



WP(MD)No.2392 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.2392 of 2015
and
MP(MD)No.1 of 2015

N.Nattathy

: Petitioner

Vs.

1.The Director,
Traffic Commercial Trades,
Railway Board,
New Delhi.

2.The General Manager,
Southern Railways,
Chennai.

3.The Divisional Manager,
Southern Railways,
Madurai Division,
Madurai.

4.Tamil Nadu Ware Housing Corporation,
Rep. by its Managing Director,
No.82, Anna Salai,
Chennai – 32.

: Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus forbearing the respondents 1 to 3 from levying and collecting demurrage charges or wharfage charges or any other charges with regard to the goods unloaded by the petitioner on behalf of the fourth respondent for the delay in unloading or detention of wagons at Tirunelveli goods shed by taking into account the time from 10 pm to 6 am on the succeeding day (ie., during night hours) and to direct the respondents 1 to 3 to refund the money already collected from the fourth respondent (which is also deducted by the fourth respondent from the amount payable to the petitioner) corresponding to the amount of demurrage or wharfage charges levied for the delay occurred in the unloading / detention of wagons during night hours, ie., from 10 pm to 6 am on the succeeding day.

For Petitioner : Mr.Niranjan S.Kumar

For Respondents : Mr.K.R.Laxman,
Central Government Standing Counsel
for R.1 to R.3



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ORDER

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The petitioner was appointed as the Handling and Transporting Contractor by the fourth respondent / Tamil Nadu Ware Housing Corporation for off-loading the goods from the wagons in Tirunelveli Goods Shed. Initially, the Contractors were provided with eight hours time to off-load the goods from the wagons in a day. The Railways has introduced round-the-clock working system, which necessitated the petitioner / Contractor to off-load the goods for 24 hours.

2.The grievance of the petitioner is that though the terminal was converted into 24 hours working, it was not provided with any basic amenities enabling the labourers to work during night hours. Because of lack of amenities like drinking water, toilet facilities, etc., there was a delay in off-loading the goods during night hours, for which, demurrage charges was levied by the respondents 1 to 3 on the fourth respondent / Ware Housing Corporation, which ultimately fall on the petitioner. The delay in off-loading is caused only because of the lack of basic amenities in the terminal and



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therefore, the petitioner has moved this writ petition for a mandamus forbearing the respondents from collecting any demurrage charges and for refunding the demurrage charges already collected.

3.Learned Standing Counsel appearing for the respondents 1 to 3 / Railways submitted that the agreement to off-load the goods from the Goods Shed was entered into between the petitioner and the Warehousing Corporation. The demurrage charges collected by the Southern Railway is only from the Warehousing Corporation and not from the petitioner. In the absence of any privity of contract between the petitioner and the Southern Railway, the petitioner cannot question the round-the-clock working system introduced by the Railways. He further submitted that the Railways is not responsible for engagement of the petitioner as a Contractor by the Warehousing Corporation and for this contention, the learned Standing Counsel has relied on the decision rendered by this Court in ***A.S.P.T.Balakrishnan & Others v. General Manager, Southern Railway & Others*** [CDJ 2012 MHC 4118], wherein, this Court has held as follows:-



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“10. It had been further stated that the clearing and forwarding agency, as representatives of the consignees, have the responsibility to release the wagons, by engaging sufficient labourers and by mechanising the system, for the unloading of the consignments. The Railways have no role to play in such matters.

11. It has also been stated that basic infrastructure and other facilities, such as proper approach road, drinking water, lighting facilities, toilets, bathrooms, rest rooms and other such amenities have been provided for the convenience of the users.

12. It has been further stated that the interim orders had been passed by the Kerala High Court, in W.P.No.20202 of 2008, relating to 'round-the-clock' working hours, introduced at Kallayi, West hill and Valappattinam goods sheds, in Kerala region, in view of the Kerala Head Load Workers Act, which prohibits labourers from working after 18.00 hours. However, in the state of Tamil Nadu, there is no such legislation in force restraining the labourers from working after sunset. As such, the writ petitions, filed by the petitioners, are devoid of merits and therefore, they are liable to be dismissed.

13. In view of the submissions made on behalf of the petitioners, as well as the respondents, and on a perusal of the records available, this Court is of the considered view that the writ



petitions, filed by the petitioners, are devoid of merits. The petitioners, who are clearing and forwarding agents, cannot be said to be aggrieved by the round-the-clock working system introduced by the Railways. It is for the clearing and forwarding agents to engage more labourers and staff to clear the consignments, as efficiently as possible. They could also use mechanical devices and other machineries and equipments for clearing the goods, and for forwarding them to the consignees concerned. Therefore, the policy decision of the Railways, to introduce 'the round-the-clock' system cannot be held to be arbitrary or illegal.

14. The purpose of introducing the said system, by the Railways, is stated to be for the purpose of efficient utilisation of the rakes and for the proper and timely distribution of essential commodities. Further, there is no statutory prohibition against the labourers working during the late evening hours or at night, as in the state of Kerala. Even otherwise, the clearing and forwarding agents concerned can utilise the labourers and the staff, efficiently, by following the shift system, if needed. As such, the writ petitions are liable to be dismissed. Hence, they are dismissed. No costs. Connected M.P.Nos.1 and 2 of 2011, M.P.No.2 of 2012 and M.P.Nos.1 and 2 of 2012 are closed.”



4.He further submitted that all the amenities, such as, High Mast-Lighting facility, Water Facility for rest room, Labourer's Toilet and Bathroom facility, Goods Shed Office at TPGY, Labourer's Locker, Concrete Flooring (Platform), First Aid Box, Drinking Water Facility and Trader's rest room, were properly done and properly available. A free time of 8 hours to all the users of the godown was also provided.

5.This Court considered the rival submissions made on either side and perused the materials placed on record.

6.The petitioner was appointed as the Handling and Transporting Contractor by the Warehousing Corporation for a period of two years from November, 2013. The Railways has introduced round-the-clock working system and demurrage charges was levied on the fourth respondent / Warehousing Corporation for the delay in off-loading of goods, which was deducted from the amount payable to the petitioner. The grievance of the petitioner is that the terminal was not provided with any basic facilities and therefore, during night hours, it is very difficult for them to off-load the



goods. According to the petitioner, the delay in off-loading of goods is only because of the lack of basic amenities and as such, the fault on the part of the respondents cannot be foisted on the petitioner.

6. Admittedly, an express contract in a written agreement was entered into between the petitioner and the Warehousing Corporation in the year 2013. The round-the-clock working system was introduced by the Railways as early as on 23.03.2008 with effect from 01.07.2008. Thus, the round-the-clock working system was introduced four years before the appointment of the petitioner as a Handling and Transport Contractor by the fourth respondent.

7. Even otherwise, the petitioner has entered into an agreement with the fourth respondent and not with the respondents 1 to 3. He is bound by the tender conditions, however, the tender notification and the conditions were not produced before this Court. A contract cannot confer rights or impose obligations arising under it on any person, except the parties to it. No one, but the parties to a contract, are entitled under it or bound under it.



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8. Since there is no privity of contract and / or any exchange of consideration between the Railways and the petitioner, the petitioner cannot maintain this writ petition as against the Railways and as such, this writ petition is dismissed. However, the respondents shall ensure that the basic amenities are provided in the Terminal enabling the labourers to work in night hours. The petitioner is also at liberty to work out his remedy as against the Ware Housing Corporation, in the manner known to law, if so advised. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
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