

(2010) 04 KL CK 0070
In the High Court Of Kerala
Case No : WP (C) . No. 29870 of 2009 (C)

Johnson V. Francis

APPELLANT

Vs

The Executive Engineer, The Assistant Executive Engineer and
The Assistant Engineer

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 04 KL CK 0070

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : P.K. Muhammed, for the Appellant; M. Dinesh, SC, KWA, for the Respondent

Judgement

P.N. Ravindran, J.—The petitioner is a contractor engaged by the Kerala Water Authority for the execution of maintenance works in the Kerala Water Authority Quarters at Koovappadom in Ernakulam district. The grievance voiced by the petitioner is that though Ext.P2 final bill was submitted, till date payment has not been effected. In this writ petition, the petitioner seeks a direction to the respondents to pay the sum of Rs. 6,58,045/- with interest at 18% per annum.

2. The first respondent has filed a counter affidavit dated 28.11.2009 wherein it is stated that the petitioner was bound to execute 37 items of work, that he has executed only 29 items and that final bill in respect of the 29 items has been check-measured and a decision taken to pay the amount subject to the condition that the petitioner shall complete the remaining works also as undertaken by him. It is also stated that the Kerala Water Authority will pay the bill amount to the petitioner if the petitioner accepts the measurements and the determination of the amounts made by the Kerala Water Authority. The learned Counsel for the petitioner submits that the petitioner is willing to accept the measurement and the determination of the amounts made by the Kerala Water Authority. The learned Counsel for the petitioner also submits that no balance work remains to be done and that as the final bill has been accepted, the petitioner is absolved of

all liabilities.

3. The first respondent has in paragraph 5 of the counter affidavit categorically stated that the petitioner has to execute eight more items of work and that he has executed only 29 items. The petitioner has not filed a reply affidavit controverting the said statement. It is evident from Ext.P2 final bill itself that the petitioner has not executed seven items of work. (See items 31, 32, 33, 34, 35, 36 and 37 in Ext.P2 bill). It is, therefore, evident that the petitioner has to execute some more works which he had agreed to execute. In such circumstances, I am of the opinion that the petitioner cannot seek payment of the final bill in full, at this stage. The petitioner can claim payment of the full amount only if he executes the balance work. Otherwise, the Kerala Water Authority will be entitled to retender the work at the risk and cost of the petitioner.

In such circumstances I dispose of the writ petition with the following directions:

- (1) The respondents shall disburse to the petitioner 75% of the bill amount admitted by them within one week from the date on which the petitioner produces a certified copy of the judgment before the first respondent.
- (2) The petitioner shall also simultaneously execute and submit an undertaking to the first respondent in the form of an affidavit attested by a Notary undertaking to execute the balance works within one month from the date on which 75% of the bill amount is disbursed to the petitioner. He shall also execute the balance works within the said period.
- (3) The respondents shall also take necessary steps to ensure that requisite administrative/financial sanction is issued so as to enable the petitioner to carry out the remaining works and also supply the necessary materials., if they have not been supplied so far.
- (4) The works shall be executed at the rates agreed upon earlier and it will not be open to the petitioner to claim revision of rates.
- (5) Upon the petitioner completing the balance works, payment of the balance amount for the works executed by the petitioner shall be made expeditiously and in any event within three months from the date of submission of the final bill after completion of the work.