

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.4207 of 2010

Order Reserved on 23.12.2014 Judgment Pronounced on 12.08.2015

Chennai Port Stevedores Association,
Represented by its President,
Shri R.V.Umashankar, having its Office at
No.3, Jaffar Syrang Street, 2nd Floor,
Chennai - 600 001. Petitioner

Vs.

- 1.Union of India,
represented by its Secretary to Government,
Ministry of Shipping, Road Transport and Highways,
Department of Shipping,
Transport Bhawan, Parliament Street,
New Delhi - 110 001.
 - 2.The Chennai Port Trust,
Represented by its Chairman
Rajaji Salai, Chennai.
 - 3.The Madras Harbour Worker Union,
rep. by its General Secretary V.K.Balakrishnan
No.42, Prakasam Salai,
Chennai - 104.
 - 4.Chennai Port and Dock Workers Congress,
rep. by its President G.Kalan
G.R.Bhavan, No.87, Royapettah High Road,
Chennai-14.
 - 5.The Madras Port and Dock Employees Union (CITU)
rep. by its General Secretary Mr.T.Narendra Rao,
No.55/26, Moore Street,
Chennai-1. Respondents
- (R3 to R5 impleaded as per order dated 08.04.2010
in MP.Nos.1 to 3 of 2010 in WP.No.4207 of 2010)

Prayer: Writ petition is filed under Article 226 of the Constitution
of India for issuance of a Writ of Mandamus, directing the

Respondents herein to implement the award of the National Industrial Tribunal, Kolkata dated 19.04.2006, passed and published under Section 17 of the Industrial Dispute Act, 1947, by the Central Government in Gazette of India dated 03.06.2006, in so far as it relates to the activities of the Members of the Petitioner's in the prescient of the second Respondent, as Stevedores.

For Petitioner : Mr.S.R.Rajagopal
For Respondents : Mr.Haja Mohideen Gisthi (for R1)
SCGSC
Mr.R.Karthikeyan (for R2)

Mr.S.Senthilnathan (for R3 & R4)

Mr.D.Dhanaraj (for R5)

O R D E R

The short facts of the case are as follows:

The petitioner submits that he is the President and Authorised Signatory of the petitioner's entity, which is a body registered under the Societies Registration Act, formed and functioning for the welfare of and protection of general interest of Stevedores operating within the prescient and second respondent herein on the strength of a licence issued to them, by the second respondent in terms of Chennai Port Stevedore Regulations Legislated under Section 123 of the Major Port Trust Act, 1963, as amended from time to time.

2.The writ petition has been filed for a issue of writ of mandamus directing the Respondent herein to implement the award of the National Industrial Tribunal, Kolkatta dated 19.04.2006, passed and published under Section 17 of the Industrial Dispute Act, 1947.

3.The Members of the Petitioner's Association are principally involved in the activity of stevedoring in the prescients of the second respondent. The activity includes loading and unloading of cargo, which comes by ships from foreign countries and berth at the Port of Chennai, which is managed and operated by the second respondent. For carrying on such activity as a Stevedore, the Members of the Petitioner's Association are favoured with the licence under the Chennai Port Stevedore Regulations Legislated under Section 123 of the Major Port Trust, 1963, as amended from time to time. The Members of the Petitioner's Association have to strictly abide by the terms and conditions set out in the licence in their day to day activities as a Stevedore acting and functioning with the second respondent. The copy of the licence of one such member is filed in the typed set of papers for use in support of the writ petition and the same may be usefully referred to. One such condition is that the

Members of the Petitioner's Association hire labour for doing skilled, semi-skilled and unskilled works inside the seaport and harbour of Chennai managed by the second respondent herein, from the Dock Labour Board attached to the second respondent. The Members of the Petitioner's Association are not allowed to employ private persons at their volition in carrying out Stevedoring Operations of Loading and unloading cargo from ships and vessels calling at the Port of Chennai.

