preferred W.P(C) No.19568/2016 and the learned single judge dismissed the same on the ground that the petitioners were not able to establish their right to claim contractor's profit and tender excess. Against the decision of the learned single judge, the above W.A was preferred. Although a work on contract basis is to be completed as per the agreement rate, Government have sanctioned the balance payment of Rs.9,66,343.76/- calculating the total amount payable to the petitioner as Rs. 29,27,736.76/- in the SoR 1999, as per G.O(Rt)dated 07.02.2017, considering that the revised SoR came into effect before the initiation of the work and that he had serious physical and financial constraints.

iii. Para 9 of the court direction dated 06.09.2024 states as follows: *“We are of the view that the Government have sympathetically considered the claim of the appellants for applying the schedule of rates which came into effect on 01.07.1999. This was done even when the Government was of the view that the said revision was not applicable to the work undertaken by the appellants. The remaining grievance of the appellants is with regard to the non-closure of the work, denial of contractors’ profit and tender excess as well as nonpayment in accordance with the supplementary agreement executed on 04.02.2002”.*

iv. The representation dated 19.09.2024 submitted by the petitioner following the court direction mentions that he had completed the work on 31.03.2002 based on the supplementary agreement executed on 04.02.2002 as per SoR 1999 at an estimated rate of Rs.38,92,000/-. Although the check measurement for the work had been done by the AE, Vettikkavala Block Panchayat, DRDA, Kollam, the petitioner contended that the Secretary, Vettikkavala Block Panchayat had not taken steps to close the bill after payment as per the revised estimated rate. The petitioner conveyed that instead of Rs.86,055/-, an amount of Rs.3,29,340/- has been deducted by the PWD for the bitumen supplied and hence a balance amount of Rs.20,24,343/- is to be received along with 18% interest and 6% compound interest with effect from 31.03.2002, the date of completion of the work. Hence it was requested to grant him an opportunity for hearing, in compliance with the court direction dated 06.09.2024.

3. While considering the matter, Sri. Sathyaseelan filed a contempt case CoC(C) No.453/25 against non-compliance of the judgment dated 06.09.2024 within the stipulated time allowed by the Court, and accordingly the Hon'ble Court directed to pass orders in terms of the judgment, after affording an opportunity of hearing to the petitioner as well as to the concerned respondents in the matter within a period of 3 weeks from 20.02.2025. Subsequently the Principal Secretary, LSGD heard the appellants and the respondents concerned on 15.03.2025.

4. The following points were presented at the time of the hearing:

4.i. The Counsel for the Appellants informed the following, apart from the details presented by the petitioner in his representation dated 19.09.2024.

a) The Commissioner of Rural Development issued order dated 10.07.2000 permitting inclusion of cost escalation and therefore revised estimate had to be prepared and sent to DLTC for approval. But DLTC did not take any action on the proposal. Thereafter a supplementary agreement was executed between the second appellant and the third respondent Secretary, Vettikkavala Block Panchayat for an amount of Rs 38,92,000/- and the work was completed on 31.03.2002. The Check Measurement was done by Assistant Engineer, Vettikkavala Block Panchayath DRDA, Kollam. The Secretary Vettikavala Block Panchayath was duty-bound to close the bill after paying the amount as per the estimated rate.

b) The Panchayat had executed the supplementary agreement with the parties and therefore was liable to pay the amount as per the said agreement. Also

the Panchayat had not denied the execution of the agreement, but alleged that it had not received the approval of the Government for the same. Revised Estimate was prepared including the cost escalation having contractor's profit (CP) and tender excess for an amount of Rs.38,92,000/- as per the Panchayat decision dated 19.05.2000. GO (MS) No. 17/2001/Planning dated 18.06.2001 provides for deemed approval, if no decision is taken by the DLTC within 15 days of submission. Government filed a statement before the High Court pursuant to interim order dated 22.01.2021, wherein the amount was calculated based on 1999 SoR. Therefore the argument of the Panchayat fails and Government have never objected the supplementary agreement dated 04.02.2002 before the Hon'ble High Court. Vide the GO dated 23.05.2017, Government admitted that the amount paid by the Government is not the final amount and the claim of the petitioner in the case before the Hon'ble High Court will continue.

