

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving : 17-12-2014

Date of Judgment: 23-12-2014

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

Writ Appeal No.247 of 2011

Chennai Port Trust,
Rep. By its Chairman,
Chennai.

.. Appellant./ Respondent

Versus

M/s.Symcom Communications,
Rep. By its Power of Attorney,
Mr.Anil V.Rupa

.. Respondent./ Petitioner

Prayer: Appeal filed under Clause 15 of the Letters Patent Act,
against the order of the learned single Judge, made in
W.P.No.18376 of 2010, dated 21.12.2010

W.P.No.18376 of 2010 Writ Petition is filed under
Article 226 of the Constitution of India praying to issue a
Writ of Certiorarified Mandamus, calling for the records of the
respondent in Letter Reference No.S2/1166/2007/M, dated
18.6.2010, quash the same and consequently direct the respondent
to fix the berth hire charges at Rs.1,380.84 per day with effect
from 29.4.2010 for the dead Vessel M.V.San Giorgio 1 and to
adjust from and out of the amount of Rs.16,32,300/- already paid
by the petitioner the correspondingly due sum towards berth hire
charges and to refund the excess amount to the petitioner.

For Appellant : Mr.P.Wilson,
Senior Advocate for
Mr.R.Karthikeyan

For Respondent : Mr.Fereshte D.Sethna for
Mr.C.Kasirajan

JUDGMENT

(Judgment of the Court was made by M.Jaichandren,J.)

Heard, the learned counsels appearing on behalf of the
appellant, as well as the respondent.

2. This Writ Appeal has been filed against the order of the learned single Judge, dated 21.12.2010, made in W.P.No.18376 of 2010.

3. The petitioner in the Writ Petition, in W.P.No.18376 of 2010, the respondent in the present Writ appeal, had filed the Writ Petition praying for the issuance of a Writ of Certiorarified Mandamus to call for and quash the letter issued by the appellant herein, dated 18.6.2010, and consequently to direct the appellant to fix the berth charges at Rs.1380.84 per day, with effect from 29.4.2010, in respect of the dead vessel MV "San Giorgio 1" and to adjust from and out of the amount of Rs.16,32,300/- already paid by the present respondent and to refund the excess amount.

4. The main question that had arisen for the decision of this court, at the stage of the Writ Petition, is as to whether, the Chennai Port Trust, the appellant herein, is entitled to levy berth hire charges as applicable to commercial vehicles or the charges leviable in the case of dead vessel meant for scrapping. The respondent had stated that it had purchased the dead vessel, namely, MV "San Giorgio 1", while the vessel was berthed at the Chennai Port Trust. While the respondent had been taking steps to comply with the necessary formalities for taking the vessel out of the Chennai Port Trust, it had sent a letter, dated 14.6.2010, requesting the Chairman, Chennai Port Trust, to levy charges for the berthing of the vessel at Rs.460.28 per eight hours, equal to Rs.1380.84 per day, on the basis of the order passed by this court, in the case of MV Eleni, on 11.9.2004, in O.S.A.No.108 of 2004, filed against the order passed in Application No.361 of 2004, in C.S.No.97 of 1997. The Deputy conservator, Chennai Port Trust, had refused to accept the plea of the respondent for the levy of the berth hire charges at the rate of Rs.460.28 per 8 hours, by his proceedings, dated 18.6.2010.

5. It had been stated in the said proceedings that the respondent should pay the charges based on the rates applicable to commercial vessels. The said order had been challenged, by the respondent, in the Writ Petition, in W.P.No.18376 of 2010. The learned single Judge had passed the order dated 21.12.2010, allowing the Writ Petition holding that the question of levying berth hire charges at the rates applicable to commercial vessels, in respect of dead vessel meant for scrapping, had been considered by this court, in O.S.A.No.108 of 2004, in its order dated 11.9.2004.

