**(2023) 03 KL CK 0086**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No.2099 Of 2015

Temple Advisor Committee APPELLANT

Vs

Cochin Devaswom Board RESPONDENT

**Date of Decision :** 09-03-2023

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2023) 03 KL CK 0086

**Hon'ble Judges :** Anil K. Narendran, J;P.G. Ajithkumar, J

**Bench :** Division Bench

**Advocate :** K.P.Sreekumar, K.P.Sudheer , S.Rajmohan

**Final Decision :** Disposed Of

## Judgement

P.G. Ajithkumar, J.

1. The Temple Advisory Committee in Vyttila Sree Siva Subramaniya Temple has filed this Writ Petition under Article 226 of the Constitution of India seeking the following reliefs,-

"i) To issue a writ of mandamus or direction to the respondents to release Rs.30,25,000/- with immediate effect;

ii) To issue a direction to approve the new estimate of Rs.83,70,308/- and to release the same."

2. As per Ext.P2 order the 1st respondent accorded sanction to the petitioner to execute the reconstruction work of the Sreekovil of the Temple at a cost of Rs.30,25,000/- on 100% contribution by the 1st respondent. It was directed that the work should be done under the supervision of the Maramath Wing of the Department. It was also directed that the income and expenditure relating to the work should be subject to audit before making final payment. An agreement in that regard was directed to be executed by the petitioner. The petitioner would contend that the work was already completed and in the light of the opinions

rendered by the Sthapathi of the Temple Sri.K.K.Sivan Achari and Vezhaparamban Brahmadathan Namboothiripad, teak wood alone could be used for the reconstruction work. Estimate based on which Ext.P2 order was issued contemplated use of anjili. When anjili is replaced with teak wood the estimated cost of the work was escalated to Rs.83,70,308/-. The 1st respondent issued no objection certificate for the purchase of the teak wood to be used for the work. The petitioner has submitted representations for approval of the revised estimate. In fact, the petitioner has completed the work in every respect as early as on 31.12.2016. In such circumstances, the petitioner seeks to release Rs.30,25,000/-after deducting the amount which was already paid and also to approve the revised estimate for Rs.83,70,308/- and to pay that amount.

3. A counter affidavit was filed on behalf of the 1st respondent. It is stated that the petitioner approached the 1st respondent and the learned Ombudsman with a suggestion that teak wood should be used instead of anjili. On the request of the petitioner, no objection certificate for the purchase of the teak wood from the Forest Department was issued, but it was made clear that the petitioner had to meet the additional expenses in that regard. The estimate approved by the 1st respondent is for Rs.30,25,000/- and sanction was accorded to carry out the work as per the said estimate with 100% contribution by the 1st respondent. Therefore, the petitioner is not entitled to claim amount as per the revised estimate of Rs.83,70,308/-. An agreement was executed by the petitioner and the amount agreed to therein is also Rs.30,25,000/-. The specific stipulation was that the amount certified by the Maramath Wing, after inspection of the work, would alone be paid. Accordingly, the 1st respondent sought to dismiss the Writ Petition.

4. The 4th respondent Kerala State Audit Department was suo motu impleaded as per the order dated 18.10.2022.

5. In I.A.No.1 of 2022 the petitioner has sought an order directing the 1st respondent to release an amount of Rs.16,98,376/- remained due in respect of the work it had done in terms of Ext.P1. The petitioner further claimed that it has constructed Namaskara Mandapam also at Vyttila Sree Siva Subramanya Swamy Temple as per the order of the 1st respondent dated 15.11.2016. Sanction was accorded with the stipulation that 60% of the estimate amount would be shared by the 1st respondent. Total cost of work was Rs.5,35,000/-. An amount of Rs.3,21,000/- is claimed due in that regard. The petitioner accordingly sought a direction to the 1st respondent to release an amount of Rs.16,98,376/-.

6. In answer to the said claims, the 1st respondent as well as the 4th respondent filed counter affidavits. The 1st respondent took the stand that only an amount of Rs.1,13,441/- was due in respect of the reconstruction work and the petitioner was asked to submit the stamped receipt for effecting payment of that amount. Exts.R1(B) and R1(C) are the documents produced by the 1st respondent sanctioning such an amount.

