IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WA.No. 2070 of 2015 IN WP(C).25837/2015

AGAINST THE ORDER DATED 16.09.2015 IN WP(C) 13310/2015
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APPELLANT/RESPONDENT :

COCHIN SHIPYARD LTD.
PO BAG NO. 1653, PERUMANOOR P.O., KOCHI - 682 015
REPRESENTED BY THE AUTHORIZED OFFICER.

BY ADVS.SRI.K.ANAND (SR.)
SMT.LATHA ANAND
SRI.M.N.RADHAKRISHNA MENON
SRI.JOSEPH SEBASTIAN (PARACKAL)

RESPONDENT/PETITIOER :

M/S.APJ REFINERIES PVT LTD
NIDA KANJIKODE, PALAKKAD - 678 621
REPRESENTED BY ITS MANAGING DIRECTOR.

BY SRI.V.KRISHNA MENON

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Ashok Bhushan, C.J. & K. Vinod Chandran, J.

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W.A. No. 2070 OF 2015

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Dated this the 18th day of September, 2015

JUDGMENT

Ashok Bhushan, C.J.

Learned counsel for the appellant submits that the petitioner was disqualified in participating in the tender process. The learned Single Judge by the impugned interim order permitted the petitioner to provisionally participate in the tender. Learned counsel for the respondent/petitioner submits that as the appeal is filed against the above mentioned interim order, the writ appeal itself can be finally disposed of. On the basis of the submissions made by learned counsel for the appellant and on perusing the record, we are of the view that the order dated 16.09.2015 passed in I.A. No.13310 of 2015 in W.P.(C) No.25837 of 2015 cannot be sustained.

2. The 1st respondent who is the writ petitioner had bid for lifting the waste oil for a period of one year at the quoted rates. He had bid in a public auction and he was awarded the contract since his bid was highest. The tender document contained the following Clause:

> "13.2 The buyer shall furnish a list of employees who shall be engaged for the work along with their particulars to CSL for their entry to CSL and shall comply with thew relevant safety rules, labour rules, such as ESI, PF etc for the employees engaged the execution of the work. The buyer is also required to maintain such record throughout the period of execution of the work."

3. This condition was reiterated in the offer letter at Ext.P2 and acceptance letter at Ext.P4. The 1st respondent admittedly committed default on the ground that the crude oil price fell and procuring waste oil at the bid amount and refining it into virgin base oil had become unviable since the other Public Sector Undertakings have started supplying oil at competitive rates. It was on such default that the security amount was forfeited and a tender holiday for one year was imposed on the petitioner.

4. We are of the view that this was in violation of the terms of the contract, and in accordance with the consequences of default, spelt out explicitly in the above referred documents. Market fluctuations alone cannot lead to default in an agreed contract since if it were otherwise and the prices went up, the

awarder could not have proceeded to cancel the contract and then, the 1st respondent would have profited. The bidder was quite aware of the elastic market conditions of waste oil, when he agreed to lift the product for one year at the bid amounts. The necessary consequences on default would ensue and the terms of award stipulated appropriate action, on default, in addition to forfeiture of security.

5. Having considered the submissions made before the Court, we are of the view that the interim order should be set aside and is hereby set aside. Learned counsel for the appellant submits that he has already filed counter in the matter.

The Writ Appeal is disposed of and the writ petition be heard on merits in accordance with law.

Ashok Bhushan,
Chief Justice.

K. Vinod Chandran,
Judge.

ttb/18/09