

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
WEDNESDAY, THE 8TH DAY OF MARCH 2023 / 17TH PHALGUNA, 1944
WP(C) NO. 199 OF 2023**

PETITIONER:

**YUSAF ALI E.,
AGED 52 YEARS,
S/O. MUHAMED BAVA E, EASSAKKANAKATH MALIYEKKAL
HOUSE, PARIYAPURAM P.O., VIA TANUR,
MALAPPURAM DISTRICT, PIN - 676 302.**

**BY ADVS.
ABDUL JAWAD K.
ABDUL MAJEED.N
A.GRANCY JOSE**

RESPONDENTS:

- 1 THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2 THE SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT (INDUSTRIES AND PUBLIC WORKS-B)
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 3 THE CHIEF ENGINEER,
OFFICE OF THE CHIEF ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS AND BRIDGES),
THYCAUD, THIRUVANANTHAPURAM, PIN - 695 014.**
- 4 THE SUPERINTENDING ENGINEER,
OFFICE OF THE SUPERINTENDING ENGINEER,
PWD ROADS NORTH CIRCLE, PWD COMPLEX, MANANCHIRA,
KOZHIKODE DISTRICT, PIN - 673 001.**
- 5 THE EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER,
PWD ROADS DIVISION, MANJERI,
MALAPPURAM DISTRICT, PIN - 676 121.**
- 6 THE SENIOR FINANCE OFFICER,
OFFICE OF THE CHIEF ENGINEER, PUBLIC WORKS
DEPARTMENT, PWD (ROADS AND BRIDGES), THYCAUD,
THIRUVANANTHAPURAM, PIN - 695 014.**

SMT.RESHMI.K.M, SENIOR GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHAJI P. CHALY, J.

W.P.(C).No.199 of 2023

Dated this the 08th day of March, 2023

JUDGMENT

The petitioner, a contractor, entered into an agreement with the Executive Engineer, PWD Roads Division, Manjeri, Malappuram District.

2. According to the petitioner, he completed the work on 27.03.2021 and the final bill amount is also paid. The grievance of the petitioner is that an amount of Rs.2,08,691/- was retained by the respondents towards the differential value of price of bitumen from the bill amount covered by Ext.P1.

3. According to the petitioner, the said action is illegal. It is further pointed out that the petitioner has entered into a contract on 05.03.2020 and therefore, the Government Order issued on 30.11.2018 with respect to the payment of the price variation in bitumen in the contracts entered into by and between the contractors and the Government during the said period would not apply to the facts and circumstances of the case; being one issued by the Government to tackle the unprecedented 33% increase in the price of bitumen during the said period.

4. In fact, the question with respect to the deduction of the difference in price of bitumen was considered by this Court in Ext.P8 judgment dated 11.11.2021 and held that the deduction of the price when the bitumen prices go down is not a correct approach to the issue. It was also further found that the terms contained in the agreement executed by

and between the parties cannot be altered, merely because the price of the bitumen has gone down.

5. In that view of the matter, considering the facts and circumstances, and taking into account the purpose for which the notification was issued by the State Government in the year 2018, I am of the considered opinion that the petitioner is entitled to succeed in the writ petition.

Therefore, after having heard learned counsel for the petitioner, Sri.Abdul Jawad K. and learned Senior Government Pleader, Smt. Reshmi K.M., the writ petition is allowed; and consequently direct the competent among the respondents to release the aforesaid amount to the petitioner at the earliest, at any rate, within six weeks from the date of receipt of a copy of this judgment.

Sd/-
SHAJI P. CHALY, JUDGE

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APPENDIX OF WP(C) 199/2023

PETITIONER'S EXHIBITS: -

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| Exhibit - P1 | A TRUE COPY OF THE COMMUNICATION DATED 05/03/2020 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER ACCEPTING THE AGREEMENT NO.EE(M) 176/2019-20. |
| Exhibit - P2 | A TRUE COPY OF THE OFFICE NOTE DATED 27/07/2021 SHOWING THE COMPLETION OF WORK OF THE PETITIONER. |
| Exhibit - P3 | A TRUE COPY OF THE G.O DATED 13/11/2018 ISSUED BY THE GOVERNMENT OF KERALA. |
| Exhibit - P4 | A TRUE COPY OF THE G.O DATED 17/04/2020. |
| Exhibit - P5 | A TRUE COPY OF THE G.O DATED 25/09/2020 ISSUED BY THE GOVERNMENT OF KERALA. |
| Exhibit- P6 | A TRUE COPY OF THE G.O (RT) NO.3815/2021/FIN DATED 30/04/2021. |
| Exhibit - P7 | A TRUE COPY OF THE RELEVANT PAGE OF THE MEMORANDUM OF PAYMENTS DATED NIL ISSUED BY THE 5TH RESPONDENT. |
| Exhibit - P8 | A TRUE COPY OF THE COMMON JUDGMENT DATED 11/11/2021 IN W.P.(C) NO.22964/2021 AND CONNECTED CASES. |