



GOVERNMENT OF KERALA

Abstract

Fisheries & Ports Department – Construction of dry dock at Alapuzha- mechanism for sharing of revenue derived from selling of dredged material – Sanctioned - Orders issued.

FISHERIES AND PORTS (E) DEPARTMENT

G.O.(Rt)No.782/2018/F&P Dated,Thiruvananthapuram, 04/10/2018

Read 1

1. G.O(Rt) 13/13/F&PD dated 7/1/2013.
2. G.O(Ms) 6/2015/F&PD dated 2/3/2015.
3. Judgement dated 23.11.2017 in WP (C) No.4118/2017 filed by M/s.Rosey House Boat.
4. Judgment dated 12.1.2018 and 16.1.2018 in WA No.71/2018 of the Hon'ble High Court of Kerala

ORDER

As per Government Order read 1st, Administrative Sanction was accorded for setting up of a dry dock at Alapuzha on Public Private Partnership (PPP) basis at a total cost of Rs. 9.42 crore. As per Government Order read as 2nd paper above, the DPR submitted by M/s Rosey House Boats for the construction for the dry dock was approved. As per the concession agreement, Government share is limited to Rs. 4.71 crore as a 50% of the estimated cost of the project, and the concessionaire's pay back liability is determined at Rs. 6.65 crores to be paid in 25 years with 5 year's moratorium period.

2) The concessionaire while executing the project carried out dredging, and for the purposes of removing and transporting the dredged material required authorization from Director of Ports to seek the transit passes from the Mining and Geology Department. However, the same was not granted by the Director of Ports, for concessionaire not agreeing to share the income out of sale proceeds of the dredged material with the Government on the equitable ratio of investment in the project by both the parties. The subject matter was resolved in the meeting held on 17.06.2016 chaired

by the Principal Secretary, Ports Department in having formulated the mechanism for the sale of the dredged material and for revenue sharing from the proceeds of the sale thereof.

3) Aggrieved with the above decision, M/s Rosey House Boats filed WP (C) No.4118/17 before the Hon'ble High Court praying to issue direction to the Geologist, Mining & Geology Department, Alappuzha to issue transit passes on payment of royalty by the petitioner under Rule 26 of the Kerala Minerals Rules, 2015 and for a direction quashing the decisions of the meeting as referred in para 2 above and all further actions thereon.

4) The Hon'ble High Court as per judgment read as 3rd paper above, allowed the writ petition and set aside the decision taken by Government to deduct 50% of the value of the sand dredged from the site and directed to take emergent steps to see that the project is completed at the earliest. It was also ordered that if any claim existing on the basis of the contract between the party, the same could be taken up by Government after the construction was completed.

5) The Government filed appeal in WA No. 71/18. The Hon'ble High Court, as per judgment read as 4th paper above allowed the appeal and set aside the impugned judgment and dismissed the writ petition. It was clarified that 'Government is entitled to enforce the decisions taken in the meeting as referred in para 2 above which was listed document as Ex. P18, and sell the sand through a mutually agreeable mechanism.'

6) In pursuance of the directions of the Hon'ble High Court in WA No. 71/18 and for arriving at a mutually agreeable mechanism, a meeting was convened with the Principal Secretary (Ports), Director of Ports, the concessionaire and other port officials on 9/8/2018. The contention of the representatives of the concessionaire was noted in the deliberations of the meeting. It is a matter of fact that the concessionaire of the project has a direct responsibility for developing the project and their stake is the highest along with the Government. The price determination for sand is to be done through e-tender and the concessionaire has an equal stake in the project. Sand is extractable from the material collected, which is being dredged from the site. Since the tender/ contract has direct Bill of Quantities for dredging and what is being paid for is accounted in the contract, the cost towards this process is not allowable for setting apart and extraction cost in such process. But the concessionaire claimed for remuneration for any action/activity taken up by them beyond the scope of works given in the existing PPP contract which may be deducted from the net revenue proceeds, which is to be shared with Government.

7) Government have examined the matter in detail and in the light of the orders of Hon'ble High Court are pleased to issue following orders:

- i. The revenue from the deliverables/usufructs of the project is to be equally shared between the concessionaire and Government on the same ratio as done for construction ie., 50:50.
- ii. The concessionaire will have the right to first refusal after highest bid in the e-tender with at least 2% higher amount payable, which will be equally shared.
- iii. Since the MSTC e-tender has already determined the price, sanction is accorded to the bidder to give acceptance for paying 2% higher amount for taking over sand extraction/sale.
- iv. Remuneration shall be calculated for any action/activity taken up by the concessionaire beyond the scope of work given in the existing PPP contract as sand extraction cost and the same shall be deductible from the net revenue

proceeds, which is to be shared with Government. Director of Ports and the concessionaire shall develop the module for this cost calculation.

- v. Concessionaire is allowed to keep shareable amount with themselves to be adjusted against payment to them. The entire amount as retained by them will be bearing an interest of 7.5% for arriving at total value at the time of annual release/stage release.
- vi. All other conditions envisaged under the Concession Agreement remains the same.

(By order of the Governor)
BISHWANATH SINHA IAS
PRINCIPAL SECRETARY

To:

1. The Director of Ports, Thiruvananthapuram
2. The Managing Partner, M/s.Rosey House Boats, Punnamada Road, Near HMC Church, Avalookkunnu P.O., Alappuzha.
- 3)The Principal Accountant General (Audit), Kerala,
Thiruvananthapuram.
- 4)The Accountant General (A&E), Kerala, Thiruvananthapuram.
- 5)Law Department (Vide file No.26332/Suit III (2)/17/Law dt.28.12.2017)
- 6) SF/OC

Forwarded /By order

Section Officer