

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 25837 of 2015 (D)

PETITIONER:

**M/S.APJ REFINERIES PVT. LTD. ,
NIDA KANJIKODE, PALAKKAD-678621,
REPRESENTED BY ITS MANAGING DIRECTOR
JILSON C.ANTO.**

**BY ADVS. SRI.V.KRISHNA MENON
SRI.DENNY K.DEVASY**

RESPONDENT:

**COCHIN SHIPYARD LTD.,
P.O.BAG NO.1653, PERUMANOOR P.O.,
KOCHI-682015, REPRESENTED BY ITS
MANAGER (GS).**

**R1 BY SRI.K.ANAND (SENIOR ADVOCATE)
ADVS. SMT.LATHA ANAND
SMT.LATHA KRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : TRUE COPY OF THE AUCTION NOTICE.
- P2 : TRUE COPY OF THE COMMUNICATION DT.20-8-2014 RECEIVED FROM
M/S.MSTC LTD. THROUGH E-MAIL.
- P3 : TRUE COPY OF THE COMMUNICATION SENT THROUGH E-MAIL TO THE
RESPONDENT AND M/S.MSTC LTD.ON 26-8-2014 WITH RESPECT TO THE
DEPOSIT OF THE SECURITY DEPOSIT.
- P4 : TRUE COPY OF THE ACCEPTANCE LETTER/SALE ORDER ISSUED BY
M/S.MSTC.
- P5 : TRUE COPY OF THE LETTER DT.26-6-2015 ISSUED BY THE RESPONDENT.
- P6 : TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DT.9-7-2015.
- P7 : TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DT.13-7-2015.
- P8 : TRUE COPY OF THE ORDER DT.13-8-2015 ISSUED BY THE RESPONDENT.
- P9 : TRUE COPY OF THE E-AUCTION NOTICE PUBLISHED BY M/S.MSTC.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 25837 of 2015

Dated this the 30th day of October, 2015

JUDGMENT

The petitioner had undertaken the contract of removal of waste oil from the respondent. The petitioner quoted the rate, at the time of award of the contract, based on the crude oil price in the international market.

2. Pending contract, there was a drastic reduction in the price of crude oil in the international market. According to the petitioner, this had impact on the contract and he was unable to perform the contract.

3. On account of non-performance of the contract, the contract was terminated after forfeiting the security deposit. The petitioner has also been restrained from taking part on similar contract for a period of one year. The petitioner challenges the action of the respondent, before this Court.

4. In this matter, a counter affidavit has been filed by the respondent which would show that they have acted only in terms of the contract, it is further stated in the counter affidavit, as follows in paragraph 6 :

“The respondent issued a letter on 26.6.2015 to take entire quantity within 15 days from 11.7.2015 failing which the respondent will be forced to forfeit the deposit as per the terms and conditions of the contract. Again, letters were sent and the petitioner was not prepared to lift the balance quantity. Due to non lifting of the waste oil the respondent is also facing great difficulty in regard to the normal operation of yard and the same has other far reaching consequences as well. Since the petitioner was not prepared to lift the balance quantity as per the terms and conditions, the respondent has initiated action for making alternate arrangements by way of new auction.”

Essentially, the issue now arising out of the breach of contract, this Court, in the contractual matters is only called upon to decide arbitrary action on the part of the public authority in terminating the contract. As it has come out now, on the part of the respondent's act was based on terms of the contract, and not beyond the terms of

contract. This Court is of the view that there is no scope for a judicial review of such decision. However, the petitioner is free to work out his remedy before the Civil Court against the termination of the contract as it is purely within the private domain of the parties arising out of the contract. Therefore, with a liberty as above, the writ petition is disposed. It is made clear that, after one year, the petitioner is free to take part in tender in accordance with norms and restrictions imposed, would not apply for the future tender, after the period of restriction is over.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

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