

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 24299 of 2015 (J)

PETITIONER(S) :

**SITHARA TRADERS,
16, 1038, THOPPUMPADY,
OPP. FISHING HARBOUR, COCHIN- 682 005,
REPRESENTED BY ITS PROPRIETOR, S.KABEER.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)**

RESPONDENT(S) :

- 1. THE KERALA STATE ELECTRICITY BOARD LTD.,
VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM- 695 004,
REPRESENTED BY ITS SECRETARY**
- 2. THE DEPUTY CHIEF ENGINEER(SCM) WITH POWERS OF CHIEF
ENGINEER, VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM- 695 004.**
- 3. THE EXECUTIVE ENGINEER-IN-CHARGE,
BDDP, BRAHMAPURAM, ERNAKULAM 682 303**

**BY SRI.RAJU JOSEPH (SENIOR ADVOCATE)
ADV. SRI.K.T.PAULOSE, S.C
ADV. SRI.SAJEEVKUMAR K.GOPAL, S.C**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: DATED NIL, TRUE COPY OF THE AUCTION CATALOG REPORT
PUBLISHED BY THE RESPONDENT BOARD.
- EXT.P2: DATED 12-06-2015, TRUE COPY OF THE E-MAIL FROM
THE RESPONDENTS.
- EXT.P3: DATED NIL, TRUE COPY OF THE LETTER SENT BY
THE RESPONDENTS.
- EXT.P4: DATED 30-06-2015, TRUE COPY OF THE DELIVERY ORDER.
- EXT.P5: DATED 06-07-2015, TRUE COPY OF THE SALE RELEASE ORDER
(LOT NO.2 OF E-AUCTION NO.14).
- EXT.P6: DATED 30-06-2015, TRUE COPY OF THE BILL.
- EXT.P7: DATED 30-06-2015, TRUE COPY OF THE BILL.
- EXT.P8: DATED 01-07-2015, TRUE COPY OF THE BILL.
- EXT.P9: DATED 07-07-2015, TRUE COPY OF THE LETTER SENT BY
THE RESPONDENT BOARD TO THE PETITIONER.
- EXT.P10: DATED 20-07-2015, TRUE COPY OF THE LETTER SENT BY
THE PETITIONER TO RESPONDENT NO.2.
- EXT.P11: DATED 27-07-2015, TRUE COPY OF THE LETTER OF RESPONDENT
NO.2 ADDRESSED TO RESPONDENT NO.3.
- EXT.P12: DATED 29-07-2015, TRUE COPY OF THE LETTER SENT BY THE
PETITIONER TO RESPONDENT NO.2.

RESPONDENT(S)' EXHIBITS :

- EXHIBIT R1(A): TRUE COPY OF THE AUCTION NOTIFICATION.
- EXHIBIT R1(B): TRUE COPY OF THE COMPLAINT MADE BY
M/S.SRI.KRISHNA METALS DATED 06.07.2015.
- EXHIBIT R1(C): TRUE COPY OF THE DECISION TAKEN BY THE KERALA
STATE ELECTRICITY BOARD LIMITED DATED 25.07.2015.

//TRUE COPY//

P.S.TO JUDGE.

A.MUHAMMED MUSTAQUE, J.

W.P(C).No.24299 of 2015

Dated this the 12th October,2015

JUDGMENT

This Writ Petition is filed by a person, who was the successful bidder of Lot No.2 in Exhibit P1 notification issued by the Kerala State Electricity Board. The petitioner paid the entire amount being the successful bidder and the petitioner was also issued necessary release order to remove the items referred to in Lot No.2. Exhibit P5 is the release order and the last date was fixed for delivery by 8.8.2015. The petitioner challenges the cancellation of confirmed bid in his favour. Exhibit P11 is the communication relating to cancellation. According to the petitioner, Exhibit P11 does not specify any reason for cancelling the order in favour of the petitioner. Therefore, the respondents cannot cancel the sale of which the ownership has been passed to the petitioner.

2. The petitioner has approached this Court challenging cancellation of the sale and return of the amount paid by the petitioner.

3. As seen from the records, the amount has been paid and the petitioner received the same under protest. Therefore, it appears that the petitioner has not waived his right to challenge the cancellation.

4. The learned Senior Counsel appearing for the Board has adverted to various clauses in the notification and contended that the Board is always reserved with the right of cancellation.

5. In view of the above matter, this Court is of the view that in normal course of a sale, it is impossible to cancel a sale after ownership is passed. However, sale by a public entity is different from sale by a private entity. The public authority is acting on a public interest. Though public functionaries are also bound by the terms and conditions of the contract, nevertheless, in certain circumstances, they can act to cancel the contract on a public interest. This is essentially to protect the interest of the State rather than to protect the terms and obligations arising out of a contract. Therefore, the State interest is

the paramount not the interest emanates out of a contract.

6. The present case projected by the Board is that they have fixed the price for a lot taking into account the fact that it was iron materials. According to them, it has come out that it is a copper material. Therefore, it is submitted that fixation of price was erroneous and was on account of the mistake. It is to set right that mistake they have cancelled the contract.

7. This Court is also of the view that if a mistake is occurred in the process, necessarily that has to set right to protect the public interest. In such circumstances, it is always open for the Board to cancel the contract. However, in such situation, any loss suffered to a person, who participated in the process, has to be taken note of by the Board as he need not put loss on account of mere mistake on the part of the Board. Learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court reported in ***ITC Limited v. State of Uttar***

Pradesh and others [(2011)7 SCC 493] to substantiate that the cancellation can be based only on the public interest and in that event the petitioner is entitled to compensation.

8. It is to be noted that cancellation order was issued without giving the petitioner an opportunity of being heard. Since the cancellation was on account of a mistake of identity of the materials, necessarily this Court is of the view that the petitioner should be given an opportunity of being heard. If there is no mistake of identity, necessarily cancellation would not have been possible invoking the public interest.

9. Therefore, this Court is of the view that the petitioner's objection shall also be heard in this matter by the second respondent. The petitioner shall appear before the second respondent and the second respondent shall advert to the objection of the petitioner and pass fresh orders in this matter. The petitioner has agreed to appear before the second respondent on 14.10.2015 at 11 a.m.

Further action would be depend upon the outcome of the decision of the second respondent. In view of the above, the order impugned is treated as a notice.

The Writ Petition is disposed of as above.

**A.MUHAMMED MUSTAQUE
JUDGE**

vgs12/10/15