

CASE NO.:

Appeal (civil) 665 of 2001
Special Leave Petition (civil) 15881 of 1999
Special Leave Petition (civil) 666 of 2001
Special Leave Petition (crl.) 1476 of 2000

PETITIONER:

M.D. KERALA STATE BEV. (M & M) CORPN. LTD. & ANR.

Vs.

RESPONDENT:

K.M.K. SALIM AND ORS.

DATE OF JUDGMENT: 17/01/2001

BENCH:

S.N.Phukan, S.S.M.Quadri

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J

J U D G M E N T

Syed Shah Mohammed Quadri, J. Leave is granted. These two appeals are between the same parties and arise out of the proceedings relating to award of contract for handling loading and unloading operations in the appellants Corporation. They can conveniently be disposed of together. Civil Appeal No.665 of 2001 @ S.L.P.(C) NO.15881 of 1999 is directed against the order of a Division Bench of the High Court of Kerala at Ernakulam in O.P.NO.19616 of 1999 dated September 20, 1999. Civil Appeal No.666 of 2001 @ S.L.P.(C)No.1476 of 2000 is directed against an interim order passed by a learned Single Judge of the High Court of Kerala at Ernakulam on December 3, 1999 in O.P. No.30284 of 1999 which is offshoot of the order impugned in the aforementioned Civil Appeal. The facts giving rise to these appeals are as follows. The appellants invited tenders for handling loading and unloading operations in the Kerala State Beverages (M & M) Corporation Liquor Godown in Valanjavattom, Tiruvalla on September 14, 1998. In response to the said invitation for tenders, 12 persons including respondent Nos.1 to 3 filed tenders. Respondent Nos.1 & 2 filed a joint tender and quoted the lowest rates. However, the appellants, after negotiations, awarded the contract to respondent No.3 at the rate lower than that quoted by respondent Nos.1 & 2 on October 23, 1998. On October 26, 1998 respondent Nos.1 & 2 questioned the validity of order of the appellant awarding the contract to respondent No.3 in the High Court in O.P.No.20911 of 1998 which was dismissed by a learned Single Judge of that court on November 26, 1998. But on appeal (Writ Appeal No.2692 of 1998), a Division Bench of the High Court set aside the order of the learned Single Judge and directed the appellants to reconsider the tenders and pass appropriate orders within one month of the order; for reporting compliance, the case

was directed to come up on July 23, 1999. The writ appeal was thus allowed on June 24, 1999. The appellants issued notice to respondent Nos.1 to 3 and conducted interview on July 12, 1999. The contract was awarded to respondent No.3 by order issued on July 21, 1999. It is that order which was quashed by the Division Bench in O.P.No.19616 of 1999 by the order, impugned in the first-mentioned civil appeal. By the said impugned order the Managing Director of the first appellant was directed to consider the tenders afresh and pass appropriate orders within two weeks from the date of that order keeping in view the observations of the High Court in Writ Appeal No.2692 of 1998. On fresh consideration of the tenders, the Managing Director awarded the contract to respondent Nos.1 & 2 on October 1, 1999. Thereafter, respondent Nos.1 & 2 filed O.P.No.30284 of 1999 seeking a writ of mandamus directing the appellants to enter into an agreement with them within ten days without insisting on any licence from the District Labour Officer in terms of award of the work. In the said O.P. a direction was sought in the above terms in C.M.P. NO.51612 of 1999. On December 3, 1999, a learned Single Judge of the High Court issued an interim direction to the first appellant as prayed for. That order is the subject matter of appeal in C.A.No.666 of 2001 @ S.L.P.(C) No.1476 of 2000. Pursuant thereto, respondent Nos.1 & 2 complied with all the formalities and have been carrying on loading and unloading operations. Dr. Rajeev Dhawan, the learned senior counsel appearing for the appellants, contended that the High Court ought not to have interfered with the order of the appellants awarding the contract to respondent No.3 on October 23, 1998. The reasons for awarding the contract to respondent No.3, submitted the learned counsel, were neither irrelevant nor arbitrary within the meaning of Wednesbury principle. So also, the High Court ought not to have interfered with the award of contract to respondent No.3 by quashing the order of the appellant dated June 24, 1999. The subsequent order of the Managing Director awarding the contract in favour of respondent Nos.1 & 2, was under the threat of contempt. He argued that if this Court were to set aside the impugned order of the Division Bench of the High Court, the award of contract in favour of respondent Nos.1 & 2, would consequently stand set aside. Mr. K. Sukumaran, the learned senior counsel appearing for respondent Nos.1 & 2, contended that the High Court directed fresh consideration of the tenders of respondent Nos.1 to 3 by the Managing Director of the first appellant and he awarded the contract in favour of respondent Nos.1 & 2. As the secretary of the first appellant did not conduct himself properly in carrying out the directions of the High Court dated June 24, 1999, the Managing Director was ordered to consider afresh the question of awarding tenders. He submitted that after award of contract in their favour, respondents executed an agreement with the appellants, paid the security deposit and furnished the bank guarantee and that respondent No.3, the affected party, did not challenge the order of award of contract in their favour so this is not a fit case for interference by this Court under Article 136 of the Constitution. We have considered the contentions of the learned counsel of the parties. We are of the view that by the impugned order the High Court did not direct the Managing Director of the first appellant to award the contract in favour of respondent Nos.1 & 2 but ordered him to consider afresh the competing claims of the tenderers and he, on fresh consideration, awarded the contract in favour of respondent Nos.1 & 2. The choice of awarding the

contract to respondent Nos.1 and 2 is that of the Managing Director of the first appellant. Inasmuch as respondent Nos.1 & 2, after award of contract, complied with all the formalities by entering into an agreement, paying the security deposit and furnishing bank guarantee, it will not be appropriate, having regard to the subsequent developments and the facts of this case, to deal with the correctness or otherwise of the reasoning of the High Court in the impugned orders. In this view of the matter, while leaving the questions of law open, we decline to interfere with the orders under challenge in these appeals. The appeals are accordingly disposed of. No costs.

JUDIS