 

7. The 4th respondent would contend that the Department has verified the records and quantified the amounts due to the petitioner. Paragraph Nos.3 reads,-

”3. As per the direction of this Honourable Court Order dated 18.10.2022, the matter of Reconstruction of Sree Subrahmanya Swami Sreekovil and renovation of Namaskara Mandapam at Vyttila Siva Subrahmanya Swami Temple, the following remarks are submitted here with after verifying the files (H1-1866/16, H1-2106/12) furnished by the Secretary, Cochin Devaswom Board, Thrissur.

1) Reconstruction of Sree Subrahmanya Swami Sreekovil

(i) As per the Board Order No. H1/2016/2012 dated 21/6/2013 Cochin Devaswom Board accepted an estimate of Rs.30,25,000/- for the Reconstruction of Sree Subrahmanya Swami Sreekovil work and entrusted the work to Temple Advisory Committee on the basis of 100% contribution from the Board with the condition of execution of an agreement with the Board.

(ii) Later Temple Advisory Committee asked for issue of a NOC for the procurement of Teak Wood from Forest Department for using Teak as Wood for the work instead of Anjili Wood in the estimate. As per Order No. H1/2106/11 dated 02.05.14 Board issued NOC to Committee with the condition that the Board will not borne any additional financial burden due to the use of Teak Wood.

(iii) An agreement was executed in connection with this work on 08.06.2015 between Temple Advisory Committee and Cochin Devaswom Board in which Committee agreed to execute this work on 100% contribution basis with the estimate of Rs.30,25,000/-and it has also been stipulated that the amount will be paid on the basis of the Valuation Certificate of the work by the Maramath Wing of Cochin Devaswom Board.

(iv) As per the Measurement Book No. 675/19-20 (Page No. 26 to 37) value of the work measured as shown below.

| | |
|---|---|
| Total valuation of the work done | Rs.20,71,841.29 |
| Deduct 10% of Contractor's profit | |
| and 5% of Overhead Charge | Rs. 3,10,776.19 |
| Amount to be paid to the Committee | Rs.17,61,065.10 |

Details of the amount already paid to the Committee. Board Order No. H1/2106/11 dated 22/7/15 Rs.4,90,766.00

‟ dated 2/6/16 : Rs.3,94,759.00

‟ dated 4/1/17 Rs.7.62.099.00

Total Rs.16,47,624.00

Balance amount to be paid to the Committee Rs.1761065-1647624

 

Rs.1,13,441.00

As per the terms of the agreement, the above mentioned amount is to be paid by the Cochin Devaswom Board to the Temple Advisory Committee.

2) Renovation of Namaskara Mandapam at Siva Subrahmanya Temple.

(i) As per the Board Order No. H1/1866/16 dated 15/11/16 an estimate of 5,35,000/- is approved and sanction is accorded to the Temple Advisory Committee to execute the work on contribution basis. Board's contribution will be 60% of the valuation amount. There is no agreement is seen executed between Committee and Board in this regard. Samithi completed the work and handed over the Namaskara Mandapam to the Board on 31.12.16. Expenditure Statement is also submitted to the Board.

(ii) Details of the valuation of the work and amount to be released to the Committee as per the final valuation in the measurement Book No. 38/2006 (Page No. 155 to 170) is given below.

Total value of the work done Rs. 3,53,930.14

Deduct Contractor's profit and 5%

Overhead Charge Rs.53,089.52

Rs. 3.00,840.62

Board's contribution 60% Rs. 1,80,504.37

Rounded to Rs. 1,80,504.00

Board's contribution to the Temple Advisory Committee (Rs.1,80,504/-) is not seen paid till date.”

8. The petitioner has filed a reply affidavit and additional reply affidavit in answer to the respective counter affidavits filed by the 1st respondent as well as the 4th respondent.

9. Heard the petitioner, the learned Senior Government Pleader and the learned Standing Counsel for Cochin Devaswom Board.

10. Ext.P2 is the order allowing the petitioner to execute the work of reconstruction of the Sreekovil of Vyttila Siva Subramaniya Temple. The order reads,-

“As per the papers cited a revised estimate of Rs.30,25,000/-(Rupees Thirty lakhs twenty five thousand only) is approved and sanction is accorded to Kshethra Upadesaka Samithy to execute the work on contribution basis. Board's Contribution will be 100% of the valuation amount.

The work should be done under the supervision of department maramath staff. After the completion of the work the samithy will not have any right on the above structure. Samithy should also submit audited income and expenditure statement before effecting the final payment or whenever the department demands.

