

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

TUESDAY, THE 15TH DAY OF MAY, 2020/25TH VAISAKHA, 1942

W.P(C) NO.9585 OF 2020

PETITIONERS:

1. M/S. MKMS BUILDERS,
REPRESENTED BY ITS MANAGING PARTNER, A. SHAJAHAN SAIT,
AGED 52, S/O M.S.ABDUL SALAM

HEAD OFFICE AT NO.23, CHAMIERSROAD,
NANDANAM, CHENNAI - 600035

2. SHAJAHAN SAIT,
AGED 52, S/O M.S.ABDUL SALAM,
NO.23, CHAMIERSROAD,
NANDANAM, CHENNAI - 600 035

BY: ADV. SURYA BINOY

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE DEPARTMENT
OF GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
2. KERALA INFRASTRUCTURE AND TECHNOLOGY FOR
EDUCATION (KITE),
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.
SCERT BUILDING, KARAMANA THIRUMALA ROAD
POOJAPPURA, THIRUVANANTHAPURAM, PIN - 695 012
3. THE PROJECT MANAGER,
KERALA INFRASTRUCTURE AND TECHNOLOGY FOR EDUCATION
(KITE), SCERT BUILDING, KARAMANA THIRUMALA ROAD
POOJAPPURA, THIRUVANANTHAPURAM, PIN - 695 012
4. THE COORDINATOR TECHNICAL,
KERALA INFRASTRUCTURE AND TECHNOLOGY FOR EDUCATION
(KITE), SCERT BUILDING, KARAMANA THIRUMALA ROAD

POOJAPPURA, THIRUVANANTHAPURAM, PIN - 695 012

R1 TO R4 BY GOVERNMENT PLEADER SMT.VINITHA B.

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON
15.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING :

ORDER

Heard the learned senior counsel Sri.Jaju Babu, instructed by Smt.Surya Binoy, for the petitioners and the learned senior Government Pleader appearing for the respondents.

2. The learned senior counsel for the petitioners would submit that his clients are not even being given an opportunity to resolve the dispute in the manner set out by Clause 24(2) of the general conditions of contract. This is seriously disputed by the learned senior Government Pleader, who would state that such dispute resolution mechanism cannot be availed after termination of the agreement. He also states that it is absolutely essential that the work is completed in a time bound manner and, therefore that, this Court should not interdict the continuation of the work, which has already been awarded to another contractor.

3. There seems to be a considerable dispute at the Bar as to whether a proper joint measurement has been undertaken to determine the quantum of work that has been completed by the petitioners. I feel that there are matters

which should gain the attention of the Chairman and Managing Director of the second respondent, who is no doubt given the power to determine such disputes in accordance with Clause 24(2) of the general conditions of contract. At present, I am not examining the question as to whether the dispute resolution in Clause 24(2) would enable the Chairman and Managing Director to resolve such disputes even after termination of the contract. However, in the entirety of the facts and circumstances of the case and taking note of the submission of the petitioners that substantial amount of money and time can be saved if they are allowed to complete the work, I direct the Chairman and Managing Director of the second respondent to hear the representative of the petitioners on 18.05.2020 and, after consideration of all relevant materials, take a decision regarding the grievances of the petitioners, if possible on 18.05.2020 itself. The decision taken by the Chairman and Managing Director will be communicated to the petitioners without any delay.

GOPINATH P., JUDGE

okb

APPENDIXPETITIONERS' EXHIBITS :

- EXHIBIT.P1: TRUE COPY OF THE LETTER OF ALLOTMENT DATED 18.04.2018 SIGNED ON 19.04.2018
- EXHIBIT.P2: TRUE COPY OF THE AGREEMENT DATED 10.05.2018 SIGNED BETWEEN THE 1ST PETITIONER FIRM AND THE 2ND RESPONDENT
- EXHIBIT.P3: TRUE COPY OF THE AGREEMENT DATED 03.02.2020 IN RESPECT OF GHS VECHOOCHIRA COLONY AND GBHSS ADOOR
- EXHIBIT.P4: TRUE COPY OF THE FINAL SHOW CAUSE NOTICE DATED 12.02.2020
- EXHIBIT.P5: TRUE COPY OF THE INITIAL REPLY FILED BY THE 1ST PETITIONER FIRM DATED 17.02.2020 TO THE FINAL SHOW CAUSE NOTICE
- EXHIBIT.P6: TRUE COPY OF THE DETAILED REPLY FILED BY THE 1ST PETITIONER FIRM DATED 18.02.2020 TO THE FINAL SHOW CAUSE NOTICE
- EXHIBIT.P7: TRUE COPY OF THE TERMINATION PROCEEDINGS DATED 26.02.2020 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT.P8: TRUE COPY OF THE INTERIM ORDER DATED 05.03.2020 PASSED BY THIS HON'BLE COURT IN WP(C) 6762 OF 2020
- EXHIBIT.P9: TRUE COPY OF THE FRESH TENDER NOTIFICATION DATED 13.03.2020
- EXHIBIT.P10: TRUE COPY OF THE REPRESENTATION DATED 24.03.2020 FILED BY THE 1ST PETITIONER FIRM BEFORE THE RESPONDENTS
- EXHIBIT.P11: TRUE COPY OF THE DETAILED REPRESENTATION DATED 24.03.2020 FILED BY THE 1ST PETITIONER FIRM BEFORE THE RESPONDENTS
- EXHIBIT.P12: TRUE COPY OF THE CORRIGENDUM DATED 28.03.2020
- EXHIBIT P13: TRUE COPY OF THE REPRESENTATION DATED 04.04.2020 FILED BY THE 1ST PETITIONER FIRM BEFORE THE CHIEF MINISTER OF KERALA

- EXHIBIT P14: TRUE COPY OF THE EMAIL DATED 05.04.2020 RECEIVED FROM THE CHIEF MINISTER'S OFFICE
- EXHIBIT P15: TRUE COPY OF THE REPRESENTATION DATED 06.04.2020.
- EXHIBIT P16: TRUE COPY OF THE GO DATED 30.07.2015 ISSUED BY THE MINISTRY OF FINANCE
- EXHIBIT P17: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 24.04.2020 IN WP(C) TMP 144 OF 2020
- EXHIBIT P18: TRUE COPY OF THE RE-TENDER PROCEEDINGS DATED 18.04.2020 FLOATED BY THE 2ND RESPONDENT
- EXHIBIT P19: PHOTOGRAPH OF THE CONSTRUCTION AT GBHSS ADOOR AT THE TIME OF TERMINATION OF CONTRACT
- EXHIBIT P19(A) : PHOTOGRAPH OF THE CONSTRUCTION AT GHSS VECHICHIRA COLONY AT THE TIME OF TERMINATION OF CONTRACT
- EXHIBIT P19(B) : PHOTOGRAPH OF THE CONSTRUCTION AT GHSS KONNI AT THE TIME OF TERMINATION OF CONTRACT
- EXHIBIT P19(C) : PHOTOGRAPH OF THE CONSTRUCTION AT GHSS KADAPRA AT THE TIME OF TERMINATION OF CONTRACT
- EXHIBIT P19(D) : PHOTOGRAPH OF THE CONSTRUCTION AT GHS KOZHENCHERRY AT THE TIME OF TERMINATION OF CONTRACT

RESPONDENTS' EXHIBITS : NIL

TRUE COPY

PA TO JUDGE