

**(2009) 08 KL CK 0072**

**High Court Of Kerala**

**Case No:** Writ Petition (C) No. 23036 of 2009 (Y)

N.S. Pramod

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision:** Aug. 17, 2009

**Hon'ble Judges:** V. Giri, J

**Bench:** Single Bench

**Advocate:** Babu Joseph Kuruvathazha, for the Appellant; No Appearance, for the Respondent

**Judgement**

V. Giri, J.

Petitioner was awarded a contract for construction of the Kottappuram Minor Distributary from Ch.0/00 M to 1200 M and an agreement was executed in this behalf on 21.05.2004. One Mr. Abbaskutty, was awarded the work Ch.1200 M to 2570 M. Petitioner refers to the fact that for the construction of the distributary, it was necessary to cut open a pathway, which was vested in the Public Works Department. It is alleged that there was delay in handing over the site and this resulted in the delay in execution of the work which was awarded to the petitioner and Abbaskutty. It is stated that later, the agreement with Mr. Abbaskutty was terminated as per Ext.P24, but without the risk and cost of the contractor. Petitioner's contract was also terminated as per Ext.P7, but this was at the risk and cost of the petitioner. It is this, which has been essentially challenged in this writ petition.

2. Petitioner has approached this Court challenging the order terminating his contract in W.P.(C). No. 32482/2008 which is disposed of under Ext.P30(a) judgment. Para 4 of the said judgment reads as follows:

4. If so, the Government shall take a decision thereon within two months from the date of receipt of the report from the 2nd respondent. Petitioner's contention, that he is entitled to a parity of treatment with Mr. Abbaskutty, made in this regard under Ext.P24 may also be considered. A decision may be taken on Ext.P30 representation.

If the Chief Engineer feels that he is entitled to take a decision on Ext.P30, he shall do so within three months from the date of receipt of a copy of this judgment. The other contentions raised by the petitioner are left open.

3. Thereafter, the Chief Engineer considered the petitioner's claim, but rejected it inter alia holding that the works carried out by the petitioner at the time of termination was only 19.4% compared to 68% of work carried out by one Mr.Abbaskutty, whose contract was terminated without his risk and cost.

4. It is Ext. P31 which is also challenged in this writ petition.

5. But I take note of the fact that petitioner has approached the Government by Ext.P32 not only challenging the termination of the above agreement but also impugning the correctness of Ext.P30(a). It is appropriate for the Government to take a decision on Ext.P30(a).

6. I heard learned Government Pleader also.

7. This writ petition is disposed of directing the first respondent to consider Ext.P32 and take a decision after hearing the petitioner as well, within 2 months from the date of receipt of a copy of this judgment. Copy of the writ petition along with the judgment shall be produced before the first respondent for compliance.