

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 16TH DAY OF DECEMBER 2016/25TH AGRAHAYANA, 1938

WP(C).No. 20280 of 2016 (H)

PETITIONER(S):

M/S. MALABAR CEMENTS LTD, CEMENT GRINDING UNIT,
CHERTHALA- REPRESENTED BY ITS DEPUTY GENERAL MANAGER,
MR.N.SRINIVASAN.

BY ADVS.SRI.E.K.NANDAKUMAR (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS
SRI.SANDEEP GOPALAKRISHNAN

RESPONDENT(S):

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF CONSUMER AFFAIRS,
KRISHI BHAVAN, NEW DELHI-110114.
2. THE DIRECTOR GENERAL, BUREAU OF INDIAN STANDARDS,
MANAK BHAVAN, 9 BAHADUR SHAH ZAFAR MARG,
NEW DELHI-110002.
3. THE DIRECTOR AND HEAD BUREAU OF INDIAN STANDARDS,
VANKARATH TOWERS, PALARIVATTOM, KOCHI-682024.

*ADDL.R4 IMPEADED

*ADD.R4

RIAZ KUTTAMASSERY, AGED 41 YEARS,
S/O.ABDUL REHMAN, PEEDIKAKKUDI,
KUTTAMASSERY, THOTTUMUGHAM P.O.,
ALUVA,-05, ERNAKULAM DISTRICT

(IS IMPEADED AS ADDL. R4 AS PER ORDER DATED 22.6.16 IN I.A.9420/16)

ADDL. R4 BY. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.P.U.VINOD KUMAR
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR
SRI.N.SATHEESH KUMAR(NEMMARA)
SMT.AMRIN FATHIMA

R1 BY SMT.PREMLATHA K. NAIR, CGC

R3 BY ADVS. SRI.S.SREEKUMAR (SR.)

. SRI.MANOJ RAMASWAMY

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-12-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE AGREEMENT NO.INDL 75435350484041 L DATED 05.02.2013.
- P2: TRUE COPY OF THE EMAIL CORRESPONDENCE BY MR KP PRADEEP KUMAR, SENIOR OFFICER (QUALITY CONTROL) OF THE PETITIONER SENT TO THE MANAGING DIRECTOR OF THE PETITIONER COMPANY DATED 10.9.2015.
- P3: TRUE COPY OF THE INDIAN STANDARD PRESCRIBED FOR THE MANUFACTURING OF PPC UNDER IS 1489 (PART 1):1991.
- P4: TRUE COPY OF THE RELEVANT PAGES OF THE OPERATING MANUAL FOR PRODUCT CERTIFICATION, 2004 ISSUED BY THE BUREAU OF INDIAN STANDARDS, NEW DELHI.
- P5: TRUE COPY OF THE STATEMENT SHOWING THE DETAILS OF PPC PRODUCTION AND THE QUALITY REPORT FOR THE PERIOD OCT.2015 TO MAY 2016.
- P6: TRUE COPY OF THE LETTER DATED 23/05/2016 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
- P7: TRUE COPY OF THE DISCREPANCY/VARIATION REPORT DATED 23/05/2016 ISSUED BY THE 3RD RESPONDENT ON THE PETITIONER.
- P8: TRUE COPY OF THE DISCREPANCY/VARIATION REPORT DATED 24/05/2016 ISSUED BY THE 3RD RESPONDENT ON THE PETITIONER.
- P9: TRUE COPY OF THE DISCREPANCY/VARIATION REPORT DATED 25/05/2016 ISSUED BY THE 3RD RESPONDENT ON THE PETITIONER.
- P10: TRUE COPY OF THE DETAIL REPLY DATED 30/05/2016 ISSUED BY THE PETITIONER TO EXHIBIT-P7 REPORT.
- P11: TRUE COPY OF THE DETAIL REPLY DATED 30/05/2016 ISSUED BY THE PETITIONER TO EXHIBIT-P8 ORDER.
- P12: TRUE COPY OF THE DETAIL REPLY DATED 04/06/2016 ISSUED BY THE PETITIONER TO EXHIBIT-P9 REPORT.
- P13: TRUE COPY OF THE EMAIL CORRESPONDENCE DATED 10/06.2016 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- P14: TRUE COPY OF THE REPLY DATED 21.6.2016, SUBMITTED ON 22.6.2016 ALONG WITH THE SEAL OF THE OFFICE OF THE BIS, KOCHI
- P15: TRUE COPY OF THE QUALITY PRODUCTION REPORTS FOR 1.7.2016 AND 2.7.2016 FROM THE BIS APPROVED LABORATORY OF THE PETITIONER
- P16: TRUE COPY OF THE E-MAIL DATED 2.7.2016 ADDRESSED TO THE 3RD RESPONDENT REQUESTING BIS OFFICIALS TO BE PRESENT FOR TESTING THE 3 DAY COMPRESSIVE STRENGTH OF CEMENT MANUFACTURED ON 1.7.2016 AND 2.7.2016
- P16(A): TRUE COPY OF THE E-MAIL DATED 4.7.2016 ADDRESSED TO THE 3RD RESPONDENT REQUESTING BIS OFFICIALS TO BE PRESENT FOR TESTING THE 3 DAY COMPRESSIVE STRENGTH OF CEMENT MANUFACTURED ON 1.7.2016 AND 2.7.2016
- P16(B): TRUE COPY OF THE E-MAIL DATED 5.7.2016 ADDRESSED TO THE 3RD RESPONDENT REQUESTING BIS OFFICIALS TO BE PRESENT FOR TESTING THE 3 DAY COMPRESSIVE STRENGTH OF CEMENT MANUFACTURED ON 1.7.2016 AND 2.7.2016

