

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.867 of 2016

M/s.Seahorse Marine Engineering Pvt. Ltd.
Rep. by the Managing Director
Mr.John Pandiyan ...Appellant/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/Respondents

Prayer: The Writ Appeal has been filed under Clause 15 of the Letters Patent to set aside the order dated 25.04.2016 passed in W.P.No.9290 of 2016.

Prayer in WP.NO.9290/2016:Writ petition filed under article 226 of the constitution of India, praying for issuance of 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 quash the same as null and void and admit the payment of Rs.21,468/- and Rs.17,192/- and Rs.307/- for the month of April 2015 made by the petitioner under license in allotment No.168/2015-16.

For Appellant : Mr.K.Mohanamurali
For Respondents : Mr.P.Saravanan

J U D G M E N T

(Judgment of the Court was made by P.VELMURUGAN,J.)

The Writ Appeal has been filed by the appellant, challenging the order of this Court dated 25.04.2016 made in W.P.No.9290 of 2016. The case of the appellant is as follows:

2.The appellant company vide letter dated 27.01.2015 made a request to the 1st respondent / The Chairman, Chennai Port Trust, for allocation of land and building - allotment of open space (paved) measuring 177 sq. mts. and covered space along with RCC Roof portion measuring 37.72 sq. mts. on license basis. The same was approved as per the terms of the contract by the 1st respondent / The Chairman, Chennai Port Trust vide allotment order No.062/2015-16 in F.No.C1/537/2014/T dated 07.09.2015 for a period of 11 months from 01.02.2015 to 31.12.2015, on monthly license fee of Rs.20,976/- and Rs.16,796/-, subsequently, 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 the 1st respondent / The Chairman, Chennai Port Trust, vide allotment order No.168/2015-16 in F.No.C1/537/2014/T dated 04.01.2015. 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 for from eighth month onwards".

3.Therefore, as per this, in the course of occupation, the appellant, under the license allotment order, there was a delay of 1 day in effecting the payment and the same was appropriately explained by the appellant through their letter in Ref.No.SHME/CPT/2015/10 dated 23.10.2015, which was not accepted by the 1st respondent /the Chairman, Chennai Port Trust. The 2nd respondent issued demand notices dated 01.09.2015 and 31.10.2015, imposing penalty of Rs.1,29,180/- for the delay in remitting the licence fee. The Appellant sent a reply letter dated 07.11.2015, thereby seeking to cancel the penalty levied

on the appellant. 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 appellant has come forward with the writ petition before this Court.

4.The learned single judge, after considering the records and rival submissions made by the counsel on either side, dismissed the writ petition No.9290 of 2016. As against the said order, the petitioner / appellant filed the present appeal.

5.Heard the rival submissions made on both sides and perused the materials available on record.

6.It is the case of the appellant that they have obtained the demand draft on 09.04.2015 for a sum of Rs.21,468/- and Rs.17,192/- which was due to the procedural delay in the company network, the demand draft was taken physically at about 2.30 p.m. and the appellant's staff reached the office of the respondent in time; because of some domestic commitments of the concerned person of the respondents, the demand draft was not received; though it was directed through another person, the account section in the office of the respondents 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, but the respondents have not accepted the same and imposed penalty of Rs.1,29,180/- which is arbitrary.

6.The learned single judge has failed to appreciate the fact that the appellant had drawn the demand draft on 09.05.2015 itself. The appellant could not effect the payment on time due to the fault on the part of staff of the respondents. The problems caused to the appellant by the staff of the respondents was explained to the respondents through their letter dated 07.11.2015, the same was not appreciated by the respondents. The learned single judge also failed to consider the explanation offered by the appellant through their letter dated 07.11.2015 to the respondents, dismissed the writ petition, stating that the appellant has not made out any legal ground to interfere with the impugned order of the 2nd respondent.

7.The learned counsel for the respondents would submit that as per the terms and conditions of the allotment order, the licence fee shall be paid on or before 25th of every preceding calendar 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 unauthorised and the licence is liable for cancellation and treated as unauthorised occupant and penal licence fee shall be payable. Therefore, as per the terms and conditions of the licence fee remittance, the respondents imposed penalty for the delay, the learned single judge, fairly considered all the aspects and dismissed the writ petition, as there is no merit.

8. Considering the rival submissions made by the both counsel and on a perusal of available records placed before this Court, it is not in dispute that the licence fee has to be paid on or before 25th of every preceding calendar 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. It is evident that the appellant has not deposited the licence fee for the month of April 2015. The appellant has also admitted that there was a delay of one day in making payment of licence fee and the only reason given for the delay is that they have taken the demand draft within the time and also they went to the office of the respondents with the demand draft but due to the fault on the part of the staff of the respondents, the appellant could not make the payment in time.

9. The appellant himself admitted that there was a delay in payment of licence fee for the month of April 2015. Though he has given certain reason for the said delay, the same is only question of fact that has to be proved by means of evidence. However, no legal issues is involved in this case. Therefore, the writ court cannot go into the disputed question of fact in the writ proceedings, in the absence of the materials, when more so, the appellant had admitted the one day delay in payment of licence fee. Under the above said circumstances, there is no merit in the appeal and there is no reason to interfere with the order passed by the learned single judge.

10. In the result, the writ appeal stands dismissed. No costs.

kas

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

To.

1.The Chairman
Chennai Port Trust
Rajaji Salai
Chennai 600 001.

2.The Traffic Manager
Chennai Port Trust
Rajaji Salai
Chennai 600 013

+1cc to Mr.K.Mohanamurali, Advocate Sr.No.88985

+1cc to MR.P.Saravanan, Advocate SR.No.88374

GMR(CO)
sm:19.1.2018

W.A.No.867 of 2016



WEB COPY