c) Despite the specific direction of the Government on 02.05.2016 to the Panchayat, the procedure in relation to the closure of work in the M Book has not been done by the Panchayat, which is arbitrary and illegal. Also on 02.11.2002, as per Ext P7, the Project Officer of the Implementing Authority recommended the CRD to immediately prepare the final bill based on SoR 1999 and to check measure the works and to approve the bills. But the respondents and implementing authority did not take any steps to finalise the bill and till this time Panchayat has not complied the same.

d) The agreement is executed by the Panchayat, which is a valid document under the provisions of the Indian Contract Act and therefore Panchayat is liable to pay the balance amount with interest @ 18% p.a. as compensation to the petitioner along with the compound interest from 31.03.2002, the date on which the work was completed.

e) As per the special conditions in the agreement, it was specified that the bitumen required for the work will be supplied departmentally from the division store free of cost. An amount of Rs.3,29,340/- for the bitumen supplied has been deducted by the PWD instead of Rs.86,055/- which is highly excessive from the permissible rate reduction.

f) Therefore the Petitioners have to get a sum of Rs.20,24,343/- as balance with the prevailing interest rate.”

4.ii. The Panchayath Secretary, Vettikkavala Block has reported the following:

“Agreement for the road work, Vendar - Moozhikkodu Road in

Vettikkavala under NABARD RIDF was signed on 08.06.1999 in SoR 1996 for Rs.13,72,000/- above 11% of estimate rate and without contractor's profit. But LBS suggested certain deviations in the estimate on 29.11.1999. Therefore revised estimate in SoR 1999 for Rs.38,92,000/- was prepared by DRDA and submitted to Government, but the same was not approved. Later Government calculated a total amount of Rs.29,27,737/- in SoR 1999 for all items and an amount of Rs.9,66,343 was sanctioned to the petitioner by excluding the already given amount of Rs.19,61,393/-. This was given to the contractor on 07.06.2017. The petitioner's request to allow revised estimate rate in SoR 1999 is not allowable as per rules. As per revised estimate of LBS, the bitumen rate was calculated in SoR 1999 amounting to Rs.3,29,340/-. But the petitioner calculated it in SoR 1996 at Rs.86,055/- which is irregular. On perusing the previous files, it is seen that the then Assistant Engineer erroneously made entries in the M Book with revised rate and contractors profit before getting government approval of the revised estimate. But later the Assistant Executive Engineer, DRDA cancelled the measurement value and passed the bills in the existing SoR after necessary correction in the M Book. In this circumstance, no amount is pending against the Petitioner".

5. The Chief Engineer, LSGD after detailed examination of the case reported as follows:

a. The work of Vendar - Moozhikkodu Road in Vettikkavala under NABARD RIDF was awarded to the contractor Sri. B. Sundaran and Sri. B. Sathyaseelan was the power of attorney holder of Sri. B. Sundaran. The work was awarded at 11% above the estimate rate in SoR 1996 and without contractors profit. AS amount of the work was Rs.19,02,000/- and TS amount was Rs.13,75,172/-. Agreement was signed on 08.06.1999 and site was handed over to the contractor on 01.07.1999. New SoR 1999 came into effect from 23.06.1999, a date before handing over of the site. But SoR 1999 could not be allowed to the contractor, since the agreement was already signed in terms of SoR 1996.

b. During the execution stage of the work, revised Technical Sanction was accorded on 21.10.2000 in SoR 1996 (without CP) for Rs.16,42,821/-, based on the direction of LBS, the Quality Monitoring Agency of NABARD. But supplementary agreement was not seen signed. After the completion of metalling work, on 14.03.2001, LBS had conducted quality checking and found certain faults and recommended some additional works. Even though revised estimate was prepared by including these additional works for Rs.19,52,615/-, the same was not approved. The Contractor filed OP

No.26476/2000 with a request to allow SoR 1999, Contractor's profit etc and as per court direction, revised estimate was prepared for Rs.38,92,000/- in SoR 1999. But DLTC had not sanctioned the same. But it is seen that supplementary agreement was signed for this unapproved revised estimate on 04.02.2002, between the Block Panchayat Secretary and the Contractor. But BOQ is seen to be absent for the same. Later as per the judgment dated 05.06.2013 in WP(C) No. 5972/2008, an amount of Rs.1,42,206/- was sanctioned to the contractor as per GO(Rt) No.763/2015/LSGD dated 17.03.2015. As per the rate in the unapproved revised estimate, the then Assistant Engineer had made entries in M Book and later the same were seen canceled. But the contractor filed WP (C) No. 19568/2016 for getting the amount entered in the M Book and its interest.