4. The Dock Labour Board and the second respondent from whom such labour is hired, fixes the rates and wages payable to the labour employed by the members of the Petitioner's Association. There have been several disputes raised under the Industrial Disputes Act, 1947, by workers union, the Port Trust, Dock Labour Board, stevedores in relation to wages, conditions of service, terms of employment, retirement benefits of workmen, hired by the Dock Labour Board under the control of second respondent. In fact, these disputes have been raised on an All India Basis in respect of workers employed by respective Dock Labour Board, attached to the Port Trusts at various seaports including Mumbai, Nheva Sheva, Kolkata, Chennai, Vishakapattinam, Cochin, Mormugao, Kandla, Paradip, Mangalore etc. This resulted in the Intervention of the first respondent. As early as, 1994, a Settlement was reached on Wage Revision of Port and Dock Workers in the Major Ports of India. Such settlement expired on 31.12.1997. Pursuant to the expiry of the period of operation of such settlement. The first respondent constituted a Bipartite Wage Negotiations Committee under the Ministry's Letter No.LB-12011/3/1997-RO dated 05.06.1998. The committee consisted of Members drawn from the Management of various port trusts through their Chairman, the personnel attached to the Dock Labour Board, persons nominated by the Federation of Association of Stevedores etc., from the Management side and Members representing the Port and Dock Workers through their respective federations. The Workers Federations and Dock Labour Board submitted the Charter of Demands individually. However, Management requested the various Workers Federations on the Bipartite Wage Negotiation Committee and submit common charter of demands, which was acceded to. From 1998, the meetings of the Bipartite Wage Negotiation Committee had been held from time to time at various venues and ultimately the settlement in terms of Section 12(3) of the Industrial Dispute Act, 1947 was reached between the Management of Major Port Trusts and the Workers Federation. Such settlement was signed on 02.08.2000 at New Delhi. The settlement forms part of the typed set of papers and may be usefully referred to. In terms of the Settlement, terms and conditions of employment applicable to class III and IV employees of Major Ports and Dock Labour Boards were substantially revised. The settlement covered class III and IV Employees Workmen:-

i) Persons employed by the Major Ports of Mumbai, Calcutta,

Chennai, Visakhapatnam, Cochin, Mormugao, Kandla, Paradip, Tuticorin, New Mangalore and Jawaharlal Nehru and / or paid directly by the Port Trusts.

ii) Persons employed by the Dock Labour Boards and their administrative bodies at Calcutta, Chennai, Visakhapatnam and Kandla and

iii) Persons registered or unregistered (listed) under any of the Schemes framed under the Dock Workers (Regulation of Employment) Act, 1948.

5. The settlement took effect notionally from 1st January 1997 and effectively from 1st January 1998 and remained in operation for a period of 10 years from 1st January, 1997 to 31st December, 2006. The Central Government in exercise of its powers under Section 7(B) of the Industrial Dispute Act, 1947, Constituted National Tribunal in relation to settlement of disputes between Management of Port Trust and their workmen. By order dated 25.11.2003, the Central Government in exercise of the above powers reconstituted in National Tribunal under Section 10(1A) of the Industrial Disputes Act, 1947, referred the following disputes to the Tribunal for Adjudication:

"Having regard to the provisions contained in clause 35 of the Settlement dated 02.08.2000 between the Federations and the Management in relation to major ports.

(i) Whether deployment of workers for any task for handling of cargo on board and on shore on the basis of gangs should be changed to the need based system depending on the nature of the job to be performed or the type of cargo to be handled and; system of notional booking of workers prevalent in some major ports should be discontinued. If so, what should be the manning sales required for various port activities?

(ii) Whether the manning scales for similar types of vessels / equipments should be uniform at all ports. If so, whether the norms should be fixed for all ports as per the lowest manning scale in existence.

(iii) Whether for similar tasks, there should be uniform manning scales. If so, whether the norms should be fixed on the basis of the lowest manning level in existence in major ports.

6. The petitioner says and submits that the reference was made by the Ministry of Labour, Government of India, in view of the contents of paragraph 35 of Wage Settlement dated 02.08.2000 between the Management of Major Ports and the representatives of employees before the Regional Labour Commissioner. Before the National Industrial Tribunal, which functioned from Kolkata. Management of Major Ports

Trust, for the purpose of negotiations were represented by Indian Ports Association and the Workmen were represented by several federations.

7. The respective parties filed their statements before the National Industrial Tribunal, Kolkatta, which was presided over by Mr. Justice Hrishikesh Banerji. Besides filing of the statements by the respective parties, including Port users and Stevedores, the Tribunal recorded detailed evidence tendered on side of the Management, Port users, Stevedores and the Workmen. The evidences so tendered were made through representative of such parties including the management and the workmen drawn from all Major Ports, to which reference has been made in earlier paragraph "b" to this writ petition. The various witnesses were examined in chief, cross-examined and re-examined in the course of the proceedings. The Tribunal on a consideration of the entire evidences and material placed on record came to the conclusions, which are noted at paragraph-33 onwards. Consequently, the Tribunal proceeded to pass an award gist of which is furnished as under:-

i) Objections raised on behalf of the Workers Federations regarding status and competence of Indian Port Association (IPA) to represent the case of the Major Ports, stands over ruled.

