

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WA.No. 993 of 2015 () IN WP(C).9765/2015

(AGAINST THE ORDER/JUDGMENT IN WP(C) 9765/2015 of HIGH COURT OF KERALA
DATED 09-04-2015)

APPELLANT(S)/PETITIONERS:

1. K.M.THOMAS,
MANAGING PARTNER, MARY MATHA TRANSPORTERS, WARD NO.IV,
BUILDING NO.106, ANGADIKADAVU, ANGAMALY-683 572.

2. RAJU P.J.,
MANAGING PARTNER, S.R.ENTERPRISES, PULIYANI HOUSE,
V.R.PURAM.P.O., CHALAKKUDY.

BY ADVS.SRI.M.P.ASHOK KUMAR
SRI.P.C.GOPINATH
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENT(S)/RESPONDENTS:

1. THE CHIEF TRANSPORT MANAGER,
BHARATH PETROLEUM CORPORATION LIMITED,
SOUTH REGIONAL OFFICE, RANGANATHAN GARDENS,
11TH MAIN ROAD, ANNA NAGAR, CHENNAI-600 040.

2. BHARATH PETROLEUM CORPORATION LIMITED
(KOCHI REFINERY), IRUMBANAM, COCHIN. PIN-682 309
REPRESENTED BY ITS SENIOR MANAGER (OM & S).

3. BHARATH PETROLEUM CORPORATION LTD.
BHARAT BHAVAN, 4 & 6, CURRIMBHOY ROAD,
BALLARD ESTATE,
MUMBAI-400 001. REPRESENTED BY ITS DIRECTOR (MARKETING).

4. KANNAMBUZHA TRANSPORT,
REPRESENTED BY ITS PARTNER, SHIBU VARGHESE,
MAMALA HOUSE, PATTIKKAD.P.O.
THRISSUR DISTRICT. 680 652.

R BY SRI.N.SUGUNAPALAN
R BY SRI.S.SUJIN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

W.A.No.No.993 of 2015

Dated this the 20th day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This writ appeal is filed by the writ petitioners in W.P.(C) No.9765/2015.

2. Heard the learned counsel appearing for the appellants, learned senior counsel appearing for the contesting respondents BPCL.

3. The matter relates to the award of transporting contract by the BPCL. The crux of the contentions, as projected before the learned single Judge by the writ petitioners, was that though they had the requirements in terms of the notified criteria, they have been refused the contract while the private respondent in the writ petition was awarded the contract though there were deficiencies in whatever was stated by the said person in answer to the invitation for offers. We see through the judgment impugned in this writ appeal that the BPCL had admitted before the learned single Judge that there was an erroneous decision at their hands in the

matter of awarding the work to the private respondent in the writ petition, though they also stood to say that the writ petitioners had not satisfied the requisite bench marks for being awarded the work. The learned single Judge proceeded by recording the submission made on behalf of the BPCL as regards the ineligibility of the private respondent and also the submission on behalf of the Company that the work awarded to that transporting contractor would be annulled. The learned single Judge hence disposed of the writ petition in the light of the submissions of BPCL, however without adjudicating the eligibility or otherwise of the writ petitioners to be included in the panel of transporters.

4. The resultant situation that followed is that the BPCL proceeded to cancel the work that was awarded to the private respondent, viz., Kannambuzha Transport. Thereupon, pleading that the said contract has reached the higher stage, whereby the parties had entered into contract which enjoins two months notice for cancellation, Kannambuzha Transport filed W.P.(C) No.13010/2015. In that writ petition, it is seen that there is an interim order against further proceedings in relation to such cancellation. We also record the submission that, in so far as as Kannampuzha Transport is concerned, it has invoked the arbitration clause in the agreement. It is also noted that another Writ Petition, W.P.(C)No.9392/2015, is filed

by some of the transporting contractors who were also not awarded the contract by the BPCL, though they contended that they are persons who are better placed than the petitioners in W.P.(C) No.9765/2015, which has given rise to this writ appeal, because they were not disqualified though the petitioners in W.P.(C) No.9765/2015 were disqualified by the BPCL.

6. On the whole, we are of the view that the submission of BPCL before the learned single Judge during the course of consideration of W.P.(C) No.9765/2015 was without foreseeing the consequence as would result in the present scenario. W.P(C).Nos.9392/2015 and 13010/2015 are pending adjudication. We are also told that there are other writ petitions in relation to certain issues generated from the same invitation of tender. Under such circumstances, what is required to be done now is to vacate the judgment dated 9/4/2015 in W.P.(C) No.9765/2015, which is challenged in this writ appeal, thereby paving way for reconsideration of W.P.(C)No.9765/2015 and also any other cases, as may be found necessary, by the learned single Judge.

7. Clarifying that nothing stated herein will stand in the way of the adjudication process before the learned single Judge, this writ appeal is allowed vacating the judgment dated 9/4/2015 in W.P.(C) No.9765/2015 and consequently, remitting that writ petition for consideration before the learned single judge to be tagged along with

W.A.No.993/2015

the connected matters as per the roster.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.