
(2021) 11 KL CK 0213

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 15722, 17618, 19228 Of 2021

Majestic Constructions

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Citation : (2021) 11 KL CK 0213

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : George Mathew M.D.Sasikumaran Praveen S. Sunil Kumar A.G Dipu
James Mathew K.T. George K.V. Stephy K Regi, K.V.Manoj Kumar

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. These three writ petitions are connected. The petitioners in these writ petitions are challenging G.O.(Rt) No.3815/2021/Fin. dated 30.04.2021 of the Government of Kerala.

2. When these writ petitions came up for consideration, both sides submitted that the point raised in these writ petitions are covered by common judgment dated 11.11.2021 in W.P.(C). No.22964 of 2021 and connected cases. It will be better to extract the relevant portion of the judgment:

"24. The Ext.P7 thus imposes a new condition in all the ongoing works as on 30.04.2021. Further, the said new condition is made applicable to all works for which agreements are executed after 01.11.2018. Ext.P7 is legally infirm for two reasons. Firstly, by Ext.P7, a new onerous condition is imposed on all ongoing works unilaterally, which is impermissible in law. It is true that as per Clause 5.2 of the Standard Bidding Document, a contractor is bound by all Government Orders prevailing. But the said Clause cannot take in Government Orders which were not prevailing at the time of the execution of agreement.

25. Secondly, there may be contracts executed after 01.11.2018 and works completed before issuance of Ext.P7 on 30.04.2021. Subsequently issued Government Orders cannot alter the rights and liabilities of concluded commercial contracts. For both the afore reasons, Ext.P7 order cannot be made applicable to all agreements executed after 01.11.2018 and before 30.04.2021.

In the circumstances, it is declared that Ext. P7 Government Order dated 30.04.2021 will not apply to such contract works undertaken by the petitioners prior to 30.04.2021 which were not ongoing contract works as on 01.11.2018. All consequence of such declaration will follow. The writ petitions are disposed of as above. However, it is made clear that Ext. P7 Government Order will apply to all contract works including if any undertaken by the petitioners, the work of which were ongoing as on 01.11.2018."

3. In the light of the above judgment, I think these writ petitions can also be disposed in tune with the above judgment.

Therefore, these three writ petitions are disposed in tune with the judgment dated 11.11.2021 in W.P.(C). No.22964 of 2021 and connected cases. The petitioners are free to approach the authority concerned to release the amount in accordance with the above judgment, if there is any amount due to them. If any amount is due to the petitioners, the same should be disbursed forthwith. It is made clear that if the respondents have got any right to recover any amount in tune with the above judgment, they are free to recover the same.