ii) Operational efficiency of any port are dependent on the performance of its employees and efficiency of equipment used is recognized. Reading of para-35 of the Settlement dated 02.08.2000, reveals a need for improvement of efficiency, customers satisfaction, augmentation of financial viability and new enterprise culture have been recognized by the parties in terms of the settlement. To meet the need as mentioned above, the parties had decided the course of action and framed issues for adjudication and the schedule of reference was also agreed and need to confine to the same. In terms of the said paragraph-35 of Settlement dated 02.08.2000. That the adjudicator should take into account local conditions of each port and other relevant factors and if need be, take assistance of experts and also clearly parties on the report of the expert before giving the award. The award will be binding on the both parties and should be finalized within a period of six months and would essentially be on the following lines:-

a) Deployment of workers for any task will not be gang based but will be need based with reference to the nature of job or cargo. Notional booking of workers will be discontinued.

b) Manning scale of similar vessels and equipment will be uniform at all ports. Norms will be fixed on the basis

of the lowest manning level in existence.

c) There will be uniform manning scale for similar tasks. Norms will be fixed on the basis of the lowest manning level in existence.

iii) Having regard to the Restrictive Labour Practices developed strict demarcation at Work Level and Job Classification, resistance of the port labour over the years for schemes of improvement of productivity, it is essential that Labour and Management Reforms must progress abreast with modernization and developed schemes in major ports to enable Indian Ports to compete in International Market.

iv) With advanced technological changes in techniques and equipments available for mechanized handling of cargo inside the port, changes in manning pattern is also required, commensurate with changes in technology.

v) Deployment of Workers in cargo handling operations should be need based as per actual requirement and not gang based.

vi) The basic need for deploying workers centers around the operations depending on whether the same is being carried out manually or a combination of manual tasks aided by mechanical equipment support system or totally by mechanically or automatic devices. The number of mazdoors to be employed on board the ship will vary from commodity to commodity, as per actual requirements depending on the effort required to be given in handling the particular type of cargo and accordingly different kinds of cargo handled should be discussed.

vii) The Tribunal in its award has indicated the number of workers / employees to be deployed in respect of different kinds of cargo starting from para 39 to 47.

viii) The Tribunal has also held the necessity of uniformity in deployment of different categories of workers on board the ship for handling cargo and the need for doing away with unnecessary and redundancy, which has increased the cost of the ports and its end users.

ix) Identical equipments should have identical manning in all ports irrespective of their locations.

x) In respect of handling of general cargo and palletized cargo, equipments like Fork Lift Truck Tractor Trailer, Mobile cranes are used and deployment of reliever to this group of

equipments does not appear to be necessary, because of extent of intensity of work involved is less.

xi) In so far as equipment used in container handling is concerned, the work is more strenuous and continuous and therefore one reliever should be deputed for operators in eight hours shifts.

xii) In all other equipments used for container handling like Reach Stacker, Toplift Truck, Front and Loader, Heavy Duty Tractor Trailer, there is no necessity for posting of the reliever, as the work is not strenuous and there is inbuilt leisure in the operation.

xiii) In so far as RTG and RMGCs concerned, deployment of one reliever for 3 operators will be adequate and one reliever for two equipments will be in order respectively.

xiv) In respect of mechanical ore / coal handling there is restrictive practice resorted to, which affects the efficiency of the port, leading to idle workforce and increase in labour cost. There should be an order to the effect that flexibility should be introduced in the matter of deployment of operational staff of the coal / ore handling plants in all ports in maintenance jobs, and there should be order and award to refer man power assessment of the plants to an expert agency in the field.

xv) In so far as manning scales for marine services is concerned, that marine activities in all the ports are same and similar irrespective of their locations and same and similar types of vessel at crafts are maintained by all ports and the crew members attached to such vessels or crafts, do the same activities irrespective of their locations and therefore there is a need for uniformity in the fixation of their wages, conditions of service etc.

8. After detailing, the entirety of the materials, the Tribunal came to the following conclusions, which is noted at para-66 of the award and stands extracted:-

"Thus, after making so much of discussion and analysis it emerges that as per the schedule suggested and proposed in the various paragraphs above, the deployment of workers for various tasks should be strictly accordingly to the necessity and requirement and there should be no deployment on gang basis as is prevailing presently. All the proposals earlier accepted in the different paragraphs should be treated as final manning scale according to necessity. In booking of workmen, there should be a common pool which shall be

