

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 15.03.2016

Orders Pronounced on : 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9290 of 2016
and
W.M.P.No.8252 of 2016

M/s.Seahorse Marine Engineering Pvt. Ltd.,
Rep. by the Managing Director Mr.John Pandiyan,
No.148/150, Luz Church Road,
Basement, Mylapore,
Chennai-600 004. Petitioner

Vs.

1. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai-600 001.
2. The Traffic Manager,
Chennai Port Trust,
Rajaji Salai, Chennai-600 013. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to No.C1/537/2014/T dated 29.01.2016 passed by the 2nd respondent and to quash the same as null and void, and admit the payment of Rs.21,468/- and Rs.17,192/1 and Rs.307/- for the month of April-2015 made by the petitioner under license in allotment No.168/2015-16.

For Petitioner : Mr.K.Mohanamurali
For respondents : Mr.P.Saravanan, CGSC
(For R1 & R2)

ORDER

This writ petition has been filed by the petitioner challenging the order dated 29.01.2016 in No.C1/537/2014/T passed by the 2nd respondent, in and by which the request of the petitioner to waive the penalty of Rs.1,29,180/- imposed on the petitioner, was rejected.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2.1.The petitioner-company made a request for an allocation of land and building allotment for covered space on monthly licence basis vide his letter dated 14.01.2014, before the respondents. Accordingly, the 1st respondent vide Allotment Order No.236/2014 in F.No.C1/537/2014/T, dated 07.11.2014 allotted the covered space with RCC Roof measuring 37.72 square mts in Unit 1, 2 & 3 at Northwest side of Chokhani Godown in Area I to the petitioner for a period of three months from November-2014 to 31.01.2015 under monthly license basis to store materials, tools and consumables. The monthly licence fee was fixed at Rs.12,008/- at the rate of Rs.316/- per square mts. After complying with the terms and conditions for the allotment order, the petitioner was in occupation of the said land and building.

2.2.Thereafter, the petitioner by letter dated 27.01.2015 made a request to the 1st respondent for allocation of land and building - allotment of open space (Paved) mg. 177 sq. mts. and covered space along with RCC Roof portion, measuring 37.72 sq.mts. on licence basis. The said request was approved by the 1st respondent and accordingly, the 1st respondent vide allotment order No.062/2015-16 in F.No.C1/537/2014/T dated 07.09.2015 allotted an open space (paved) mg 177 sq.mts. at Northwest side of Chokhani Godwon in Area I for the purpose of carrying out repair jobs and to setup mobile rest room with portable Toilets, Showers, Slings and the Covered space with RCC Roof measuring 37.72 sq. mts in Unit 1, 2 and 3 at Northwest side of Chokhani Godwon in Area I to the petitioner for a period of 11 months from 01.02.2015 to 31.12.2015 under monthly licence basis.

2.3.Thereafter, the said allocation of the land and building was renewed for another period of 11 months from 01.01.2016 to 30.11.2016 by 1st respondent vide allotment order No.168/2015-16 in F.No.C1/537/2014/T dated 04.01.2015.

2.4.Under the Allotment Order No.062/2015-16, the condition No.5 reads as follows:

"5.Delay in payment of license fee and other dues as specified in Sl.No.4 above shall attract penal interest @ 16.75 p.a. from the due date till the date of payment subject to a maximum of 15 days from the due date. If payment not received within 15 days from the due date, the occupation will be liable for cancellation and will be treated as unauthorised and penal license

fee shall be payable as per Scale of Rates specified below_

(i) Three times of the normal license fee for the first three months from the date of unauthorised occupation or identification of encroachment.

(ii) Five terms of the normal license fee beyond three months and upto seven months.

(iii) Ten times of the normal licence fee from eighth month onwards."

2.5. Under the allotment order No.168/2015-16, the condition No.4 reads as follows_

"4. Delay in payment of license fee and other dues as specified in Sl.No.4 above shall attract penal interest @ 16.75 p.a. from the due date till the date of payment subject to a maximum of 30 days from the due date. If payment not received within 30 days from the due date the occupation will be liable for cancellation and will be treated as unauthorized and penal license fee shall be payable as per Scale of Rates specified below_

(i) Three times of the normal license fee for the first three months from the date of unauthorized occupation or identification of encroachment.

(ii) Five terms of the normal license fee beyond three months and upto seven months.

(iii) Ten times of the normal license fee from eighth month onwards.

In the course of occupation of the petitioner under the license Allotment Order No.062/2015-16, there was a delay of 1 day in effecting the payment and the same was appropriately explained by the petitioner through their letter in Ref.No.SHME/CPT/2015/10 dated 23.10.2015. In the said letter, it was clearly stated by the petitioner that the petitioner obtained the demand draft on 09.04.2015 for a sum of Rs.21,468/- and Rs.17,192/-; it was due to the procedural delay in the Computer network, the Demand Draft was taken physically around at 2.30 pm and the petitioner's staff reached the office of the respondent in time; because of sum domestic commitments of concern person of the respondent, the payment was not received; though it was directed through another person, the account section the office of the respondent was closed. However, on 10.04.2015 along with a penalty of Rs.307/-, the payment of Rs.21,468/- and Rs.17,192/- was effected. The details of the payment were enclosed in the letter dated 07.11.2015.