6. It had been further stated that it was an admitted fact that there is no scrapping yard at the Chennai port Trust and consequently, the berth hire charges were not made applicable for dead vessels meant for scrapping. The Chennai Port Trust had

been following the berth hire charges prescribed and notified by the Vishakapattinam Port Trust, for dead vessels meant for scrapping. Therefore, it would not be open to the Chennai Port Trust to levy the hire charges, in respect of the vessel MV "San Giorgio 1", based on the rates applicable to commercial vessels. Aggrieved by the order passed by the learned single Judge allowing the Writ Petition, in W.P.No.18376 of 2010, the Chennai Port Trust has filed the present Writ Appeal before this Court raising a number of grounds.

7. The learned counsel appearing on behalf of the appellant had submitted that the learned single Judge had not considered the fact that MV "San Giorgio 1", is not a dead vessel. He had failed to consider the fact that the ship had been denied entry into the Tuticorin Port Trust and thereafter, it had reached the limits of the Chennai Port Trust. M/s.Olam International, the Cargo Interest, had requested the Chennai Port Trust to berth the vessel and to discharge the cargo. A letter of undertaking, dated 3.4.2007, had been executed, agreeing to pay all the charges, including the demurrage charges that would be incurred, as a result of the vessel being brought into the Port of Chennai. An indemnity bond, dated 16.4.2007, had also been executed, undertaking to indemnify the Chennai Port Trust against all losses that would be incurred due to the berthing of the vessel. The learned single judge had not considered the fact that the Chennai Port Trust had been informed about the order of arrest, dated 17.4.2007, issued by the Bombay High Court, which had compelled the Chennai Port Trust to arrest the ship that had been berthed in the commercial berth. As such the vessel had been occupying a commercial berth, depriving the Chennai Port Trust to grant permission for other commercial vehicles to berth. As the vessel MV "San Giorgio 1" had been insured, it cannot be treated as a dead vessel.

8. It had been further submitted that the learned single Judge had failed to consider the fact that no materials had been placed on record by the respondent herein in support of its claim that the vessel in question was classified as a dead vessel. In the auction for the sale of the vessel by the Bombay High Court, it had been sold for Rs.6 crores. Therefore, it cannot be considered to be a dead vessel. M/s.Olam International Limited had paid the vessel related charges only on a commercial rate and not at the Vishagapattinam Port Trust rate meant for scrap vessels. The learned single Judge had failed to consider the fact that the Bombay High Court had directed the owners of the vehicles to pay the outstanding dues to the Chennai Port Trust, with interest, which would be applicable to a commercial berth. It should have been noted that the Vishakapattinam Port Trust has a natural harbour, unlike the Chennai Port Trust. Therefore, the charges for the berthing of the vessels would differ. It is the berth rate fixed by the berthing authorities for the major ports that would be applicable to the commercial

vessel. Further, the learned single Judge ought to have considered the fact that, as on 10.1.2011, a sum of Rs.96,89,572/- was payable in respect of the vessel in question, for its use of the commercial berth and it would be only a sum of Rs.3,91,428/- if it is classified to be a dead vessel. It would be a huge loss for the Chennai Port Trust, if this court permits the respondent to pay only the charges payable in respect of the MV "San Giorgio 1", as a dead vessel.

9. In reply the learned counsel appearing on behalf of the respondent had submitted that there cannot be any dispute about the fact that the MV "San Giorgio 1" is a dead vessel. In its long journey from the Port of West Africa, the vessel had become dead, as it could not sail on its own due to a fire accident. Thereafter, as the Tuticorin Port Trust refused to permit the berthing of the vessel it had to be berthed at the Chennai Port Trust. As the vessel in question was a dead vessel the respondent had requested that the ship had to be towed and dismantled and cut and removed as a scrap. In fact the request made by the respondent for the cutting and scrapping of the vessel, at the Chennai Port Trust, had been refused, by the appellant. The delay in the towing of the vessel was beyond the control of the respondent. In fact a bank guarantee had also been given for a about sum of Rs.1 crore, in favour of the appellant, at the time of the towing of the vessel from the Chennai Port Trust. Even though the ship had been purchased by the respondent, on 29.4.2010, the vessel could be towed out of the Chennai Port Trust only on 21.3.2011, after obtaining appropriate orders from this court, after the filing of a contempt petition.

