

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2786 OF 2017

Reliance Infrastructure Ltd. & Anr.	... Petitioners
Vs.	
Union of India and Ors.	... Respondents

Mr. Vikram Nankani, Senior Counsel a/w Mr. Vishal Agrawal and Mr. Ashutosh Mishra and Ms. Isha i/by Mr. P.K. Shetty for the Petitioner.

Mr. Pradeep S. Jetly for the Respondent.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 4th DECEMBER, 2017

PC.

1 Heard the learned counsel appearing for the petitioners. The challenge in this Petition under Article 226 of the Constitution of India is two fold. The first challenge is to the show cause notice issued to the petitioners by the respondents, inter alia, calling upon the petitioners to pay cost recovery charges for the period from April, 2011 to March, 2017. The second grievance made in this Petition is as regards failure of the respondents to consider application for exemption dated 30th September, 2016 (Exhibit 'L' to the Petition). As far as the second grievance is concerned, the learned counsel appearing for the respondents contends that even if exemption is granted, it will be

prospective. He accepts that application dated 30th September, 2017 is not yet decided.

2 As far as the first challenge is concerned, our attention is invited to the letter dated 3rd August, 2017. The submission of the petitioners is that on one hand, the particulars demanded by the said letter are not being provided and on the other hand, the respondents are insisting on proceeding with the show cause notice.

3 Paragraphs 2 to 4 of the said letter dated 3rd August, 2017 read thus :

“2. In this regard, we wish to inform your goodself that according to the notice, 1 Assistant Commissioner, 1 Superintendent, 3 Inspectors and 4 Hawaldars were posted on cost recovery basis at the Dahanu Port for the period 2011-12 to 2016-17. While we deny that there is any liability on us to defray the cost incurred on the aforesaid officers, we would be grateful if we are furnished with details of the officers viz. their names, period of posting along with copies of the relevant posting orders etc. We request that we also be furnished details of their leave records. We also request your goodself to confirm that during the relevant period, the said officers were exclusively posted at Dahanu port and were not assigned/ deputed for any other work.

3. Your goodself will appreciate that the details of the officers posted at Dahanu and the administrative posting orders of all such officers so posted are essential for us, and in absence of the said information, it would not be possible for us to prepare our reply to the notice.
4. We accordingly request your goodself, to kindly adjourn the hearing granted to us and give suitable directions to the concerned officers to provide us the details of the officers, including name, designation, duration of posting, salary break-up, alongwith relevant posting orders, so as to enable us to prepare our reply.”

4 If according to the case of the petitioners, the staff was not posted on cost recovery basis at Dahanu Port for the relevant period, the petitioners can always raise the said contention by way of a reply to the show cause notice. If the authority deciding the show cause notice wants to rely upon certain documents, it is obvious that before concluding hearing of the show cause notice, the petitioners will have to be given inspection of the said documents and an opportunity to meet the said documents and canvass the submissions on those documents. Therefore, only on the ground that certain information is not being provided to the petitioners, challenge to the show cause notice in this Petition under Article 226 of the Constitution of India cannot be entertained.

5 As regards the application for exemption dated 30th
September, 2016, as the same is pending for more than one year, we
propose to direct the concerned authorities to immediately dispose of
the same.

6 Hence, we dispose of the Petition by passing the following
order :-

ORDER

- (i) We decline to entertain the challenge to the show cause notice. However all contentions of the petitioners are kept open which can be raised by the petitioners by filing a reply within a period of three weeks from today;
- (ii) If the authority competent to dispose of the show cause notice wants to rely upon any document while passing order, inspection of the said document shall be given to the petitioners. After giving inspection, a reasonable opportunity shall be given to the petitioners to meet the documents and to make submissions thereon;
- (iii) We direct the appropriate authority which is competent to decide the application for exemption dated 30th

September, 2017 (Exhibit – L to the Petition) to decide the said application within a period of two weeks from the date on which this order is uploaded. Order passed on the application be communicated to the petitioners;

(iv) Subject to the above directions, we decline to entertain the Petition under Article 226 of the Constitution of India;

(v) Petition is accordingly disposed of;

(vi) All contentions on merits are kept open.

(A.K. MENON, J)

(A.S. OKA, J)