2.6.It is further stated by the petitioner that except for the month of April-2015, all other payments were remitted with due appreciation and acknowledgment from the respondent. Only in respect of April-2015, there was a delay of one day in making the payment. However, the respondent sent a notice of demand dated 01.09.2015 and 31.10.2015, imposing penalty of Rs.1,29,180/- for the delay in remitting the licence fee. The petitioner sent a reply letter dated 07.11.2015, thereby seeking to cancel the penalty levied on the petitioner. However, the 2nd respondent passed the impugned order in No.C1/537/2014/T, dated 29.01.2016, rejecting the request of the petitioner to waive the penalty as there was one day delay in effecting the licence fee for the month of April-2015. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3.When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the 1st respondent vide Allotment Order No.062/2015-16 in F.No.C1/537/2014/T dated 07.09.2015 allotted an open space (paved) mg 177 sq.mts. at Northwest side of Chokhani Godwon in Area I, to the petitioner, for the purpose of carrying out repair jobs and to setup mobile rest room with portable Toilets, Showrs, Slings and the Covered space with RCC Roof measuring 37.72 sq. mts in Unit 1, 2 and 3 at Northwest side of Chokhani Godwon for a period of 11 months from 01.02.2015 to 31.12.2015 under monthly licence basis. Thereafter, the petitioner was in occupation of the said open space. Subsequently, on the request of the petitioner, the said licence period was renewed by the 1st respondent vide allotment order No.168/2015-16 in F.No.C1/537/2014/T dated 04.01.2015, for another period of 11 months from 01.01.2016 to 30.11.2016. As per the terms and conditions of the Allotment Order, the licence fee shall be paid on or before 25th of every preceding calender month. Further, any delay in payment of licence fee shall attract penal interest @ 16.75% p.a. from the due date till the date of payment subject to a maximum of 15 days from the due date. If payment is not paid within 15 days after the due date, the occupation will be treated as unauthorized and the licence will be liable for cancellation and treated as unauthorized occupation and penal licence fee shall be payable.

4.The learned counsel for the petitioner would submit that except for the month of April-2015, the petitioner has paid the licence fee before the due date, for all the other months. The due date for licence fee in respect of April-2015 fell on 09.04.2015. The petitioner took Demand Draft on 09.04.2015 itself and when the petitioner's staff went to the office of the respondents, the concerned staff, in the office of the respondents refused to receive the

payment/demand draft due to his some domestic commitments. Therefore, the payment could not be made on 09.04.2015. However, the licence fee was paid by Demand Draft on 10.04.2015. In spite of the same, the 2nd respondent has issued the demand notice imposing penalty of Rs.1,29,180/- for the delayed payment. Thus, the learned counsel for the petitioner sought for quashment of the impugned order.

5. But, the learned counsel appearing for the respondents, by filing a detailed counter, submitted that as per Clause 5 r/w Clause 7 of the Scale of Rates framed by the Tariff Authority for Major Ports (TAMP), the penalty leviable for the belated remittance of the licence fee beyond the period of 15 days, are as follows—

i) Three times of the normal license fee for the first three months from the date of unauthorized occupation or identification of encroachment.

ii) Five times of the normal license fee beyond three months and upto seven months.

iii) Ten times of normal license fee from eighth month onwards.

In the instant case, the petitioner ought to have paid the license fee on or before 09.04.2015; but, the same was paid only 10.04.2015; therefore, as per the terms and conditions of the Allotment order, the demand was made by the respondents claiming a sum of Rs.1,29,180/- as penalty. Thus, the learned counsel appearing for the respondents submitted absolutely no legal ground is available to the petitioner to quash the impugned order.

6. Heard both side and perused the materials available on record.

7. It is admitted by the petitioner that the petitioner could not pay the licence fee within the specified period of 15 days and the petitioner paid the amount only on 16th day. The only explanation given by the petitioner is that though the petitioner had taken Demand Draft on 09.04.2015 itself, the staff who was present in the office of the respondent was not in a position to receive the demand draft due to his personal commitments; when the petitioner's staff went to the account section in the office of the respondents, the office of the respondents was closed.

8. Therefore, as contended by the learned counsel for the respondents, no legal ground is available to the petitioner to seek the indulgence of this Court. Though the learned counsel for the petitioner submitted that when the petitioner's staff went to the office of the respondents, the

staffs were not available in the account section of the office of the respondents, the learned counsel for the respondents is not admitting the said statement of the petitioner. Therefore, there is a disputed question of fact involved in this case. This Court cannot conduct any roving enquiry under Article 226 of the Constitution of India with regard to disputed question of fact. Furthermore, no legal ground is available to the petitioner warranting this Court to make an interference in the impugned order passed by the 2nd respondent. Therefore, the prayer of the petitioner in this writ petition cannot be entertained. Hence, the writ petitioner is liable to be dismissed.

In fine, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.
2. The Traffic Manager,
Chenna Port Trust,
Rajaji Salai,
Chennai-600 013.

+1cc to Mr.P.Saravanan, Advocate, S.R.No.25923
+1cc to Mr.K.Mohanamurali, Advocate, S.R.No.25565

W.P.No.9290 of 2016
and
W.M.P.No.8252 of 2016

MP(CO)
CA(10/05/2016)