interchangeable and there will be sufficient flexibility to this effect that if the workman deputed at a particular place or for a particular job is required at a different place for a different job, he can be deputed without any difficulty. It is also made clear in this connection that the schedule must be followed strictly. But, however, one thing is made clear that the management of the Ports should not try to take work from private parties and should not engage labourers other than the employees of the Port for the work supposed to be entrusted to them. The system of deployment of workmen for 10 days or so as prevalent at Haldia and Calcutta should be done away with and deployment should be only for 12 hours shift. So far as the mooring operations are concerned and in all other fields, that shift shall strictly be of 8 hours. So far as Item No.2 of schedule of reference is concerned, it has earlier been made clear in various paragraphs by discussing the evidence and the materials that the manning scale of these vessels and crafts used by the Ports in the marine department should also be strictly according to the proposals which have been accepted and the deployment should be strictly according to the scales suggested and also according to necessity which should be flexible and should be the discretion of the management. It has been thought proper that the lowest manning scale prevailing in a particular port should be accepted for this purpose as has been done in the paragraphs above and has been accepted and accordingly the third issue is also decided and it is held that for similar tasks there must be similar manning scales in all the Ports and the question of having different manning scales at different Ports for similar task does not appear to be proper and should not be allowed to continue. It is made clear that the proposals made and discussed in the earlier paragraphs regarding different activities of cargo handling or manning of vessels and crafts are finally accepted and are made applicable. Accordingly, the award is made.

Hrishikesh Banerji, Presiding Officer dated, the 19th April 2006, Kolkata"

9.The award has since been published and duly notified in terms of Section 17 of Industrial Disputes Act, 1947, by the Central Government in the Gazette of India dated 03.06.2006. Thus, the award has become final and binding in respect of wages, conditions of service etc. of workmen / employees of major ports through out the country including the second respondent. It now transpires that the second respondent has not implemented the award in its terms relating to employment, deployment of labour for handling of cargo and cargo handling equipments inside the port premises at Chennai. The petitioner further understands that the award has also not been implemented by the Tuticorin Port Trust and parties are moved to this

Court with the pleadings for implementation of the award.

10.The petitioner says and submits that the award passed by National Industrial Tribunal, Kolkatta is comprehensive one covering all aspects of employment and deployment of Labour force in the major ports of the country. The award is eminently justifiable having regard to the fact that all the parties affected have been heard, detailed evidences let in and analysed and findings rendered touching upon the conditions of service, wages, and other terms of employment of the labour.

11.The petitioner says and submits that the award of the Tribunal has been implemented by every other major ports in the country excepting in the port of the second respondent and Chennai Seaport. The award in its terms has put a final seal on the need for uniformity in wage fixation, terms and conditions of service, deployment and manning levels at various areas of work, including manual and mechanized handling of cargo of various types and has taken in its fold progressive thinking and measures in promoting the welfare and interest of the workmen hand in hand with the development of the ports in a systematic, scientific manner so as to make them operationally effective and for promoting and sustaining the growth of commerce and trade in as much as making the major ports in India competitive, conducive to International Maritime Trade. Thus, there can be no impediment, qualms or reservations on the terms of the award and implementation thereof.

12.The Petitioner Association and its Members have been repeatedly knocking at the doors of the respondent for implementation of the award of the National Industrial Tribunal. The award if implemented (which has been done successful in other ports) would lead to standardized conduct of the Member's of the Petitioner's Association business in stevedoring in as much as there is certainty in the matter of fixation of wages, deployment of labour, procurement, installation and deployment of cargo handling equipments, like cranes, fork lift truck, coal handling equipments, tractors, trailers and other such materials, which are essential for carrying out stevedoring operations within the prescient of second respondent. There will be a certain amount of certainty in the conduct of the business of the Members of Petitioner's Association in so far as making financial arrangement for day to day working, besides making capital investment in machinery, storage facilities etc. Thus, it is submitted that the petitioner's request for implementation of the award of the National Industrial Tribunal, is fully justified and warranted in the facts and circumstances of the case.

13.It is submitted that despite several representations by the Petitioner's Association to the first and second respondents, the

award of the National Industrial Tribunal, Kolkata has not been implemented in the second respondent port till date. In fact, the petitioner has given detailed representations to the respondents, reiterating their demand / request for implementation of the award of the National Tribunal on various dates. The Office bearers of the Petitioner's Association have met and interacted with the second respondent and officials attached to the first respondent and have reminded them as to the implementation of the award. They have also drawn the attention of the respondents to the fact that the award has been implemented in most of the major ports in the country. In fact, the petitioner association has also brought to the attention of the respondents of the fact of workers union / trade bodies of Vishakapattinam Port, moving the High Court, Andhra Pradesh for suspending the operation of the award in so far as it relates to the Vizag Port. However, the High Court has directed the Vishakapattinam Port Trust, to implement the award subject to certain conditions and the matter is subjudice. However, the respondents have not made their stand / position clear with respect to the demand of the Petitioner's Association for the implementation of the Award. Hence, the writ petition.