10. It has been further stated that there cannot be any dispute with regard to the fact that MV "San Giorgio 1" is a dead vessel. The said issue has not been contested by the appellant by furnishing necessary evidence. While so, it would not be open to the appellant to state that MV "San Giorgio 1" is not a dead vessel. Even otherwise, it could be seen from the decision of Division Bench of this court, in O.S.A.No.108 of 2004, that the appellant had agreed to accept the charges relating to a dead vessel, based on the rates prescribed by the Vishakapattinam Port Trust. When the berth hire rates applicable to major ports had not been fixed and notified in respect of the dead vessels, the Chennai Port Trust has been following the rates prescribed by the Vishakapattinam Port Trust. Therefore, unless contrary evidence is shown, it could be presumed that the rates applicable to dead vessels, fixed and notified by the Berth Authority for Major Ports, in respect of such vessels, for the Vishakapattinam Port Trust, should also be made applicable to the Chennai Port Trust. If so the amount payable by the respondent would only be Rs.1380.84 per day, in respect of the vessel MV "San Giorgio 1". However, during the course of the

proceedings, the appellant had issued a communication to respondent, demanding the payment of Rs.15 crores, payable by the respondent in respect of the vessel MV "San Giorgio 1". It is unreasonable on the part of the appellant to demand the additional hire charges, at this belated stage. It has also been pointed out that the appellant had not followed the procedures prescribed in the provisions of the Major Port Trusts Act, 1963, especially, Section 56 of the said Act. In fact, the appellant ought to have issued a show cause notice for claiming the additional berth charges, in respect of the vessel MV "San Giorgio 1". Even if the vessel had been towed out of the Chennai Port Trust and if the arrest or distraint of the vessel cannot be made at the Chennai Port Trust, it would be open to the appellant to make its claim, by issuing a show cause notice, under Section 56 of the Major Port Trusts Act, 1963.

11. It has been further stated that, when the payment of the rates, in respect of the vessel MV "San Giorgio 1", is seriously disputed, it would not open to this court to decide the case by invoking its writ jurisdiction, under Article 226 of the Constitution of India, as the matter needs to be decided based on evidence, both oral as well as documentary. The claim made by the appellant cannot be gone into by this court, at this stage. In fact the appellant had not made such a claim at the earliest point of time and therefore, the claim would be hit by the doctrine of limitation. It has also been stated that, in view of the decision of the Division Bench of this Court, in O.S.A.No.108 of 2004 the issue relating to the payment of the berth hire charges, in respect of the dead vessel, is no longer res integra. Therefore, the present appeal filed by the appellant is devoid of merits and therefore, it is liable to be dismissed.

12. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, we are of the considered view that the appellant has not been in a position to show, by sufficient evidence, that the vessel in question, namely, MV "San Giorgio 1", is not a dead vessel. Further, the amount payable in respect of the vessel MV "San Giorgio 1" cannot be based on the rates applicable to commercial vehicles. The fact the vessel in question is a dead vessel cannot be questioned, in view of the finding of the learned single Judge of this court, in his order, dated 21.12.2010, made in W.P.No.18376 of 2010. Further, no evidence has been placed before this court to substantiate the said claim made on behalf of the appellant that the vessel is not a dead vessel. As the appellant had not been in a position to show that the berth hire charges applicable to the vessel MV "San Giorgio 1" has been notified by the Berth Authority for Major Ports and made applicable in respect of the Chennai Port Trust, the claim of the appellant cannot be sustained.

13. From the records available it could be seen that the Chennai Port Trust has been adopting the rates fixed by the Vishakapattinam Port Trust, in respect of the dead vessels. There is nothing on record to show that the rates had been revised in respect of the dead vessels, berthed at the Chennai Port Trust, by way of a notification issued by the Berth Authority for Major Ports. Therefore, the contentions raised on behalf of the appellant, with regard to the berth hire charges, in respect of the vessel MV "San Giorgio 1", cannot be countenanced. We are of the considered view that no cause or reason has been shown by the appellant to set aside the order passed by the learned single Judge, dated 21.12.2010, made in W.P.No.18376 of 2010.