P17: TRUE COPY OF THE E-MAIL DATED 04.08.2016 RECEIVED FROM MR.SAI KUMAR, SCIENTIST C BIS KOCHI OFFICE

P18: TRUE COPY OF THE REVISED IS 1489 PART I : 2015 PUBLISHED IN DECEMBER, 2015

RESPONDENT(S)' EXHIBITS & ANNEXURES:

EXT.R3(a): TRUE COPY OF THE REGISTERED LETTER ISSUED TO THE PETITIONER NO.KOBO/L-6400025294 DATED 13.6.2016

EXT.R3(b): TRUE COPY OF THE INSPECTION REPORT DATED 16.6.2016

ADVOCATE COMMISSIONER'S REPORT

ANNEXURE A1: TRUE COPY OF THE DECLARATION ON THE STOCK OF OPC CEMENT IN THE UNIT DATED JUNE 28, 2016

ANNEXURE A2: TRUE COPY OF THE DECLARATION ON THE STOCK OF PPC IN THE UNIT DATED JUNE 28, 2016

ANNEXURE A3: TRUE COPY OF THE DAILY PRODUCTION REPORT OF THE CEMENT GRINDING UNIT OF THE PETITIONER COMPANY DATED JUNE 27, 2016

ANNEXURE A4: TRUE COPY OF THE SCREENSHOT OF THE DISPLAY SCREE OF THE SYSTEM AS ON 5:45 PM ON JUNE 28, 2016

ANNEXURE A5: TRUE COPY OF THE LETTER IN THIS REGARD ARE ISSUED BY THE UNIT MANAGER DATED 1 JULY, 2016

ANNEXURE A6: TRUE COPY OF THE SCREENSHOT OF THE DISPLAY SCREEN OF THE CONTROL SYSTEM AS ON 4:21 PM ON JULY 1, 2016

//TRUE COPY//

P.A. TO JUDGE

dlk

SHAJI P. CHALY, J.

W.P.(C). NO. 20280 OF 2016

Dated this the 16th day of December, 2016

JUDGMENT

This writ petition is filed by the petitioner challenging Ext.P13 e-mail correspondence directing the petitioner to stop marking the Portland Pozzolana Cement (in short PPC). Petitioner is a State Public Sector undertaking purchased Ordinary Portland Cement (in short OPC) from Cement Corporation of India (in short CCI), which is a Central Public Sector undertaking as a quid-pro-quo arrangement to source clinker from CCI to re-open the Cement Grinding Unit (CGU) of MCL in Cherthala. Due to unfavourable market conditions, purchased OPC could not be sold at competitive price. OPC is Ground clinker with around 4% addition of Gypsum. When the OPC could not be sold due to low demand, petitioner decided to reprocess and utilise the OPC for manufacturing PPC by adding small quantities of OPC, along with imported clinker ensuring the BIS

stipulated standards in PPC thus manufactured. According to the petitioner, the output PPC manufactured by the petitioner is fully compliant with the BIS specifications, prescribed under Ext. P3. However, the third respondent has hastily and unilaterally issued Ext. P13. whereby a direction was issued to stop BIS marking.

