

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8245 of 2010
and
M.P.No.2 of 2010

Order Reserved on 23.12.2014 Judgment Pronounced on 12.08.2015

Chennai Port and Dock Workers Congress,
Rep. by its President,
G.Kalan
G.R.Bhavan, No.87, Royapettah High Road,
Chennai-600014.

...Petitioner

Vs.

1. Union of India,
Rep. 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 Presiding Officer,
National Industrial Tribunal,
No.20-B, Abdul Hameez Street,
Kolkatta - 700 069.

...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling upon the production of the records relating to the award dated

19.04.2006 made in Ref.No.N.T. - 01 of 2001 passed by the third respondent herein and quash.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.S.Haja Mohideen Gisthi (for R1)
SCGSC

Mr.R.Karthikeyan (for R2)

R3 - Tribunal

ORDER

The short facts of the case are as follows:

The petitioner submits that he is the President of Chennai Port and Dock Workers Congress and General Secretary of Indian National Port and Dock Workers Federation (INTUC). Originally their Union was registered under the Trade Unions Act 1926 as Madras Port and Dock Workers Congress, Madras. Subsequently, the name of the Union was changed as Chennai Port and Dock Workers Congress on 30.11.1999 and the registration number is No.3631.

2.He submits that the Central Government by order dated 25.11.2003 in exercise of its powers under Section 7-B of the Industrial Disputes Act 1947, reconstituted National Industrial Tribunal and under Section 10(1A) of the said Act referred the following dispute to the Tribunal for adjudication. The said 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 in relation to Major Ports. The disputes referred for adjudication are as follows:-

i.Whether deployment of workers for any task for handling 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?

ii.Whether the manning scales of 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?

3. He submits that the port is a point at which sea-borne cargo is transferred from one mode of transport to another and on the seaward side the port is concerned with the flow of ships bringing the cargo for discharge and load the cargo accumulated at the port for different destinations. The operations in port are broadly classified as operational and supportive. Operational activity includes handling of cargo, equipment operations and movement of vessels and crafts etc. Supportive activities include maintenance of equipments, administration, health, canteen and other activities. For doing the operation of handling of cargo, the workers registered with the D.L.B., are engaged on board as well as on shore. These workers are engaged in gangs to do different operations and each gang consists of need based number of workers of different skills.

4. He further submits that it has become a practice in the recent times to allow the stevedoring companies to engage the private labour of their own pools whereby the workers of the Dock Labour Board are deprived of their emoluments except the minimum guaranteed wages. It is only to further facilitate the stevedoring companies and to deprive the continuous work to the Dock workers that the managements of the Major ports have been insisting for abolition of the gang based engagement of labour and for introduction of need based system. He further submits that due to the introduction of modern equipment in the Port there has been considerable reduction of man - force and even the gangs engaged at present are need based and scientifically designed.

5. He submits that before the National Industrial Tribunal the Indian Ports Association, representing all the Major ports has filed claim statement in support of their demands seeking deployment of workers on need based system instead of gang based system, fixation of manning scales for similar types of vessels / equipments in a uniform manner at all ports and also for fixing uniform scales should take place on the basis of the lowest manning scales in existence.

6. He submits that there are five federations representing the workers, they have filed separate written statements opposing the contentions raised by the managements of the ports. It is pleaded that already the manning scales are designed to suit the existing mechanized systems in the ports and there is no scope for further

reduction in the manning scale leading to further decline in workers strength and deployment of outsiders and cheap contract labour. It is also stated that the adjudicator will have to take into account local conditions of each port and other relevant factors and also take the assistance of the experts before passing award. It was insisted that the Tribunal should take assistance of the expert committee for proper adjudication. It was pleaded emphatically that the gang based deployment was decided upon by the expert committee after detailed studies taking into account the prevailing local conditions at the given points of time. In respect of uniformity of the manning scales also it was urged that the same has to be debated at local level as it depends upon locally prevailing conditions.

7.He submits that the National Tribunal after examining witnesses on both sides passed an award dated 19.04.2006 in Reference No.N.T.01 of 2001 which was published in the Gazette of the Union of India dated 03.06.2006. The aforesaid award is illegal, unjustifiable, unfounded and hence liable to be set aside. Under these circumstances they have no other efficacious remedy except to approach this Court under Article 226 of the Constitution of India to issue a Writ of Certiorari calling upon the production of the records relating to the award dated 19.04.2006 made in Ref.No.N.T. - 01 of 2001 passed by the third respondent herein and quash the same.

8.The second respondent has filed a counter affidavit and submits that WP.No.8245 of 2010 filed by the Chennai Port and Dock Workers Congress and WP.No.8246 of 2010 filed by the Madras Harbour Workers Union in the High Court of Madras against the implementation of the Manning Scale Award of the National Industrial Tribunal has been perused and as the affidavit and the grounds putforth by both the unions on the above Writ Petitions are identical matching word by word hence this respondent herein is filing this Common Counter affidavit in both these Writ Petitions.