c. The contractor had also filed several petitions before Government and the Government had as per GO(Rt) No. 350/2017/LSGD dated 07.02.2017, calculated a total amount of Rs.29,27,737/- (without CP and Tender Excess) in SoR 1999 for all items and an amount of Rs.9,66,343/- was sanctioned to the petitioner by excluding the amount of Rs.19,61,393/- already paid to the petitioners. Since the work was undertaken as a contract work, the petitioner is eligible for Contractor's Profit. Later WP (C) No. 19568/2016 was dismissed by the Court and the petitioner filed WA No.41/2022. As per the judgment dated 06.09.2024 in the writ appeal, the Court directed the Government to consider the matters including the non-closure of Bill Book, tender excess request, eligibility of Contractor Profit, and the claim of the petitioner that he is eligible for getting rate as per the supplementary agreement dated 04.02.2002.

d. Even though SoR 1999 was allowed as per Government order dated 07.02.2017, the Bill Book was not seen closed, due to the non-approval of the revised estimate and due to the non-disposal of the writ petition pending before the court (for claiming sanction of revised estimate). After the completion of metalling work, the LBS had conducted quality checking and recommended some rectifications on 14.03.2001. But on perusing the files concerned, delay was seen occurred from the part of the Block Panchayat in supplying bitumen and therefore the petitioner is eligible for the cost for re-metalling and other extra items. Hence all works done as per the unapproved revised estimate may be included in the M Book and direction may be given to close the M Book accordingly, after finalizing the rates.

e. Bitumen was supplied by the Block Panchayath in SoR 1999 and therefore an amount of Rs.1,98,135/- can be deducted from the total amount of the work as the cost of bitumen. Also, an amount of Rs.2748/- has to be remitted

by the contractor as the sum of 2.1 % sales tax and its 15 % surcharge of bitumen.

f. In these circumstances, the maximum balance amount allowable to the Contractor has been worked out as follows:

Amount in ₹

Total amount allowable for the work @ SoR 1999 including 10% CP	32,39,677
Amount to be deducted, as cost of bitumen (including CP)	1,98,135
Amount to be deducted as 2.1% sales tax on bitumen and its 15% surcharge	2,748
Balance amount	30,38,794
Settlement as per GO(Rt) No. 350/2017/LSGD dated 07.02.2017	29,27,737
Balance amount allowable to the contractor	1,11,057
Balance amount allowable including 12% interest from 2017	2,74,973

5. Government have examined the details in the representation submitted by the petitioner pursuant to the judgment dated 06.09.24 in WA 41/22 (in Sri Sathyaseelan and another before the Hon. High Court), the statements given during the hearing and verification reports furnished by the CE, LSGD .

6. Having examined the various issues raised in this case, the following directions are issued to Secretary, Vettikkavala Block Panchayat, the third respondent in the Writ Appeal No.41/2022:

(i) An amount of Rs.2,74,973/- (Rupees Two Lakhs Seventy Four Thousand, Nine Hundred and Seventy Three only) will be released to the petitioners, as the balance amount found eligible, for the work related to Vendar - Moozhikkodu Road in Vettikkavala under NABARD RIDF from the permissible fund of the Block Panchayat;

(ii) All works done as per supplementary agreement dated 04.02.2002 based on the unapproved revised estimate will be included in the M Book.

(iii) The officers concerned will take immediate steps to close the M Book and the work accordingly.

7. The judgment dated 06.09.24 in WA 41/2022 filed by Sri Sathyaseelan and another before the Hon'ble High Court is complied with accordingly.

(By order of the Governor)
DR SHARMILA MARY JOSEPH
PRINCIPAL SECRETARY

The Advocate General, Kerala, Ernakulam (with C/L)
The Principal Director, LSGD, Thiruvananthapuram
The Chief Engineer, LSGD, Thiruvananthapuram
The Principal Accountant General (Audit), Kerala, Thiruvananthapuram
The Accountant General (A&E), Kerala, Thiruvananthapuram
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Section Officer

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Private Secretary to Hon'ble Minister for LSGD