14. The second respondent has filed a counter affidavit and stating that consequent upon the expiry of period of Wages Settlement dated 06.12.1994 for Major Port and Dock Workers of all the Major Ports in the country, on 31.12.1996, Ministry of Surface Transport, Government of India, constituted another Bi-party Wage Negotiation Committee, representing Management and Port and Dock Workers. Accordingly, the Memorandum of Understanding dated 02.08.2000 was signed under Section 12(3) of the Industrial Disputes Act, 1947. In respect of wages and working condition of workers of Port and Dock which implemented with effect from 01.01.1997, Vide Cl.35 of the said settlement, it was mutually agreed by the representatives of the Management and Federations to refer the following issues for adjudication under the Industrial Disputes Act, 1947 and it was agreed that the award will be binding on both the parties.

Issues Referred:

a) Whether deployment of workers for any task for handling of cargo on board and on shore on the basis of gangs should be changed to the need based system depending on the nature of the job to be performed or the type of cargo to be handled and; system of notional booking of workers prevalent in some major ports should be discontinued. If so, what should be the manning scales required for various port activities?

b) Whether the manning scales for similar types of vessels, equipments should be uniform at all ports. If so, whether the norms

should be fixed or all ports as per the lowest manning scale in existence?

c) Whether for similar tasks, there should be uniform manning scales. If so, whether the norms should be fixed on the basis of the lowest manning scale in existence in Major Ports?

15. He submits that the Tribunal was constituted and passed an Award on 19.04.2006. Government of India, Ministry of Labour, published the said Award in the Gazette of India vide notification No.L-31011/1/2000-IR(M), dated 23.05.2006. The Tribunal Award vide ref No.LAB/NT-1 of 2000/446, dated 28.06.2006 was forwarded by the Labour Advisor, Industrial Relation Officer of Kolkatta Port Trust. The Ministry by letter No.LB-14014/1/2000-L-IV, dated 06.07.2006 called for the comments of the Ports on implementation of the Award.

16. This respondent submits that as the workers were not happy with the Award, the Award was challenged in the High Court of Andhra Pradesh by Vishaka Harbour and Dock Workers Union of Vishakapatnam Port Trust to praying that the High Court may be pleased to suspend the Award. The High Court of Andhra Pradesh has issued status quo regarding the implementation of Award. This respondent submits that thereafter, Vishakapatnam Port Trust filed counter and vacated the stay petition. Upon hearing the petition, the High Court of Andhra Pradesh vide order dated 18.04.2009, modified the status quo orders duly permitting Vishakapatnam Port Trust to implement the Award subject to the following conditions.

(i) None of the members of the petitioner's union shall be retrenched and

(ii) Vishakapatnam Port Trust shall not resort to private engagement of stevedoring companies.

17. This respondent submits that thereafter Vishakapatnam Port Trust after discussion with the Trade Unions arrived a settlement under Section 12(3) of the Industrial Disputes Act, 1947 on 25.01.2010. It is submitted that Vishakapatnam Port Trust implemented Award, by adopting extra manning over and above the manning provided in the National Industrial Award. The Vishakapatnam Port Trust has not implemented the exact terms of the Award and the same was accepted subject to modifications. This respondent submits that the modified order of the High Court of Andhra Pradesh communication has been received from the Ministry vide letter No.LB-14014/1/2001/L-II, dated 22.04.2009 informing Ports to take necessary action.

18. This respondent submits that the Ministry vide letter No.LB-14014/1/2000-L-IV, dated 06.07.2006 which refer to the Kolkatta Port letter dated 28.06.2006 has called for comments of the Trust, if any,

on the implementation of the award on or before 20.07.2006. It is submitted that the Chennai Port Trust furnished the remarks on the implementation of the NIA vide Chairman's letter No. IR3/23657/200/S, dated 17.08.2006 to the Ministry and the issue of implementation of National Industrial Award was discussed in the meeting held under the Chairmanship of Secretary, Shipping, Government of India, New Delhi with the representative of 15 Major Federations of the Port and Dock Workers under item No.16 of the Minutes of the meeting. It was stated in the minutes that the Award of National Tribunal, manning scale could be discussed separately.

19. This respondent submits that in view of the letter dated 22.04.2009 by the Ministry informing the vacation of status quo in the Writ Petition filed by the Trade Union of Vishakapatnam Port Trust for information and necessary action of the respective Ports, the Major Labour Federations representing the Port and Dock employees issued strike notices on the implementation of the said Award. The Managing Director, Indian Ports Association vide his letter No. IPA/NIT/CLC/2009, dated 06.05.2009 forwarded a copy of the Chief Labour Commissioner @, New Delhi letter No. 1(12)2009-IR, dated 05.05.2009 addressed to the Leaders of the said Labour Federations and copy to the Joint Secretary, Ministry of Shipping.

20. This respondent submits that the Managing Director, Indian Ports Association has requested the Chairmen of Major Ports to send a brief note on the Award along with the implementation status of the Award of National Industrial Tribunal on manning scale and further requested to depute an officer to the conciliation meeting proposed by Chief Labour Commissioner @ at New Delhi on 11.05.2009. Accordingly, the Secretary, Chennai Port Trust was deputed to attend the above conciliation meeting at New Delhi. At the Conciliation meeting after joint discussion, the Chief Labour Commissioner @ requested the parties present to hold responsible in view of the present scenario and invoked Sections 22 and 33 of the I.D. Act on both the parties with a direction to hold further discussion at the respective Ports to arrive at an amicable solution.

21. This respondent submits that based on this, Labour Federations / Trade Unions deferred their proposed strike. It is submitted that after conciliation proceedings, the respondent Trust is holding bilateral discussions with the Trade Unions periodically by explaining them the implementation status obtained from the Major Ports as mentioned in the earlier paras. It is submitted that at the final bi-lateral discussion held on 07.10.2009 with the Trade Unions, it was decided to obtain the details of manning scales adopted by three Major Ports namely Cochin, Vishakapatnam and New Mangalore Ports which have implemented the said Award and prepare a comparative statement with that of the proposal of Chennai Port Trust as requested by the Unions. Accordingly, details are obtained from the

above Ports. It is submitted that as the Trade Unions are busy with the discussions on the Wage Settlement, further negotiation could not be held.

22.This respondent submits that in the wage revision settlement, it was mentioned under para-42 that with a view to increase productivity, it was agreed that revision of datum, piece-rate and incentive will be undertaken based on the performance of the previous 3 years and duly taking to consideration applicable guidelines relevant factors and operational requirements. It is further stated that in case there is no settlement at local level on the above issue within 6 months from the date of signing of this settlement, the dispute matter will be sent for adjudication for arbitration and Industrial Disputes Act 1947. It is submitted that as per the above, the existing datum, piece-rate, incentive have to be modified based on the applicable guidelines. The incentive and datum are interlinked with the manning scale. Manning scale incentive and datum of the then Madras Dock Labour Board was revised during 2001 under 12(3) settlement of Industrial Disputes Act 1947. Hence, the respondent Port Trust is now taking steps to arrive at a new datum, piece-rate by inter linking manning scale.

23.This respondent submits that the National Tribunal Award has been implemented in few Ports that too with some changes making suitable to the working pattern of the particular Port and no Port implemented the Award in toto as per award since, the Ports are encountering different operational problems. For example, in Chennai Port Trust, for operation of General Cargo, Tribunal awarded 1 Tally Clerk per vessel whereas normally discharge operation in any vessel takes place two more hooks. It is impossible for 1 Tally Clerk to tally the discharge or loading of cargo simultaneously from two or more hooks. Therefore, the present award of posting 1 Tally Clerk for general cargo vessel is difficult to implement in toto and there has to be 1 Tally Clerk per each hook. It is submitted that the Chennai Port Trust is also making all efforts to arrive need based manning scale and is trying to complete the whole exercise within the stipulated period by discussing with the Trade Unions.

24.This respondent submits that when the talks were going on, the petitioner on a pure misconception has chosen to approach this Court praying for a Mandamus for implementation of the Award. It is submitted that this respondent Trust is taking all steps to arrive at a settlement with the Unions and to arrive at a settlement with slight modifications to the Award.

25.This respondent submits that the Cochin Port Trust also in and by its order dated 23.04.2009 wanted to implement the award and as disputes arose, a Memorandum of Understanding was entered into between the workers and the Cochin Port Trust and a MOU dated

08.06.2009 and 25.06.2009 was entered with modifications to the Award and the Award has been implemented. It is submitted that this respondent is also taking steps to implement the Award and is negotiating with the Unions to implement the same. With regard to the averments in Para-3 to 9, 11, 13, 14 this respondent has no remarks to offer.

26. With regard to the averments in para-3(h) and (j), it is informed that the Award has been implemented after discussion with the recognized Unions at Cochin, Vishakapatnam and New Mangalore Ports with some modifications and not in its entirety. This respondent submits that the Trust is also taking steps to implement the Award after negotiations with the Unions and it is also submitted that in other Ports also except, Cochin, Vishakapatnam and Mangalore the Award is not implemented so far and discussion with the respective Ports' Union is under progress and hence the averments to the contrary are hereby denied. In view of the above it is respectfully prayed that this Court may be pleased to dismiss the above Writ Petition as devoid of merits.