9.He states that the brief facts of the case is as follows:

It is submitted that consequent upon the expiry of period of Wage 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. It is submitted that 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:

- 1)Deployment of workers for any task will not be gang based but will be need based service to the nature of job or cargo. Notional booking of workers will be discontinued.
- 2)Manning Scale on similar vessels and equipments will be uniform at all Ports. Norms will be fixed on the basis of the lowest manning scale level in existence.
- 3)There will be uniform manning scale for similar task. Norms will be fixed on the basis of lowest manning level in the existence.

10.This respondent submits that the Tribunal 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. It is submitted that 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. It is submitted that in the meanwhile, 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 and 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.

- a)None of the members of the Petitioners Union shall be retrenched
- b)Vishakapatnam Port Trust shall not resort to private engagement of stevedoring companies.

It is submitted 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 and 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 Award in its entirety and the same was accepted subject to modifications.

11.This respondent submits that consequent upon the vacation 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 and 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 had 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 Respondent / Chennai Port Trust furnished the remarks on the implementation of the National Industrial Award vide Chairman's letter No.IR3/23657/2000/S, dated 17.08.2006 to the Ministry.

12.This respondent submits that in the meanwhile, 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 representatives 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. This respondent submits that in view of the letter dated 22.04.2009 by the Ministry informing the vacation of 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.

13.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. It is submitted that 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 be held responsible in view of the present scenario and invoked Sections 22 and 33 of the

Industrial Disputes Act on both the parties with a direction to held further discussion at the respective Ports to arrive at an amicable solution and it is submitted 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 other Major Ports.

14.This respondent submits 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 Port Trust 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 and accordingly details are obtained from the above Ports and as the Trade Unions are busy with the discussions on the Wage Settlement, further negotiation could not be held. 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 six months from the date of signing of this settlement, the disputed 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 and 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 is now taking steps to arrive new datum, piece-rate by inter linking manning scale.

15.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. It is submitted that 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 with two more hooks. It is impossible for 1 Tally clerk to tally the discharge or loaded cargo simultaneously from two or more hooks. Therefore, the present award

of posting 1 Tally Clerk for general cargo, difficult to implement in toto and they has to be 1 Tally clerk per each hook and therefore, the respondent / Chennai Port Trust is also making all efforts to arrive at a suitable need based manning scale and will try to complete the whole exercise within the stipulated period. This respondent submits that in Cochin Port Trust also wanted to implement the award and as disputes arose a MOU was entered with modifications to the award and the award in Cochin Port Trust was also implemented subject to modifications and not in its entirety. He states that in the meanwhile, the Stevedores association has also filed a Writ Petition in WP.No.4207 of 2010 praying for a mandamus for implementing the award of the National Tribunal and notice has been ordered by this Court and the same is also pending adjudication.

16.This respondent submits that since these two unions are affiliates of the major Labour Federations that are parties to the wage settlement dated 02.08.2000 and in Clause 35 of the settlement stipulates that the three points mentioned therein would be referred for arbitration. It is submitted that only up on signing the said settlement the work was entrusted to the National Industrial Tribunal by the Central Government and hence the averments to the contrary are hereby denied.

17.This respondent submits that in as much as the National Industrial Tribunal had taken into account all the relevant records and statistics connected with handling of different types of Cargos in all the Major Ports and the representatives of the Port users and the representatives of major Labour Federations were given a fair chance to represent their cases and thereafter pronounced the Award which was accepted and Gazetted by the Government of India, it will be unfair on the part of the trade unions to say that the Tribunal as overlooked all the vital factors before coming to a decision and hence the averments to the contrary are hereby denied.

18.It is submitted that none of the workers will loose their jobs because there will be no retrenchment and those workers who are rendered surplus consequent to the implementation of the Award would be accommodated in other divisions of the Trust and as such there will be no monetary loose for them as they will receive their wages intact.

19.It is submitted that the W.P.No.4207 of 2010 referred to in this para is filed by the Madras Port Stevedores Association praying for implementation of the Manning Scale Award of the NIT in view of the delay in implementation. In view of the operational difficulties

that would arise consequent to implementation, the Secretary, Shipping Government of India, discussed the NIT Award with the representatives of the 15 Major Federations of the Port and Dock Workers under item 16 of the minutes of the meeting it was stated in the minutes that the Award of the National Tribunal will be discussed separately. The another reason for the delay is that one of the Trade Union functioning in Vishakapatnam Port Trust filed a writ petition in the High Court of Andhra Pradesh praying for suspension of the Award. The High Court of Andhra Pradesh had issued status quo by staying the implementation of the Award. The counter filed by the Vishakapatnam Port Trust was heard by the High Court of Andhra Pradesh and by order dated 18.05.2009 modified the status quo orders and allowed the Vishakapatnam Port Trust to implement the Award. Thereafter the Vishakapatnam Port Trust held discussions with the local Trade Unions and arrived a settlement under Section 12(3) of the Industrial Disputes Act, 1947 on 25.01.2010 thereby implementing the Award by adapting extra manning over and above the manning provided in the National Industrial Tribunal Award.

20.It is submitted that the settlement dated 19.01.2010 does not mention about the manning scale and it is incorrect to say that the workers will not get the benefits if the Award is implemented. In fact, these workers will get their wages and salaries to which they are eligible even if they are posted to work or not.

