



GOVERNMENT OF KERALA

Abstract

Finance Department- WP(C)No.18708/2017 filed by Sri.D.Suresh before the Hon'ble High Court of Kerala - Judgement complied - Orders Issued - Reg.

FINANCE (Industries & Public Works -B) DEPARTMENT

G.O (P) No.110/2018/Fin.

Dated, Thiruvananthapuram, 18.07.2018

Read:- (1) Judgement dated 29/11/2017 in WP(C)No.18708/17
(2) G.O(P) No.30/2016/Fin dated 29/02/2016
(3) G.O(P) No.87/2017/Fin dated 05/07/2017
(4) Letter No.ELI2374/2017 dated 14/03/2018 of the Chief Electrical Engineer.

ORDER

Sri.D.Suresh, a PWD electrical contractor filed WP(C)No.18708/17 before the Hon'ble High Court of Kerala contenting that although the Government issued G.O.(P)No.30/2016/Fin dated 29/02/2016 directing that Service Tax shall be allowed to be included as a component in the estimate cost of all new works, Chief Electrical Engineer did not include this as an item in the estimate cost. As per the Judgement read above, Hon'ble High Court directed the 1st respondent, (Finance Department) to consider and pass orders on the representation (Ext.P5), submitted by the petitioner by taking note of ExtP3 Order (G.O(P)No.30/2016/Fin dated 29/02/2016) within a period of two months, after hearing the petitioner.

2. Based on the Judgement, a hearing was conducted on 27/02/2018 in the Chamber of Additional Secretary (Finance) and the incumbent attend the hearing. At the time of hearing the petitioner argued that the Chief Electrical Engineer is reluctant to pay the Service Tax as the same is not included in the estimate cost. Accordingly detailed report was called for from the Chief Electrical Engineer.

3. The Chief Electrical Engineer has reported vide paper read 4th above that the petitioner has submitted tender for the work - Electrification for State Central Library Heritage Model Reference Block, Thiruvananthapuram at an estimate cost of Rs.41,21,714.07. The work is almost completed. He has also attended tender for the work Electrification of the proposed building for Fine Arts College, Thiruvananthapuram at an estimate cost of Rs. 21,82,849/-. He executed the agreement of the 2nd work only on 15.01.2018 after repeated reminders and notices from that office. The Chief Electrical Engineer has pointed out that the argument of petitioner that he has executed two works is false. He has executed only one work and he started the second work only on 16/01/2018. Its agreement having been executed after GST came into force, there does not seem to be any Service Tax liability.

4. The PWD invites tender for the works for which the contractor has to quote the rate inclusive of all taxes at the time. Provision for Service Tax is included in the estimate as per Government Order read as 2nd above. Service Tax is included in the estimate as a separate component as many works do not have Service Tax liability [works which are included in the negative list] and many contractors who have limited annual turnover need not pay Service Tax. Hence as per Government Order read as 2nd above, Service Tax shall be allowed to be included as a component in the estimate. As per Government Order read as 3rd above, the Service Tax shall be paid by the contractor to the concerned department on demand. It shall be reimbursed to him by the engineer in charge after ascertaining the genuineness of the claims of the contractor on verification of this tax returns and other supporting records. As such the contractor is aware that the two Government Orders were applicable and Service Tax paid by him will be reimbursed by the Department. All Government Orders issued from time to time regarding contracts will be applicable to these works also.

5. When works are awarded after inviting competitive tender, the Public Works Department asks the prospective bidders to quote the rates inclusive of all taxes. After attending the tender with the lowest rate and then demanding additional amount in whatever form is not justifiable as it betrays the whole tender process. Hence the demand of the petitioner is not justifiable. He is eligible only for the rate for which he has quoted during tender. Thus the Petitioner's request does not merit any consideration and hence ExtP5 representation is rejected.

6. Thus the Judgment dated 29/11/2017 of the Hon'ble High Court in WP(C)No.18708/2017 stands complied with.

(By order of the Governor)

YAMUNA.V
Additional Secretary (Finance)

To

The Principal Accountant General(A&E),Kerala,Thiruvananthapuram
The Principal Accountant General(G&SSA), Kerala,
Thiruvananthapuram
The Principal Accountant General(E&RSA),Kerala,Thiruvnanthapuram
Sri.D.Suresh, D.S.Electricals, D.S.Mandiram, Vallakkadavu P.O,
Thiruvananthapuram
The Registrar, Subordinate Judiciary, High Court of Kerala
The Chief Electrical Engineer, PWD, Thiruvananthapuram
The Nodal Officer, www.finance.kerala.gov.in
The Stock File/Office Copy (E-679313)

Forwarded/By order,



Section Officer.