The Devaswom Officer should obtain and submit a consent letter from the Samithy before commencement of the above work. An agreement should be executed by the Samithy in this regard. B.P cited as 1st paper above is hereby cancelled."

11. In Ext.P2 order the petitioner has been directed to submit audited income and expenditure statement of account regarding the work before effecting the final payment. Indisputedly, in terms of the said order, an agreement was executed by the petitioner. The requirement of using teak wood instead of anjili for the reconstruction work has been seen accepted by the 1st respondent, but there is nothing on record to show that the 1st respondent had agreed to bear the expenditure required to be incurred over and above the originally estimated amount, i.e., Rs.30,25,000/-. From Exts.R1(B) and R1(C), it can be seen that the balance amount due was quantified on the basis of the notes submitted by the Assistant Engineer and Assistant Executive Engineer in regard to the work. The petitioner does not dispute that the 1st respondent is obliged to take measurements before ordering payment of the cost of work. The 4th respondent in the counter affidavit stated that in respect of the reconstruction of the Sreekovil of the Temple, the total amount now due to the petitioner is Rs.1,13,441/-. The petitioner claims that having the Sreekovil been reconstructed using teak wood with the permission, the 1st respondent should pay the amount as per the revised estimate of Rs.83,70,308/-. But there is nothing on record to show that the 1st respondent ever agreed to pay the price in terms of the revised estimate. On the other hand, as pointed out by the 4th respondent, the 1st respondent issued no objection certificate as per order No.H1/2106/11 dated 02.05.2014 on the condition that the Board will not borne any additional financial burden due to the use of teak wood. It implies that the entire extra expenditure on account of using teak wood would be borne by the petitioner. In such circumstances, the relief claimed by the petitioner to issue a direction to the 1st respondent to approve the revised estimate of Rs.83,70,308/- is not liable to be granted.

12. In I.A.No.1 of 2022 the petitioner has claimed payment of Rs.16,98,376/-. This includes amount of Rs.13,77,376/-, the balance amount said to be due with respect to the reconstruction of the Sreekovil at an estimated cost of Rs.30,25,000/- and Rs.3,21,000/-, which is the 60% contribution agreed to be paid by the 1st respondent in respect of the construction of Namaskara Mandapam. The amount due to the petitioner under those two heads was quantified by the 4th respondent on the basis of the measurements done by the Maramath Wing of the Board. The amount thus quantified Rs.1,13,441/- in respect of the reconstruction of the Sreekovil and Rs.1,80,504/- in respect of the Namaskara Mandapam.

13. The learned counsel appearing for the petitioner would submit that the

 

measurements were taken by the officials of the Board without giving notice to the petitioner. The work was completed as early as on 31.12.2016. The officials took the measurements not with the knowledge of the office bearers of the petitioner. It is therefore contended that the works actually carried out could not be brought to the notice of the officials. the learned counsel accordingly would submit that the measurements made do not reflect the entire work undertook by the petitioner and that resulted prejudice to the petitioner. Thus the learned counsel would submit that a proper measurement of both the works has to be done afresh.

14. As pointed out above, what the petitioner entitled is only the cost of work it has undertaken in terms of Ext.P2 order. The estimated amount of the work is Rs.30,25,000/-. The cost of the work undertaken by the petitioner in terms of that estimate is liable to be paid by the 1st respondent. Similarly, the costs of work carried out by the petitioner for the construction of the Namaskara Mandapam in terms of order No.H1-1866/2016 dated 15.11.2016 is also liable to be paid by the 1st respondent. The grievance of the petitioner is that the final measurements were taken in the absence of office bearers of the petitioner and therefore the particulars of the entire work they have done do not reflect in the measurement book. The work of the Sreekovil was completed as early as on 31.12.2016. The measurement was done in the year 2022. As a result of such a long delay, there was possibility of omissions in the measurement unless duly apprised. In that view of the matter, we are of the view that there shall be a direction to the 1st respondent to have a fresh measurement of the works of reconstruction of Sreekovil and construction of Namaskara Mandapam in the presence of the office bearers of the petitioner. The amount due to the petitioner shall be quantified on the basis of such measurements. The amount found to be due shall be paid to the petitioner after audit and certification by the 4th respondent. Whole such process shall be completed within a period of three months from today. It is made clear that the entitlement of the petitioner is in accordance with Ext.P2 and order No.H1-1866/2016 dated 15.11.2016.

The Writ Petition is disposed of accordingly.