

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. 23422 of 2014 (C)

PETITIONER(S) :

M/S.TRADEX SHIPPING COMPANY PVT. LTD.,
G-301, PANAMPILLY NAGAR, ERNAKULAM-682 036,
REPRESENTED BY ITS AUTHORIZED SIGNAGORY MR.P.VASUDEVAN.

BY ADVS.SRI.JOY THATTIL ITTOOP
SRI.A.G.ADITYA SHENOY
SRI.K.M.BIJU
SRI. JACOB TOMLIN VARGHEESE

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 SRI.S.RADHAKRISHNAN, SC, LAKSHADWEEP ADMN.

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

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT-P1: A TRUE COPY OF THE CONTRACT FOR DEPLOYMENT OF OFFICERS ENTERED BY THE PETITIONER WITH 1ST AND 2ND RESPONDENTS DATED 01/10/2010.
- EXHIBIT-P2: A COPY OF THE PERFORMANCE GUARANTEE DATED 30/09/2010.
- EXHIBIT-P3: A COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 28/08/2012, ALONG WITH THE ATTACHED LETTER RECEIVED FROM MR.GIRISH T.RAJAMOHAN DATED 27/08/2012.
- EXHIBIT-P4: A COPY OF THE PETITIONER'S LETTER DATED 30/08/2012.
- EXHIBIT-P5: A COPY OF THE PETITIONER'S LETTER DATED 31/08/2012.
- EXHIBIT-P6: A COPY OF THE LETTER FROM THE 1ST RESPONDENT TO THE PETITIONER DATED 01/09/2012.
- EXHIBIT-P7: A COPY OF THE LETTER FROM THE 1ST RESPONDENT TO THE PETITIONER DATED 02/09/2012.
- EXHIBIT-P8: A COPY OF THE LETTER FROM THE 1ST RESPONDENT TO THE PETITIONER DATED 03.09.2012.
- EXHIBIT-P9: A COPY OF THE LETTER FROM THE PETITIONER TO THE 1ST RESPONDENT DATED 03/09/2012.
- EXHIBIT-P10: A COPY OF THE LETTER FROM THE PETITIONER TO THE 1ST RESPONDENT DATED 07.09.2012.
- EXHIBIT-P11: A COPY OF THE MINUTES OF THE MEETING HELD ON 08.09.2012.
- EXHIBIT-P12: A COPY OF THE EMAIL DATED 09.09.2012, ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT-P13: A TRUE COPY OF THE FORWARDED FAX MESSAGE CONTAINING THE REQUEST BY THE 1ST RESPONDENT FOR ENCHASHMENT OF THE PETITIONERS BANK GUARANTEE ALONG WITH THE HANDWRITTEN CREDIT MADE BY THE PETITIONERS BANKERS, DATED 13/09/2012.

EXHIBIT-P14: A COPY OF THE LETTER FROM THE 1ST RESPONDENT TO THE PETITIONER DATED 18/10/2012.

EXHIBIT-P15: A COPY OF THE LETTER DATED 31/10/2012, ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXHIBIT-P16(I): A COPY OF THE REMINDER ISSUED BY THE PETITIONER DATED 31/12/2012.

EXHIBIT-P16(II): A COPY OF THE REMINDER ISSUED BY THE PETITIONER DATED 26/02/2013.

EXHIBIT-P16(III): A COPY OF THE REMINDER ISSUED BY THE PETITIONER DATED 07/06/2013.

EXHIBIT-P16(IV): A COPY OF THE REMINDER ISSUED BY THE PETITIONER DATED 25/07/2013.

EXHIBIT-P16(V): A COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 25/11/2013.

EXHIBIT-P16(VI): A COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 02.12.2013.

EXHIBIT-P17: A COPY OF THE DETAILED REMINDER ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 17/02/2014.

EXHIBIT-P18: A COPY OF THE LETTER DATED 06.08.2014 ISSUED BY THE PETITIONER TO THE RESPONDENTS ALONG WITH THE ACKNOWLEDGMENT CARDS.

RESPONDENT(S) ' EXHIBITS :

EXHIBIT-R1 (A) : A COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN WP(C) NO.24661/2012 DATED 27/05/2014.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 23422 of 2014

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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 wrongly invoked with regard to the vessel, m.b. Suheli, almost 2 years ago.

(2) To issue a writ of mandamus or other appropriate writ, direction or order, directing the 1st and 2nd respondents to consider and take appropriate steps to reimburse/refund the bank guarantee wrongly invoked, after considering the detailed representation submitted by the petitioner in Ext. P8 dated 06.08.2014

(3). 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 along with the contract. It is challenging the event occurred admittedly about two years ago that the petitioner sought to approach this Court, seeking to refund/reimburse the Bank Guarantee stated as invoked and encashed.

3. The averments and allegations are sought to be rebutted by the first respondent Corporation by filing a detailed counter affidavit. It is pointed out that the writ petition itself is not maintainable, in view of the involvement of the disputed questions 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 resolved in appropriate manner, as provided in Ext. P1. Circumstances under which, the Bank Guarantee was invoked, have also been sought to be explained referring to the turn of events, including the intervention made by a Division Bench of this Court as per Ext. R1(a) judgment (to which I was also member).

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 an 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.

sd/-

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

kmd