

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).NO. 5469 OF 2015 (G)

PETITIONER(S):

**M/S. ALBATROSS MARINE SERVICES,
ID: SANTHITHOTTEKATT ESTATE, CHITTOOR ROAD,
ERNAKULAM SOUTH, COCHIN -682 016,
REPRESENTED BY ITS CHAIRMAN
SHRI. JOSEPH THOMAS.**

**BY ADVS. SRI.JOY THATTIL ITTOOP,
SRI.A.G.ADITYA SHENOY.**

RESPONDENT(S):

- 1. LAKSHADWEEP DEVELOPMENT CORPORATION LTD. (LDCL),
27/1038 B, PANAMPILLY NAGAR, ERNAKULAM- 682 036,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. UNION TERRITORY OF LAKSHADWEEP,
GOVERNMENT OF INDIA, KAVARATTI- 682 555,
REPRESENTED BY ITS ADMINISTRATOR.**

BY ADV. SRI.S.RADHAKRISHNAN, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: A TRUE COPY OF THE CONTRACT FOR DEPLOYMENT OF OFFICERS ENTERED BY THE PETITIONER WITH THE 1ST AND 2ND RESPONDENT DATED 03.09.2011.
- P2: A COPY OF THE PERFORMANCE GUARANTEE DATED 27.08.2011.
- P3: A TRUE COPY OF THE COMMUNICATION DATED 05.09.2012 ISSUED BY THE 1ST RESPONDENT.
- P4: A TRUE COPY COMMUNICATION DATED 06.09.2012 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.
- P5: A TRUE COPY OF THE FORWARDED FAX MESSAGE CONTAINING THE REQUEST BY THE 1ST RESPONDENT FOR ENCASHMENT OF THE PETITIONERS BANK GUARANTEE ALONG WITH THE CREDIT MADE BY THE PETITIONERS BANKERS, DATED 10.09.2012.
- P6: A COPY OF THE LETTER DATED 15.09.2012 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.
- P7(I) COPY OF THE REMINDER DATED 08.011.2012.
- P7(II) COPY OF THE REMINDER DATED 20.11.2012.
- P7(III) COPY OF THE REMINDER DATED 14.02.2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 5469 of 2015

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Dated, this the 27th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers :

(1) To issue a writ of mandamus or other appropriate writ, direction or order directing the 1st and 2nd respondents to reimburse/refund the bank guarantee dated 27.08.2011 for an amount of Rs.25,21,560/- with regard to the 4 vessels m.v. Cheriya, Thinnakkara, m.v. Laccadives and m.v. Ubaidulla, which was wrongly invoked on 10.09.2012 by the respondents.

(2). To grant such other relief, as this Hon'ble Court may deem fit and proper in the interest of justice.

2. The pleadings and proceedings reveal that the petitioner company is engaged in rendering various services in connection with the management of ships/vessels and a contract was awarded to the petitioner by the respondent Corporation. In the course of operation as above, alleging various lapses on the part of the petitioner, notices were issued, which according to the petitioner were

properly replied. However, without any regard to the actual facts and figures, the respondent Corporation sought to mulct huge liability upon the shoulders of the petitioner. They also invoked the Bank Guarantee, which was furnished while entering into the contract. The said event occurred admittedly about 'two years' ago and it is challenging the said proceedings, that the petitioner has now approached this Court, seeking to refund/reimburse the Bank Guarantee stated as invoked and encashed.

3. Heard the learned standing counsel appearing for the respondents as well. It is pointed out that the writ petition itself is not maintainable, in view of the involvement of the disputed question of facts. Reference is also made to Clause 13 of Ext. P1 contract, providing for Arbitration. If the petitioner is having any grievance, it is open for the petitioner to raise dispute and to have the same caused to be dissolved in an appropriate manner, as provided in Ext. P1.

4. After hearing both the sides, this Court finds that the petitioner has approached this Court with a stale cause of action, that too, despite the availability of efficacious alternate remedy, as mentioned in Ext. P1. It has been alerted by the Apex Court on many an occasion, including in **Rabindranath Bose Vs. Union of**

India (AIR 1970 SC 470), that the persons who are sitting on arm chair and taking rest without any regard to the rights and liberties are not entitled to have any relief.

In the above circumstances, this Court finds that no interference is warranted in this writ petition. The same is dismissed, without prejudice to the rights and liberties of the petitioner to pursue other appropriate remedy in accordance with law.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd