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W.P.No.8219 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON :21.03.2024  
DELIVERED ON : **26.06.2024**

**Coram:**

**THE HONOURABLE MRS.JUSTICE N.MALA**

**W.P.No.8219 of 2021 and  
W.M.P.Nos.13011 and 8773 of 2021**

Ennore Tank Terminals Private Ltd.,  
3rd Floor, P.T.Lee Chengalvaraya Naicker Maaligai  
23 Rajaji Salai  
Chennai 600 001.  
Rep by its Authorised Signatory

...Petitioner

**Vs.**

Deputy Director of Industrial Safety & Health  
No.15, State Bank Colony II Street,  
Thiruvottiur,  
Chennai 600 019.

...Respondent

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondent from extending and insisting the petitioners to comply with the provisions of the Factories Act in respect of the petitioner's permits inside the Kamarajar Port Trust, Vallur Post, Ponneri Taluk, Thiruvallur 600 120 pursuant to the show cause notice of the respondent in A/751/2021 and A/No/752/2021 consequential Inspection Report in proceedings No.TVR-URF/EIR/2021, dated 08.03.2021.



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For Petitioner : Mr.G.Anandgopalan  
For Respondent : Mr.P.Sanjaygandhi,  
Govt., Advocate

### **ORDER**

The writ petition is filed for a Writ of Mandamus forbearing the respondent from extending and insisting the petitioners to comply with the provisions of the Factories Act, in respect of the petitioner's permises inside the Kamarajar Port Trust, Vallur Post, Ponneri Taluk, Thiruvallur-600 120, pursuant to the show cause notice of the respondent in A/751/2021 and A/No/752/2021, consequential Inspection Report in proceedings No.TVR-URF/EIR/2021, dated 08.03.2021.

2.Though the genesis of the writ petitions are the show cause notices, the writ petitions is entertained as the jurisdiction or competence of the respondents to invoke the factories Act against the petitioner is questioned.

### **BRIEF FACTS:**

3. The petitioner company is engaged in receiving liquid products from vessels coming alongside the jetty into the integrated tank farm terminal through pipelines and transporting the same through tanker, lorries or pipelines to its various customers. For the said purpose, the petitioner entered into licenced agreement with the Kamarajar port (formally Ennore Port Ltd.) for



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development of jetty and an integrated tank farm within the port premises on

Build, Operate and Transfer (BOT) basis for a period of 30 years from 2006

under the Public-Private partnership model. In pursuance of the licence

agreement, the petitioner built the integrated storage tanks and terminals, which

are located within the port premises as defined and notified by the Government

in terms of the Indian Ports Act, 1908. The petitioner's aforesaid premises has

valid licences from PESO and also under the Pollution Laws. The petitioner has

compiled with the labour laws like ESI, EPF and the Contract Labour Abolition

Act, 1970. While so, the petitioner's premises (Storage tank terminal) was

inspected by the respondent on 18.02.2021. The respondent was of the view

that the petitioner's premises was a factory and that the petitioner violated

certain provisions of the Factories Act, 1948. Therefore a show cause notice,

dated 08.03.2021 was issued to the petitioner. The petitioner sent his reply to

the show cause notice on 24.03.2021 denying that his premises was a factory

and thereafter filed this writ petition for the aforesaid relief.

4.The respondent filed a detailed counter and as the petitioner filed an additional affidavit, the respondent also filed an additional counter reiterating its stand that the petitioner's premises was a factory and justified the issuance of the show cause notice, which was issued for violation of the provisions of the



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Factories Act, 1948. The respondent denied that the workers of the petitioner Company were covered by the provisions of the Dock Workers (Regulation of Employment) Act, 1948 and the Dock Workers (Safety, health and Welfare) Act, 1986 and the regulations framed thereunder.

### **RIVAL CONTENTIONS:**

5. The petitioner's case is that the petitioner's premises is covered only by the Indian Ports Act, the Dock Workers (Regulation of Employment) Act, 1948 and the Dock Workers (Safety, health and Welfare) Act, 1986 and not the Factories Act. The petitioner states that the only activity carried on by the petitioner is receipt and storage of petroleum products for re-delivery to its customers through tanker lorries and pipelines hence no manufacturing process is involved and consequently the factories Act is not applicable to it. According to the petitioner, 67 persons are employed by the petitioner and they are covered under the provisions of Dock Workers (Safety, health and Welfare) Act, 1986. The petitioner states that it is registered under the Contract Labourers (Regulation and Abolition) Act, 1970 and the Contract Labourers engaged by it are also covered under the Dock Workers (Safety, health and Welfare) Act, 1986. The factual position that the persons engaged by the petitioner are covered under the provisions of the Dock Workers (Safety, health and Welfare)



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Act, 1986 is not denied by the respondent.

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6.The respondent, on the other hand, states that all premises except the exempted premises are covered by the Factories Act, that pumping oil is a manufacturing process as defined under Section 2k(ii) of the factories Act and as the petitioner company employs more than 10 persons, the petitioner establishment is a factory, that the Ports Act does not prohibit the registration and coverage under the Factories Act, even though the premises is within the port area, that as Factories Act is applicable to dry docks it will also apply to other premises within the port area and that the Dock Workers Act is applicable only to workers working for movement of goods from ship to dock and dock to ship and not applicable to workers working away from the dock (ie) land area though within the port premises. The Factories Act comes in the shore area (Land area) where operation of pumping oil from storage tanks into tanker lorries takes place for distribution of petroleum and oil to various customers at various locations through tanker lorries and pipelines.



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**DISCUSSION:**

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7. The Crux of the matter is whether the Petitioner's establishment is covered by the Dock Workers (Regulation of Employment) Act, 1948 and the Dock Workers (Safety, health and Welfare) Act, 1986 or the Factories Act, 1948.

8. To consider the said issue, the definition of Dock worker, cargo and Dock work in the Dock Workers (Regulation of Employment) Act, 1948 and the Dock Workers (Safety, health and Welfare) Act, 1986 are required to be looked into. The Dockworkers (Regulation of Employment) Act, 1948 defines Cargo and Dock Workers as follows:

*"Sec. 2(aa): "**cargo**" includes anything carried or to be carried in a ship or other vessel;*

*Sec. 2(b): "**dock worker**" means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port;"*

The Dock Workers (Safety, health and Welfare) Act, 1986 defines Cargo, Dock work and Dock Worker as follows:

*"Sec. 2(b): "**cargo**" includes anything carried or to be carried in a ship or other vessel;*



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*Sec. 2(d): "dock work" means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place, and includes—*

*(i) work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port; and*

*(ii) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area in board the ship or in the docks;*

*Sec. 2(e): "dock worker" means a person employed or to be employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, on dock work;"*

9.The definitions under both the Acts are in *pari materia*. Before proceeding further it would be useful to refer to few judgements which will throw light on the issue. The Hon'ble Supreme Court in ***Calcutta Port Shramik Union v. Calcutta River Transport Assn., 1988 Supp SCC 768***, while dealing with the issue whether Bargemen working in Calcutta Port Trust were Dock Workers or not for the purpose of claiming benefit of wage revision confirmed the findings of the National Tribunal which held as follows:



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*"15. .... The definition of the dock workers has to be understood in the light of not only their work in the port but also consistent with the definitions of cargo, vessel, employer and the port in the Acts referred to above. The terms, loading, unloading and movement of persons employed in any port in connection with the preparation of ships or vessels for the receipt or discharge of cargo would indicate that the work of the bargemen came rightly within the definition of dock workers as defined in Act 9 of 1948. There is plenty of evidence in the case that their main work and activity is within the port. The fact that one of the companies had made use of them to go beyond the port by itself does not in any manner bring down their description to make them less as dock workers."*

10. The Bombay High Court, while considering the issue whether ore samplers were dock workers or not in the context of the validity of a reference by the Central Government of the dispute to the Industrial Tribunal, initially held that the ore samplers were not dock workers and later, on remand by the Hon'ble Supreme Court of the matter to the Tribunal and on challenge to the Award before the Bombay High Court in the Second round of litigation held as follows:

***"Therapeutics Chemicals Research Corporation v. Central Government Industrial Tribunal No. 1, 1989 (1) LLN 383 :***

*"25. The "dock worker", as defined in S. 2(6) of the Dock Workers (Regulation of Employment) Act, reads as under:*

*"'Dock worker' means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading movement or storage of cargoes, or work in connection with the preparation*



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*of ships or other vessels for the receipt or discharge of cargoes or leaving port.”*

*A dock labourer is thus a person who is employed in or in the vicinity of any port and in addition, works in connection with the loading, unloading, movement or storage of cargoes or in connection with the preparation of ships for the receipt or discharge of cargoes or leaving port. Sri Usgaoncar is, therefore, right when he contends that two conditions are necessary for a person coming under that definition, one being that such person works in or in the vicinity of a port and, second, that he works in connection with the cargoes. The definition of “dock worker” is verbatim equal to the definition to the “dock worker” in the Dock Workers (Regulation of Employment) Act, 1946, which is in force in the United Kingdom. In National Dock Labour Board v. John Bland and Company, Ltd. [1970 (2) All E.R. 577] (vide supra), the Court of appeal had observed that the said definition speaks of cargo and since the Act provides that the “cargo” includes anything carried or to be carried in a ship or other vessel, to ascertain the scope of dock work one has to find the meaning of the word “cargo” and, therefore, a man is a dock worker only when he is employed in connection with a cargo or cargoes. This view was upheld in appeal in the decision in National Dock Labour Board v. John Bland and Company, Ltd. [1971 (2) All E.R. 779] (vide supra). There is no dispute that, in fact, a dock worker should be connected with the cargo but what is submitted is that it is not necessary that the work should strictly be of loading, unloading, movement or storage of cargoes or work of preparation of ships for receipt and discharge of cargoes or leaving port. What is submitted is that the work should be in connection with any of these activities and, therefore, if connection with any such activities is established and is a continuous process necessary for any such activities, then, a person doing such kind of work comes within the purview of the said definition. This submission appears to us to be correct, especially while interpreting a beneficent piece of legislation as the Dock Workers (Regulation of*



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*Employment) Act is. As observed by the Supreme Court in Andhra University v. Regional Provident Fund Commissioner, Andhra Pradesh [1986-1 L.L.N. 61] (vide supra), in interpreting a beneficent piece of legislation, the same should be construed liberally and not in a narrow manner, for, this may defeat the object and the purpose of the Act. We also find merit in the submission of Sri Kakodkar that the word “connection” means “relation” and, therefore, the work should be in relation to any of the above activities in order to bring a person within the definition of “dock worker” in the Act. Also, there is merit in the submission of learned counsel that the word “vicinity” should not be given a narrow meaning so as to be construed as being a thing very close to the port.”*

11. So also the Andhra Pradesh High Court in ***Raman C. Amin (Dr.) v. Dock Labour Board, Vishakapatnam, 1989 SCC OnLine AP 568***, was called upon to decide if ore samplers were Dock Workers. The Court following the above judgment of the Bombay High Court analysed the definition of Dock Workers as defined in Sec. 2(b) of the Dock Workers (Regulation of Employment) Act, 1948 and held as follows:

*"7. From a reading of the decision, it is clear that (he is) a person employed or to be employed in or in the vicinity of any port on work in connection with the loading, unloading movement or storage of cargoes or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port.*

*8. Thus it is clear that not only the workers who are employed or to be employed in actual loading or unloading, movement or storage, of cargoes but also those who work in connection with the loading, unloading, movement or*



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*storage or preparation of ships or other vessels for receipt or discharge of cargoes or leaving port are included within the meaning of dock workers. The sampling, workers are engaged in taking samples before the export of goods in the process of preparation of the ship or vessel for receipt of the cargo. As such they are included in the definition of dock workers."*

12. Recently a learned Judge of our High Court had the occasion to decide whether boat men, who were engaged to take the cargo from the port to mid sea were dock workers or not for the purpose of absorption into the Tuticorin port. The learned Judge, after referring to the aforesaid judgements at Paragraph Nos. 12 and 13 held as follows:

*12.The entire dispute has arisen because the Tuticorin Port Trust had not treated the members of the Boatmen Union on par with the other workmen. The argument as to whether the boatman would fall under the category of dock workers, it is necessary to refer to the Dock Workers (Regulation of Employment) Act, 1948. Under Section 2(b), the definition of a Dock Worker is as follows:*

*Section 2. Definitions.~In this Act, unless there is anything repugnant in the subject or context, ~*

*2[(aa) cargo includes anything carried or to be carried in a ship or other vessel;]*

*(b) "dock worker" means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port;*

*13.A reading of this provision shows that any person who is employed not only in the Port itself but also in the vicinity of any port in connection with*



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*loading and unloading and movement or storage of cargoes is treated as a dock worker. The role of the boatmen is not denied. The boatmen were used by the stevedores and others in order to go on to the mid sea to “lighten the load of the ship and bring them onto shore.” Similarly, in order to load the ships, the boatmen used to take the cargo from the shores onto the ships which were anchored in the mid~sea and from the boats, the cargo used to be loaded onto the ships. The reason why step motherly treatment is being given to the boatmen is due to the fact that they are not physically handling the cargo. Physically handling the cargo is an artificial differentiation. A reading of the aforesaid definition would show that even if there is any connection between the boatmen and the loading and unloading of the cargo, they have to be treated as dock workers.*

13.The following points emerge from the definition and the judgements of the courts:

- (i). Definition of dockworker is of wide import.
- (ii). It includes all categories of workers working in the vicinity or in the port if they are handling cargoes.
- (iii). The definition of dock workers has to be understood in the light of not only their work in the port but also in conformity with the definition of cargo, vessel, employees and the ports in the Act.
- (iv). The terms loading and unloading and movement of persons employed in any port in connection with preparation of ships or vessels for receipt or discharge of cargo is an indicator for bringing in the workers within the definition.



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(v). Evidence to establish if the main work and activity was within the port.

(vi). It is not necessary that the worker should be physically involved in the loading and unloading etc., but it would suffice if the worker is employed in connection with such activity.

(vii). The connection of the worker with the activities mentioned in the definition should be read in conjunction with the movement of cargo.

14. The pivotal activity in a port is the handling of cargo and in this area of work a lot of labour is employed. It is true that in most of the ports, fairly large quantity of cargo is handled outside the dock area, for that reason can it be said that in all cases where the workers are engaged to do work outside the dock areas they are not covered by the Dock Workers (Regulation of Employment) Act, 1948 and the Dock Workers (Safety, health and Welfare) Act, 1986.

15. The definition of cargo is very wide and inclusive and covers anything carried or to be carried in a ship or vessel. So also the definition of dock worker is very comprehensive as it includes all types of workers employed in a port or in the vicinity, if they are handling cargoes. Two aspects are very crucial to the definition of a dockworker. One the work should be in a port or in its vicinity



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and two the work should be in connection with the handling of cargoes. It is the respondent's contention that the petitioners' workers are not involved in the loading or unloading of cargo or its movement within the dock area (jetty) and hence the Dockworkers Act is not applicable. In my view, the differentiation is superficial. The definition of dockworker lays stress on cargo and port area or vicinity and therefore any person who is employed in connection with the cargo in the port area and its vicinity will be a dockworker. It is also not necessary that the worker should be physically engaged in loading, unloading, movement or storage of cargoes or work of preparation of ships for receipt and discharge of cargoes or leaving port. What is necessary is that the work should be connected with any of the above activities. If the work is in any way connected to the above activities in relation to the cargo, then the worker will be a Dockworker.

16. That the storage terminals are within the port premises and petroleum, oil, etc, are the cargo brought in vessels is not disputed. Hence the workers who work for the transport of oil and petroleum in the storage area within the port premises will be dock workers as they are engaged in connection with the cargo. One more aspect which needs to be noted is that the operation of the storage tankers containing oil and petroleum has a direct affect on the preparation of ships for receipt and discharge of cargos and leaving the port. If the said cargos



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are not managed by the workers by transporting in time, so as keep the storage tanks ready for receipt and discharge from vessels, then it will affect the movement of the vessels and consequently the port operations. Viewed from this angle also, it is clear that the workers are dock workers.

17.The contention of the Respondent that the factories functioning in any premises shall be registered and covered by the Factories Act is rejected in view of my finding that the workers are dock workers as defined by the Acts. Once it is held that the workers of the Petitioner's Company are 'Dock Workers' it is only the Special Acts i.e., the Dockworker (Regulation of Employment) Act, 1948 and the Dockworker (Safety, health and Welfare) Act, 1986 that will apply to the petitioner Company and not the Factories Act, as the Factories Act is a general Act. The Dockworkers Act, 1948, Dockworker (Safety, health and Welfare) Act, 1986 and the regulations framed thereunder and also schemes are enacted specifically for the dockworkers who are employed in Ports and who fit in the definition of dock workers, hence the Special Act will prevail over the General Act i.e. Factories Act.

18. As I have taken the view that the workers of the Petitioner Company are Dock workers, the other submissions of the learned Counsel for the



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respondents that the Petitioner's operations amount to 'Manufacturing Process' as defined under Sec. 2(k)(ii) of the Factories Act, and that as Factories Act applies to Dry Docks it will also apply to workers employed away from Docks is not countenanced. The applicability of the Factories Act to dry Docks has no relevance as on the facts of the present case, it is found that the workers are Dock workers. The contention that as the Factories Act is made applicable to dry docks it should also apply to workers working in Shore Area does not advance the respondent's case but on the contrary goes against the contention. The application of Factories Act to dry docks for repair of ships/vessels is made on the premise that the workers engaged in repair works are not dock workers as they are not engaged in loading, unloading or any other activity connected with the cargo. Therefore, if the workers are dock workers, necessarily the factories Act has no application.

19. A key aspect which needs special mention is the apprehension of the respondent that non-compliance with the provisions of the Factories Act, which is a labour welfare legislation will jeopardise the life and limb of the workers as well as the public in case of major accidents. I am afraid the said apprehension is unfounded. The learned counsel for the petitioner has submitted a comparative table of the provisions of the two Acts and it clearly shows that the



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provisions of the two Acts relating to safety, health, welfare etc., of the workers

is in *pari materia*. For the purpose of better appreciation, the comparative table

is extracted below:

| <b>FACTORIES ACT, 1948</b>                      | <b>DOCK WORKERS (SAFETY, HEALTH AND WELFARE) REGULATIONS, 1990</b> |
|-------------------------------------------------|--------------------------------------------------------------------|
| <b>HEALTH</b>                                   |                                                                    |
| Section 11- Cleanliness                         | Section 95- Cleanliness                                            |
| Section 13- Ventilation and Temperature         | Section 99- Ventilation and Temperature                            |
| Section 18- Drinking Water                      | Section 96- Drinking Water                                         |
| Section 19- Latrines and Urinals                | Section 97- Latrines and Urinals                                   |
| <b>SAFETY</b>                                   |                                                                    |
| Section 21- Fencing of Machinery                | Section 27- Fencing of Machinery                                   |
| Section 38- Precautions in case of Fire         | Section 17- Fire Protection                                        |
| Section 32- Floors, stairs and means of access  | Section 20,21- Floors and stairs                                   |
| Section 40B- Safety Officers                    | Section 93- Safety Officers                                        |
| <b>WELFARE</b>                                  |                                                                    |
| Section 42- Washing Facilities                  | Section 100- Washing Facilities                                    |
| Section 45- First aid appliances                | Section 101- First aid boxes                                       |
| Section 46- Canteens                            | Section 106- Canteens                                              |
| Section 47- Shelters, Restrooms and Lunch rooms | Section 105- Shelters, Rest sheds and Lunch rooms                  |
| <b>OTHER PROVISIONS</b>                         |                                                                    |
| Section 89- Notice of certain diseases          | Section 92- Notification of certain diseases                       |
| Section 9- Powers of Inspectors                 | Section 3- Powers of Inspectors                                    |



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20. It is therefore clear that all safety, health and welfare measures provided for the benefit of the workers under the factories Act are also provided under the Dock Workers (Safety, Health and Welfare) Regulations, 1990, framed under the Dock Workers (Safety, health and Welfare) Act, 1986.

21. In view of all the above discussions, the writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

Index: Yes/No  
Speaking Order: Yes/No  
Neutral Citation: Yes/No  
To  
Deputy Director of Industrial Safety & Health  
No.15, State Bank Colony II Street,  
Thiruvottiyur,  
Chennai 600 019.



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**N.MALA.J.**  
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