2. Respondents have filed detailed counter affidavit justifying Ext. P13 action. According to the respondents, petitioner is not following the method prescribed under Ext. P18 revised standards of manufacturing process. Anyhow, when the writ petition was pending before this Court, various interim orders were passed and finally on 04.10.2016, an interim order was passed by this Court directing the Advocate Commissioner appointed by this Court to open the silo and permit both parties to take required quantity of cement and conduct the test with respect to the strength of the cement, in their respective laboratories. A further direction was issued to produce the test results in a sealed cover and accordingly that was

produced before this Court and on opening of the same, it was found that the cement manufactured by the petitioner is having sufficient strength, in accordance with the BIS standards. However, learned counsel for the respondents submitted that petitioner is not following the procedure prescribed under Ext. P18, especially Clause 5, which reads as follows:-

"5. MANUFACTURE

Portland Pozzolana cement shall be manufactured either by intimately inter-grinding Portland cement clinker/ordinary Portland cement and fly ash or by intimately and uniformly blending ordinary Portland cement and fine fly ash with required addition of gypsum so as to produce a cement capable of complying with this Standard. The fly ash constituent shall not be less than 15 percent and not more than 35 percent by mass of Portland pozzolana cement. The homogeneity of the mixture shall be guaranteed within ± 3 percent of the declared fly ash addition, in the same consignment.

When Portland pozzolana cement is obtained by grinding fly ash with Portland cement clinker, no material shall be added after burning, other than gypsum (natural mineral or chemical, see Note), water, and not more than a total of 1.0 percent of air-entraining agents or other agents including

colouring agents, which have proved not to be harmful. The limitation of all such additions shall also apply to manufacture of Portland pozzolana cement by blending process.

Note - Chemical gypsum shall be added provided that the performance requirement of the final product as specified in this standard are met with."

3. Taking note of the respective submissions and the developments that took place after the filing of this writ petition and having found that the cement manufactured by the petitioner is having sufficient strength, in accordance with the BIS revised standard, it is only appropriate that the writ petition can be disposed of, in accordance with the reports submitted by the petitioner, as well as the respondents.

4. Therefore, the writ petition is disposed of recording that the cement manufactured by the petitioner, which is the subject matter of this writ petition is having sufficient standards, as per Ext. P18 revised standards prescribed by the BIS. However, I make it clear that petitioner is duty bound to follow the prescriptions contained under Ext. P18 hitherto. Learned counsel for the

petitioner also submitted that the claim with respect to the Ordinary Portland Cement claimed by the petitioner is given up. However, the petitioner may be permitted to use the same for the purpose of construction of roads internally. Learned counsel for the respondents also did not oppose the use of the Ordinary Portland Cement by the petitioner for the said purpose. The same is also recorded.

5. Pursuant to the orders passed by this Court, the key of the silo under the lock and key of the Advocate Commissioner and deposited with the Registrar of this Court, in view of the orders passed above, shall be handed over to the counsel for the petitioner. Needless to say, since the cement was found to be having sufficient strength, in accordance with the prescriptions contained under the revised standards, the petitioner is permitted to mark BIS.

6. When the Advocate Commissioner was appointed by this Court, initial batta of Rs. 1,00,000/- was fixed. The Advocate Commissioner has made a request with respect to additional batta. Taking note of the submissions made by

the Advocate Commissioner, I think an additional batta of Rs. 50,000/- also can be fixed. Therefore, there will be a direction to the petitioner to pay an additional batta of Rs. 50,000/- to the Advocate Commissioner.

Writ petition is disposed of accordingly.

SHAJI P. CHALY
JUDGE

DCS