14. It is also to be noted that the additional berth hire charges claimed by the appellant, in respect of the vessel MV "San Giorgio 1", cannot be an issue before this court, as a number of disputed issues have been raised with regard to the said claim made by the appellant. Further, the appellant ought to have followed the procedures established, as per the provisions of the Major Port Trusts Act, 1963, for making its claim for the payment of the additional berth hire charges. Section 56 of the said Act contemplates the issuance of a show cause notice to the party in question, in respect of the payment of the charges short-levied or erroneously refunded. Accordingly, a show cause notice ought to have been issued to the respondent relating to the claim of the additional berth hire charges, in respect of the vessel in question. Instead the appellant had issued a communication making a demand, of asking the respondent to pay a sum of Rs.15 crores, as the additional berth charges, in respect of the vessel MV "San Giorgio 1". Such a procedure followed by the appellant cannot be sustained in the eye of law. However, it may be open to the appellant to make its claim, if any, for the payment of the additional hire charges, from the respondent, in respect of the vessel, by following the procedures contemplated under the provisions of the Major Port Trusts Act, 1963, before the appropriate authority or forum. With the above observations, we confirm the order passed by the learned single Judge, dated 21.12.2010, made in W.P.No.18376 of 2010. Accordingly, the Writ Appeal stands dismissed. No costs.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

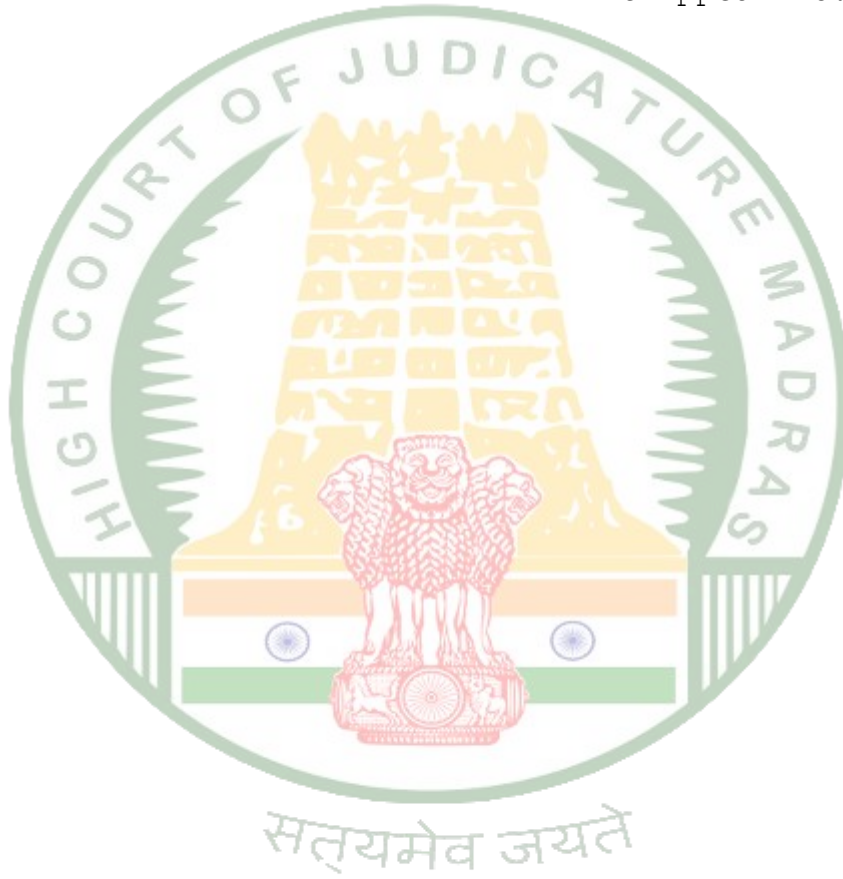
To

The Chairman
Chennai Port Trust
Chennai

1 cc to Mr.C. Kasirajan, Advocate, Sr. 63318
1 cc to Mr.K. Karthikeyan, Advocate, Sr. 63843

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