

## V.O. Jose and The Secretary Vs State of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Sept. 15, 2010

**Hon'ble Judges:** T.R. Ramachandran Nair, J

**Bench:** Single Bench

**Advocate:** Babu Joseph Kuruvathazha, for the Appellant; Anoop Elias, for the Respondent

**Final Decision:** Allowed

### Judgement

T.R. Ramachandran Nair, J.

The petitioner is a contractor who was the successful tenderer pursuant to a notification issued by the

Nedumbassery Grama Panchayat as per Exhibit P1. The work in question was construction of a Mini Civil Station. The Panchayat had to invite

tenders for the execution of the work as the land along with the existing building of the Panchayat was acquired for the purpose of the Seaport-

Airport Road.

2. The petitioner completed the work to the satisfaction of the Panchayat. Finally, certain claims remained to be met by the Panchayat, for which

due resolutions were taken by the Panchayat seeking permission of the Government, which stands rejected by the Government as per Exhibit P10

by a cryptic order. This is under challenge in this Writ Petition.

3. Initially, the petitioner submitted the tender by quoting the rate of 40% above the estimate PAC. Pursuant to negotiations, the petitioner

extended his readiness to reduce the rate by 5%, which was accepted by the President of the 1st respondent-Panchayat as evidenced by Exhibit

P2. The Committee of the Panchayat considered the matter again and by Exhibit P3 resolution, they also accepted the rate quoted by the

petitioner. Finally, by Exhibit P3(a), Executive Engineer and Convenor of the District Level Technical Committee requested the Superintending

Engineer, Local Self Government Department to approve the rate quoted by the petitioner. Exhibit P4 is the communication from the Chief

Engineer to the Secretary of the Panchayat stating that in the light of the Government Order mentioned therein, further action can be proceeded

with, wherein the tender excess is fixed at 7.5%. Again the petitioner was called for negotiation whereby he submitted Exhibit P5 extending his

willingness to reduce the rate by 5% from 35% to 30%. The 2nd respondent forwarded the same to the Chief Engineer for approval as per Exhibit

P6. The Panchayat thereafter passed Exhibit P7 resolution, whereby they decided to have the tender excess at 7.5%. It was also decided that the

steel required will be supplied on purchasing from SIDCO. It is the case of the petitioner that the petitioner executed the agreement and

commenced the work and the work was completed in all respects. It appears that the Panchayat could not supply the steel as resolved in Exhibit

P9, which compelled the petitioner to purchase steel from open market and now the petitioner seeks for the difference in the price, namely the

market rate under which he purchased the steel. The Panchayat by a detailed resolution Exhibit P8 informed the Government about these matters

and requested for sanction for payment of tender excess at 7.5% and disbursement of the difference in the price of steel to the petitioner.

4. The learned Counsel for the petitioner submitted that none of the relevant facts were considered by the Government as evident from Exhibit P10

and no reasons are shown to support the decision taken to reject the request made by the Panchayat as per Exhibit P8.

5. A reading of Exhibit P10 shows that it is a one line reply rejecting the request of the Panchayat. What prompted the Government to reject the

request of the Panchayat is not evident from Exhibit P10.

6. The Panchayat has filed a counter affidavit explaining various aspects. It is explained in paragraph 7 that the Panchayat Committee held on

10.11.2004 discussed the matter in detail and decided to extend tender excess of 7.5% and also decided to supply steel to the petitioner by

effecting purchase from SIDCO. Accordingly, the Panchayat had requested the Member Secretary, State Planning Board to accord sanction for

the supply of steel from SIDCO, as per Exhibit R1(c). It appears that Government sanction was not given for the said resolution. It is explained

that the bona fide intention of the Panchayat was to complete the work within the stipulated time frame, since the Panchayat was under pressure to

accommodate eight public offices in the newly built civil station.

7. It is mentioned in paragraph No. 9 that while the construction was in progress, so many alterations and additions were made as per the technical

opinion of the Assistant Engineer, LSGD thereby enhancing the original estimate amount of Rs. 39,51,800/- to Rs. 61,77,576/-. The Panchayat

had accorded administrative sanction to the enhanced estimate amount vide resolution No. 1(2) dated 18.8.2005. The petitioner had completed

the work and the building was inaugurated on 15.5.2005 by the then Chief Minister of Kerala. All the eight Government Offices are presently

functioning in the new building. It is also stated that the petitioner did not accept the final bill as the conditions of the resolutions of the Panchayat

have not been fulfilled. Accordingly, the Panchayat has taken Exhibit P8 resolution and forwarded it along with Exhibit P9 to the Government.

8. The stand taken by the Panchayat therefore is that the peculiar circumstances under which the contract was executed, justify the action of the

Panchayat and the Government has to sanction tender excess at the rate of 7.5% and the difference in the price of steel. It is mentioned that as so

many Government Offices had to be accommodated in the new building, the work had to be completed urgently and the Contractor also was

compelled to complete the construction in the light of the urgency of the matter.

9. It is evident from Exhibit P10 that none of these aspects have been considered by the Government, while rejecting the claim of the Panchayat. It

is clear that the Contractor has fulfilled his obligations to the contract as per the directions of the Panchayat. Therefore, evidently, the Panchayat is

under the obligation to meet the requirements also. Therefore, it is not proper to refuse the request made by the Panchayat without any reason, as

the work has also been executed to the satisfaction of the Panchayat and Government Offices have been accommodated in the new building.

In that view of the matter, as Exhibit P10 did not reveal any proper reason for rejection of the request made by the Panchayat, it cannot survive.

Exhibit P10 is, therefore, quashed. The Writ Petition is allowed. There will be a direction to the Government to reconsider the request made by the

Panchayat as per Exhibits P8 and P9, after hearing the petitioner and the first respondent-Panchayat within a period of three months from the date

of receipt of a copy of this judgment. No costs.