27. The highly competent counsel Mr.S.R.Rajagopal appearing for the petitioner submits that the members of the Petitioner's Association are principally involved in the activity of stevedoring in the precincts of the Chennai Port Trust. The activity including loading and unloading of Cargo, which comes by ships from foreign countries and berth at the Port of Chennai. The members of the petitioner's association are given licence under the Chennai Port Trust steward regulation legislated under Section 123 of the major port trust. The members of the association strictly adhere to the terms and conditions mentioned in the licence. One of the condition is that the members of the petitioner's association hire labour for doing skilled, semi skilled and unskilled worker inside the seaport and harbour of Chennai. The association is not allowed to employ private persons to carry out stevedoring operations. The learned counsel further submits that the Dock Labour Board and the Chennai Port Trust, from whom such labour is hired, fixes the rates and wages payable to the labourer employed by the members of the association.

28. Several disputes raised under the Industrial Dispute Act by Worker's Union, the Port Trust Dock Labour Court, Stevedores in relation to wages, conditions of service, terms of employment, retirement benefits of workmen, hired by the Dock labour board under the control of Chennai Port Trust. These disputes have been raised on an All India basis in respect of workers employed by respective dock labour board, attached to the port trusts of various seaports namely Mumbai, Nhevasheva, Calcutta, Chennai, Vizakapattinam, Cochin, Mormugao, Kandla, Paradip, Mangalore etc. The first respondent had intervened in the said dispute as early as 1994 and a settlement was reached on wage revision of port and dock workers in the major ports

of India. The said settlement had expired on 31.12.1997. Hence, the first respondent / Ministry of Shipping constituted a Bipartite wage negotiations committee dated 05.06.1998. The committee consisted of members from various port trusts, the personnel attached to the dock labour board, the persons nominated by the federation of associations of stevedores etc. Subsequently, the settlement in terms of Section 12(3) of the Industrial Dispute Act was reached between the management of Port Trust and the workers federation. The same was signed on 02.08.2000 at New Delhi. The terms and conditions of employment applicable to Clause-III and Clause-IV employees of major ports and dock labour boards were substantially revised. The settlement covered Clause-III and Clause-IV employees of the major ports. The personnel employed by the dock labour boards and their administrative body is at Calcutta, Chennai, Vizakapattinam and Kandla.

29. The very competent counsel further submits that the Central Government in exercise of its powers under Section 7(B) of the Industrial Dispute Act, constituted National Tribunal in relation to settlement of disputes between the management of port trust and their workmen. The Central Government reconstituted in National Tribunal under Section 1A of the Industrial Dispute Act, 1947. The provisions contained in Clause 35 of the Settlement dated 02.08.2000 between the Federations and the Management in relation to major ports. Before the National Industrial Tribunal, the respective parties filed their statements. The National Tribunal also recorded the evidence of the parties. Consequently, the National Tribunal passed an award on merits, which is suitable for execution. The said award dated 19.04.2006 was also published under Section 17 of the Industrial Dispute Act by the Central Government in the Gazette of India dated 03.06.2006. The same is applicable to the members of the petitioner's association of Chennai Port Trust as stevedores. The highly competent counsel also pointed out some important decisions made by the National Tribunal at Calcutta in the affidavit. As such, the award dated 19.04.2006 passed by the National Industrial Tribunal, Calcutta is suitable for execution. Hence, the very competent counsel entreats the Court to give direction to the respondents herein to implement the said award.

30. The highly competent senior Central Government standing counsel Mr. Haja Mohideen Gisthi appearing for the first respondent submits that the first respondent had constituted National Tribunal in relation to settlement of disputes between management of port trust and their work men by order dated 25.11.2003, as per Section 7 (B) of the Industrial Dispute Act, 1947. After constitution of National Tribunal at Calcutta, for adjudication, wherein all the parties have submitted their written statements and also tendered evidence and then the National Tribunal passed the said award on merits. The said award had been passed on 19.04.2006 and the same

was published in the Central Government Gazette dated 03.06.2006. Against the said award, no appeal, no revision, no review has been filed. As such, the said award has become final and upheld.

31.The very competent counsel Mr.R.Karthikeyan appearing for the 2nd respondent / Chennai Port Trust submits that the Chennai Port Trust also has filed detailed written statements and also tendered evidence through representatives. The same was recorded by the National Tribunal. Besides, the Tribunal had also considered the material evidence submitted by all parties and passed the award. The same was published in the Government Gazette. Against the said award, the second respondent had not filed any appeal.

