

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 06TH DAY OF FEBRUARY 2019 / 17TH MAGHA, 1940

WP(C).No. 36325 of 2018

PETITIONER/S:

ARUN P.,  
AGED 35 YEARS  
S/O.P.PURUSHOTHAMAN, PARASAKTHI BUILDING, SHORNUR  
PO, PALAKKAD DISTRICT, 679 122, MANAGING PARTNER,  
OJASVI'S CONSTRUCTION SOLUTIONS, A PARTNERSHIP FIRM,  
REGISTERED UNDER THE INDIAN PARTNERSHIP ACT.

BY ADV. SRI.BINOY VASUDEVAN

RESPONDENT/S:

- 1 THE SHORANUR MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,  
SHORANUR PO, PALAKKAD DISTRICT- 679121.
- 2 THE SECRETARY,  
SHORANUR MUNICIPALITY, MUNICIPAL OFFICE, SHORANUR  
P.O., PALAKKAD DISTRICT- 679 121.
- 3 THE ASSISTANT ENGINEER,  
SHORANUR MUNICIPALITY, MUNICIPAL OFFICE, SHORANUR  
P.O., PALAKKAD DISTRICT- 679 121.

BY ADV. SRI.P.P.THAJUDEEN, SC, SHORNUR MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
06.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Petitioner was a Contractor, engaged by the 1<sup>st</sup> respondent Municipality for construction of a town hall. According to the petitioner, the work was completed and final bill was submitted. In accordance with the final bill, an amount of Rs.1,16,691/- is retained and the balance amount is released. It is thus seeking direction to the Municipality, to pay the balance amount, this writ petition is filed.

2. A detailed statement is filed by respondents 1 to 3 and the agreement is also produced. According to the respondents, the work was completed by the petitioner belatedly and therefore, in accordance with the covenants contained under the agreement, amount is adjusted towards the damages suffered by the Municipality. Therefore, the amount as is sought for by the petitioner is not liable to be paid by the Municipality.

3. Having heard learned Counsel for the petitioner and the learned Standing Counsel for the Municipality, I am of the considered opinion that, since the amount as is claimed by the petitioner remains as a disputed amount, it is not proper on the part of this Court to consider the issue under Article 226 of

the Constitution of India.

4. In that view of the matter, this writ petition is dismissed, leaving open the liberty of the petitioner to make suitable claims before the competent civil court. I also make it clear that all the questions of facts and law raised in this writ petition are left open.

sd/

**SHAJI P.CHALY**

**JUDGE**

Jm/

## **APPENDIX**

### **PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE SELECTION NOTICE NO.E1/10378/15 DATED 15.09.2015.
EXHIBIT P2	TRUE COPY OF ACKNOWLEDGEMENT FORM FOR HANDING OVER THE SITE OF THE CONTRACTOR.
EXHIBIT P3	TRUE COPY OF THE WORK ORDER DATED 29.09.2015.
EXHIBIT P4	TRUE COPY OF THE LETTER DATED 16.11.2015 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
EXHIBIT P5	TRUE COPY OF THE COMMUNICATION DATED 27.11.2015 SENT BY THE 3RD RESPONDENT TO THE PETITIONER.
EXHIBIT P6	TRUE COPY OF THE LETTER DATED 21.12.2015 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
EXHIBIT P7	TRUE COPY OF THE LETTER DATED 18.01.2016.
EXHIBIT P8	TRUE COPY OF THE LETTER DATED 05.02.2016 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS.
EXHIBIT P8 A	TRUE COPY POSTAL ACKNOWLEDGEMENT CARDS.
EXHIBIT P9	TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER DATED 13.07.2016 BEFORE THE 2ND RESPONDENT.
EXHIBIT P10	TRUE COPY OF THE DECISION NO.5 OF THE STANDING COMMITTEE FOR PUBLIC WORKS AT ITS MEETING HELD ON 23.08.2016.
EXHIBIT P11	TRUE COPY OF THE REQUEST DATED 17.01.2017.
EXHIBIT P12	TRUE COPY OF THE REQUEST DATED 06.03.2017.
EXHIBIT P13	TRUE COPY OF THE LETTER DATED 15.03.2017.
EXHIBIT P14	TRUE COPY OF THE ESTIMATE REPORT SUBMITTED BY THE 3RD RESPONDENT.
EXHIBIT P15	TRUE COPY OF THE BILL APPROVED BY THE

RESPONDENTS.

EXHIBIT P16

TRUE COPY OF THE LETTER SUBMITTED BY THE  
PETITIONER DATED 13.07.2018 TO THE 2ND  
RESPONDENT ALONG WITH THE POSTAL RECEIPT.