



**GOVERNMENT OF KERALA**

**Abstract**

Finance Department - Clarification on payment of price difference of bitumen -  
Judgement in WP(C)no. 22964/2021 and other connected cases- Orders issued

**FINANCE (INDUSTRIES & PUBLIC WORKS - B) DEPARTMENT**

G.O.(P)No.63/2023/FIN

Dated, Thiruvananthapuram, 26/06/2023

- Read :-
1. G.O.(Rt.)No. 9386/2018/FIN dated 13/11/2018
  2. G.O.(Rt.)No. 2816/2020/FIN dated 17/04/2020
  3. G.O.(Rt.)No. 5502/2020/FIN dated 25/09/2020
  4. G.O.(Rt.)No. 3815/2021/FIN dated 30/04/2021
  5. G.O.(Rt.)No. 96/2022/FIN dated 26/08/2022
  6. Judgement dated 11/11/2021 of Hon'ble High Court of Kerala in WP(C)no. 22964/2021, 23576/2021 and other connected cases
  7. Judgement dated 15/02/2023 of Hon'ble High Court of Kerala in WP(C)no. 19474/2022
  8. Report of Principal Accountant General (AuditII) Kerala Thiruvananthapuram

**ORDER**

There was a steep rise in the price of bitumen on April 2018 by 33% due to the enhanced price of petroleum products in the market, the contractors demanded additional amount in contracts already awarded but not completed. Since the price of bitumen has an impact in the cost of road construction both in PWD and LSGD, Government have decided to compensate the price difference of bitumen to the contracts for the ongoing works w.e.f 1/11/2018 vide Government order G.O.(Rt.) No.9386/2018/FIN dated 13/11/2018.

Subsequent modifications were made to G.O.(Rt.)No. 9386/2018/FIN dated 13/11/2018 vide reference 2 to 4 above.

The order G.O.(Rt.)No. 9386/2018/Fin dated 13/11/2018 was modified by the Government vide order referred 2 above, to the extent that the price difference

of bitumen as on the date of agreement between the contractor / accredited agency and the implementing officer and the date of invoice (Invoice date on or after 01.11.2018) may be paid to or recovered from the contractor on the basis of representation submitted by the MD ULCCS.

In the above revision also Government intended to recover the difference in price from the contractor, if the price of the bitumen has decreased.

Again, the Government Order dated 13.11.2018 and the subsequent Government Order dated 17.04.2020 was further modified vide Government order read 3<sup>rd</sup> above apparently on the basis of the request made by the Chairman, Builders Association of India stated that for open tenders , the price difference of bitumen as on date of closing of tenders and the date of invoice ( after 01.11.2018) will be payable.

While the contractors were being extended with the benefits of above Government order referred 3<sup>rd</sup> above , the General Secretary All Kerala Government Contractors Association and the Chairman of Builders Association of India have requested to clarify the earlier orders regarding the price difference of bitumin.

Accordingly, vide Government order referred 4<sup>th</sup> above, Government have modified para 3 of the G O referred 3<sup>rd</sup> above and clarified that for open tenders, the price difference of bitumen will be payable or recoverable shall be reckoned, as the difference of invoice value and the market rate of bitumen as on the last date of submission of tender. For works on nomination date of agreement will be reckoned. This Government Order is applicable for all ongoing works and works for which agreements are executed after 01.11.2018.

In the above said G O , Government have made it clear that the order is applicable for all ongoing works and works for which agreements are executed after 01.11.2018. This was aggrieved by the contractors and they approached Hon.High Court against the condition of the order vide reference 4<sup>th</sup> above.

The Hon.High Court has observed that the Government Order referred 4th above imposes a new condition made applicable to all works for which agreements are executed after 1/11/2018 and for all ongoing works on 30/4/2021. The Hon.High

→ Court viewed that the condition imposed by Govt Order dated 30/4/2021 is impermissible in Law. The Hon.High Court also viewed that Govt Order dated 30/4/2021 is a revision of the Government Order dated 13/11/2018 due to the unprecedented escalation price of bitumen by 33%. It is on account of the said Government order alone, the subsequent revision was made by the Government and orders were issued vide reference 2<sup>nd</sup> to 4<sup>th</sup> above. Therefore, the observation of Hon.High Court is that the contention advanced by the petitioners on account of G.O. (Rt.)No. 3815/2021/FIN dated 30/04/2021, as it is a general order applicable to all contracts on or after 1/11/2018 which can never be sustained under law. Also, the Hon.High Court found that a mere assumption and expectation by the petitioner that by virtue of the government orders in question, any contractor who has executed the contract after 1/11/2018 is entitled to get the escalation of the price of bitumen during the tenure of contract is baseless and unfounded.

The Principal Accountant General(Audit II) proposed a Draft Paragraph on – Irregular payment due to price difference of bitumen over and above the agreed rates violating contract conditions - for the inclusion in the report of the Comptroller and Audit General of India. That report was submitted in compliance of audit conducted in eight Road divisions in the State. The audit viewed that the Government order dated 13/11/2018 and its modifications, in general, vitiate the tenet of tender system since they do not form part of tender/agreement conditions in the cases of the above said works. The steep hike in the market price of bitumen and the consequent demand by the contractors for additional amount in contracts already awarded were stated as the reason behind the decision. This was not tenable since the contractors were bound by agreement to execute the works disregarding market fluctuations and the Government had no obligation to protect the contractors from their business risk.

Hence in the above views of the Hon. High Court and report of Principal Accountant General(Audit II), Government have discontinued the provisions for allowing price difference/recovery of the price difference of bitumen vide Govt Order referred 5<sup>th</sup> above.

In the light of the observations of Hon.High Court in this regard that the original

Government Order for payment of the price escalation of the bitumen dated 13.11.2018 was issued by the Government to tackle the situation of an unprecedented increase of bitumen that has happened in the year 2018 consequent to the steep hike in the price of petroleum products and all the subsequent orders are only the revision of the order dated 13.11.2018, Government are now pleased to clarify that Government Order, G.O.(Rt.)No. 3815/2021/FIN dated 30/04/2021 will apply to all contract works including if any undertaken by the petitioners, the work of which were ongoing as on 01.11.2018.

(By Order of the Governor)  
**BISHWANATH SINHA IAS**  
**ADDITIONAL CHIEF SECRETARY(Finance)**

To

The Accountant General (A&E) Kerala, Thiruvananthapuram  
 The Accountant General (Audit-I) Kerala, Thiruvananthapuram  
 The Accountant General (Audit-II) Kerala, Thiruvananthapuram  
 All Heads of Departments/Offices  
 The secretary to Governor  
 Private Secretary to Hon.Chief Minister  
 All Private Secretaries to Hon. Ministers  
 Private Secretary to the Leader of Opposition  
 All Secretaries to Government  
 The Registrar, High Court of Kerala  
 All Commissions/Corporations/PSUs/Companies  
 The Registrar, all Universities  
 Chief Engineers PWD/WRD/LSGD/HED  
 The Chief Technical Examiner  
 All the petitioners  
 The Nodal Officer, [www.finance.kerala.gov.in](http://www.finance.kerala.gov.in)  
 Stock file/Office Copy (E-1903159)

Forwarded/By Order

Section Officer