32.The highly competent counsel Mr.S.Senthilnathan appearing for the 3rd and 4th respondents submits that both Unions are registered. The first respondent reconstituted National Industrial Tribunal under Section 10(1A) of the Industrial Dispute Act for adjudication. The reference for adjudication itself was in pursuance of the provisions contained in Clause-35 of the settlement dated 02.08.2000 between the federation and the management of the ports. The main issue before the National Tribunal is namely whether the deployment of workers for any task for handling cargo on board and on shore on the basis of gangs should be charged to the need based system depending on the nature of job to be performed or the type of cargo to be handled. The system of notional booking of workers prevalent in some major ports should be discontinued, if so, what should be the manning scales required for various port activities. The other issue of manning scales of similar types of vessels should be uniform at all ports; If so, the norms should be fixed for all ports as per the lowest manning scale in existence and whether for similar tasks, there should be uniform manning scales, If so, whether the norms should be fixed on the basis of the lowest manning level in existence in major ports. The operations in Port are broadly classified as operational and supportive. The operational activity of handling of cargo, equipment operations and movement of vessels and crafts etc. These workers are engaged in gangs to do different operations and each gang consents of need based number of workers of different skills.

33.The very competent counsel further submits that before constituting the National Industrial Tribunal, the Indian Ports Association representing all the major ports has filed claim statement in support of their demands seeking employment of workers on need based systems instead of gang based systems and also for fixing uniform scales should take place on the basis of lowest scales in existence. Five federations filed their separate written statements and resisted the contentions raised by the Port Trust. Further, it was insisted before the Tribunal that the National Tribunal should take assistance of the experts committee for fair and proper adjudication. The National Tribunal passed an award on

19.04.2006 in an arbitrary manner. The petitioner's union is pressing for appointing of a committee of experts for scientific study of deployment of labour and manning scales. The earlier settlement dated 02.08.2000 provides in Clause-35 that the Tribunal may take the assistance of experts, but the National Tribunal did not undertake any exercise for appointment of expert committee and proceeded with the case in a mechanical way. As such, the award is not suitable for execution. Further, the award has not been supported by any substantial evidence. If the award is implemented at Chennai Port, the Workers will lose their jobs. Further every port got different types of operational problems. The second respondent also has admitted that the award cannot be implemented as it is in Chennai Port Trust.

34.The very competent counsel further submits that a memorandum of settlement dated 19.01.2010 has been arrived at under Section 12 (3) of the Industrial Dispute Act before the Deputy Chief Labour Commissioner, Central, in respect of wage structure and service conditions, wherein the management and federation are parties to the said settlement which is existing and binding on the respective parties. The same cannot be nullified by bringing the award passed by the National Tribunal. The said award has so far, not been implemented in any ports. If the award is implemented, the existing benefits of the workmen will be affected. In order to protect their welfare, the award passed by the National Tribunal may be set aside. When attempts were made to implement the said award, there was strike and agitation by the workers. If the award is implemented in Chennai Port, the Industrial peace will be disturbed. Consequently, there will be revenue loss to the Government. Hence, in the interest of the Union members and the management the said award may be quashed. Accordingly, the very competent counsel prayed before this Court.

35.The highly competent counsel Mr.D.Dhanaraj appearing for the 5th respondent / Madras Port and Dock Employees Union submits that the award was passed by the National Tribunal on 19.04.2006 and the same could not be implemented for the past 10 years since the award has been passed in an arbitrary manner without getting reports from expert committee, who is the competent authority to give more details after study of scientific deployment of labour. In the absence of expert committees association, the National Tribunal has passed the award in an arbitrary manner and as such there is lacuna in the award and therefore, the said award could not be executed for the past 10 years since it is not fit to be operated upon any further. The very competent counsel Mr.D.Dhanaraj endorsed the arguments advanced by the highly competent counsel appearing for the petitioner and entreats the Court to dismiss the above writ petition.

36.On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on

perusing the typed set of papers, this Court is of the view that as per the Central Government in exercise of its powers under Section 7 (B) of the Industrial Dispute Act, 1947, the National Tribunal has been constituted in relation to settlement of disputes between management of port trusts and their workforce. The same was decided after recording statement of both parties and after recording the evidence of both parties and after scrutinising the relevant records of the management, the award has been passed on 19.04.2006. Subsequently, the same was published under Section 17 of the Industrial Dispute Act, 1947, in the Government Gazette dated 03.06.2006. Further, the award has been passed by the National Industrial Tribunal, Calcutta on merits. As such, the above writ petition is allowed and this Court directs the first and second respondents to implement the award of the National Industrial Tribunal, Calcutta dated 19.04.2006.

37. In the result, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
Union of India,
Ministry of Shipping, Road Transport and Highways,
Department of Shipping,
Transport Bhawan, Parliament Street,
New Delhi - 110 001.

2. The Chairman
The Chennai Port Trust,
Rajaji Salai, Chennai.

1 cc to Mr. R. Karthikeyan, Advocate Sr.No.42274
1 cc to Mr. Haja Mohideen Gisthi, Advocate Sr.No.42263
1 cc to Mr. S. Senthilnathan, Advocate Sr.No.42435
1 cc to Mr. S. R. Rajagopal, Advocate Sr.No.42112

W.P.No.4207 of 2010

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