

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.20732 OF 2017

ORDER:

This writ petition is filed for the following relief:

"The Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus:

a) to declare the impugned communications dated 21.06.2017 issued by Respondent No. 1 to the Petitioner and to Respondent No. 2 as being unreasoned, arbitrary, illegal and unconstitutional.

b) to direct the Respondents to release/ discharge the bank guarantees BG namely, 1)13940100004648, 2)13940100004696, 3)13940100004697, 4)13940100004699, 5)13940100004700, 6)13940100004701, 7)13940100004702, 8)13940100004703, 9)13940100004704, 10)13940100004705, 11)13940100004706, 12)13940100004937, 13)13940100004938, 14)13940100004939, 15)13940100004940, 16)13940100004941, 17)13940100004942, 18)13940100004943, 19)13940100005591, 20)13940100006250 in favour of the Petitioner.

c) to direct respondents No.1 to return/refund the overcharged amount of Rs.39,00,00,000/- (Rupees Thirty Nine Lakhs Only) towards demurrages charges to the petitioner.

d) to grant any relief/s and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case".

Heard Sri Vedula Venkataramana, learned Senior Counsel for the petitioner and Sri P. Sri Ram, learned Senior Counsel for respondent No.1.

The petitioner is a Thermal Power Generation Company, which is developing a Thermal Power Project of two units of 660 MW each at Korba and Chattisgarh. The said project was accorded

provisional mega power status from the Ministry of Power and was recognized as a project of national importance. For the purpose of execution of the said project, the petitioner was required to import certain equipments and materials and it decided to import the machinery through Visakhapatnam Port. The demurrage charges for the imported goods are prescribed by a Scale of Rates issued by the first respondent. The petitioner could not take delivery of the imported goods within time and hence, the first respondent imposed demurrage charges along with penalty at 10 times. The issue with regard to the admission of demurrage charges is governed by a Circular issued under Section 111 of Major Port Trust Act, 1963. On imposing demurrage charges, the petitioner addressed a letter to the first respondent on 20.10.2015 stating that the demurrage charges are to be paid by 50% cash and 50% Bank Guarantee for shipment wise and requested for waiver/remission of demurrage charges. It was also stated that out of 9,500 Metric Tons of material, 4,900 Metric Tons of material was already cleared by the customs and accordingly, requested to allow the petitioner to start lifting the material pending the decision on demurrage waiver/remission. The Board of Directors of the first respondent Port Trust passed Resolution No.171/2015-2016 allowing the petitioner to take delivery of their consignment of project material for the entire quantity, as conformed by them in their letter dated 20.10.2015 by making payment of the demurrage charges incurred partly 50% in cash and remaining 50% in the form of irrevocable

Bank Guarantee encashable within three months and to waive the interest incurred on the Bank Guarantee amount, subject to the condition that the Bank Guarantee is furnished in original. Accordingly, the petitioner furnished 20 Bank Guarantees for an amount of Rs.52,39,44,960/- valid upto 29.02.2017 and renewed upto 31.08.2017. In all the Bank Guarantees, it was stated that they were furnished pending resolution of the petitioner's request for waiver/reduction in the demurrage charges by the competent authority of the Visakhapatnam Port Trust. While so, on 21.06.2017, the first respondent addressed a letter to the petitioner on 21.06.2017 informing that the concerned authorities have resolved "not to consider remission of demurrage charges" and therefore, the request of the petitioner for waiver/remission of demurrage charges was not considered. On the same date, the first respondent addressed another letter to the second respondent requesting it to encash the Bank Guarantees and credit the proceeds to its account. Aggrieved by the same, the present writ petition was filed.

The learned Senior Counsel appearing for the petitioner submitted that since furnishing of Bank Guarantees was depending upon the decision of the first respondent with regard to the request for waiver/remission of demurrage charges, which was not considered, encashment of Bank Guarantees is illegal.

The learned Senior Counsel appearing for the first respondent submits that the request of the petitioner cannot be entertained at all as it has no basis.

The communication issued to the petitioner on 21.06.2017 reads as follows:

“With regard to the request of waiver of remission of demurrage charges vide letter cited the concerned authorities resolved “not to consider remission of demurrage charges.

Hence, it is to inform that your request for waiver/remission of demurrage charges in the subject case is not considered.”

During the course of hearing, the file relating to the impugned communication is produced. Though the impugned communication is not properly worded, it is supported by a decision of the Sub Committee and the resolution of the Board of Directors passed thereupon. But the said decision of the Sub Committee or the resolution of the Board of Directors was not communicated to the petitioner. In such circumstances, it cannot be said that the request has no basis or it was not considered.

In the circumstances, the writ petition is allowed and impugned communication dated 21.06.2017 is set aside. Consequently, the invocation of the Bank Guarantees shall stand set aside. In view of disposal of writ petition on this short ground, the various contentions and defences of the parties are not adverted herein. Liberty is given to the first respondent to issue a proper communication with regard to the decision taken by the competent authority.

In view of the same, it is needless to observe that the petitioner shall extend the Bank Guarantees for a period of three months.

Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAMALINGESWARA RAO, J

Date: 08.08.2017
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