21.It is submitted that as already stated, one of the Trade Union functioning in Vishakapatnam Port Trust filed a writ petition in the High Court of Andhra Pradesh praying for suspension of the Award. The High Court of Andhra Pradesh had issued status quo by staying the implementation of the Award. The counter filed by the Vishakapatnam Port Trust was heard by the High Court of Andhra Pradesh and by order dated 18.05.2009 modified the status quo orders and allowed the Vishakapatnam Port Trust to implement the Award. Thereafter the Vishakapatnam Port Trust held discussions with the local Trade Unions and arrived a settlement under Section 12(3) of the Industrial Disputes Act, 1947 on 25.01.2010 thereby implementing the Award by adapting extra manning over and above the manning provided in the National Industrial Tribunal Award. In Chennai Port Trust also at the meeting held on 09.09.2010 by the Chairman with the representatives of the recognised Trade Unions over the issue of implementation of the manning Scale award of the NIT, it was decided to form a committee comprising one representative from each of the seven recognised unions and Secretary, Traffic Manager, Chief Mechanical Engineer, Deputy Conservator and Financial Advisor and Chief Accounts Officer as members to discuss and formulate a solution

for implementation of the Award. This was agreed to by the representatives of the 7 recognised unions.

22.It is submitted that the Chennai Port Trust is also making all effort to arrive at a suitable need based manning Scale which will be completed in a short time and as such, there is no justification on the part of the petitioner union seeking to quash or set aside the implementation of the Manning Scale Award of the National Industrial Tribunal. It is submitted that the Award has been implemented after discussion with the recognized unions at Cochin, Vishakapatnam and New Mangalore Ports with some modifications and in other Ports the Award is not implemented so far and discussion with the respective Ports' Union is under progress. In view of the above, it is respectfully prayed that this Court may be pleased to dismiss the above writ petition.

23.On considering the facts and circumstances of the case, the same issue has been decided against the petitioner herein. As such, the above writ petition is dismissed.

24.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//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.

3. The Presiding Officer,
National Industrial Tribunal,
No.20-B, Abdul Hameez Street,
Kolkatta - 700 069.

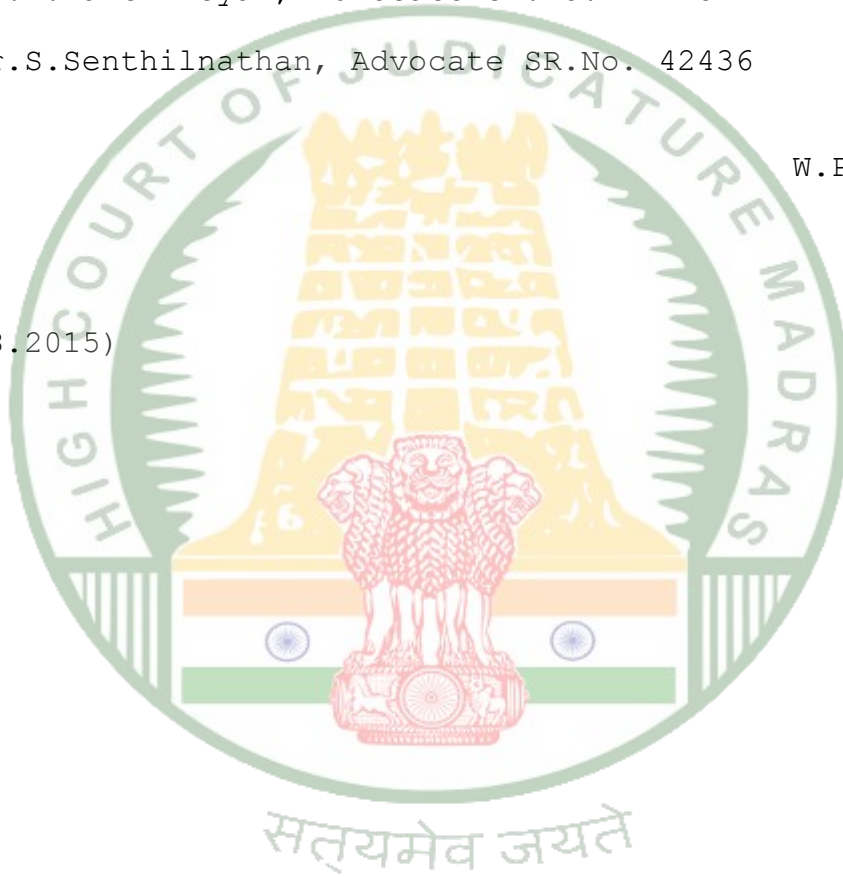
1 CC to Mr.S.Haja Mohideen Gisthi, Advocate SR.No. 42264

1 CC to Mr.R.Karthikeyan, Advocate SR.No. 42273

1 CC to Mr.S.Senthilnathan, Advocate SR.No. 42436

W.P.No.8245 of 2010
and
M.P.No.2 of 2010

GGK (CO)
PSI (28.08.2015)



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