THE HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No. 9088 of 2003,
WRIT PETITION No. 9585 of 2003,
WRIT PETITION No. 20005 of 2003
AND
WRIT PETITION No. 26404 of 2003

COMMON ORDER:

Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

2. It is represented that all the four writ petitions are common for the reason that the relief sought is one and the same. Therefore, with the consent of the counsel for both sides, these four writ petitions are being disposed of by a common order.

3. The present four writ petitions are filed by the petitioners to declare the action of respondents 3 and 4 in enhancing the vessel related charges for fishing vessels as shown in the Appendix filed along with the writ petitions, as illegal and *ultra vires* to the provisions of Articles 14 and 19(1)(g) of the Constitution of India and also the provisions of Major Port Trusts Act, 1963 and consequently direct the respondents to collect the old rates.

4. The brief facts of the cases are that the petitioners in all the four writ petitions are Operators of Fishing Trawlers from the Fishing Harbor, Visakhapatnam like other traders in the same trade. The first respondent with an intention to promote fishing activity in India, has taken the initiative in mid 1970's and has

given an impetus to individual entrepreneurs in extending not only financial assistance but also the technical know-how for acquiring and operating fishing trawlers in India and in furtherance of the said objective, have established independent and separate fishing harbors for exclusive use of the fishing vessels including mechanized fishing boats and fishing trawlers. The Government of India with an intention to promote the fishing industry, have established a separate fund to finance the Indian Fishing Industry Entrepreneurs under the name and style of S.D.F.C. (Shipping Development Fund Committee) and extended more than 90 to 95% of the financial assistance to the entrepreneurs in acquiring the vessels. The fishing trawlers were also utilizing the facility of slipway to effect repairs on land condition. However, all of a sudden, 4th respondent high-handedly started demanding an exorbitantly high amount at the rate of 235% to 260% more than the existing rates and as such, the monthly wharf-age charges were increased as mentioned in Annexure-I. The dry docking chargers are also increased from Rs.30,150/- to Rs.66,200/- for a normal vessel of 120 tons and the berthing charges were increased from Rs.2,030/- to Rs.7,064.80 ps. per month. The 4th respondent was trying to implement the hike in rates since May, 2001 without informing the individual trawler owners or seeking their objections beforehand.

5. Per contra, though the writ petitions are of the year 2003, no counter-affidavits have been filed on behalf of the respondents 1 to 3 as well as respondent No.5. However, a counter-affidavit has been filed on behalf of 4th respondent contending *inter alia* that all the Major Ports in India are not alike in terms of infrastructure facility services and it is not relevant and correct to draw out a comparison between Chennai Fishing Harbor and Visakhapatnam Fishing Harbor. Hence, there is no substance in the averment made by the petitioners that all of a sudden there is abnormal increase in the vessel charges. It is also stated in the counter that it is not possible to carry out the slip-in/slip out and dock-in/dock out of the vessels without regular maintenance and up keep of the equipment. The 3rd respondent has got its' own procedure and the petitioners have no say in dictating terms to the said authority which is a statutory authority constituted under the provisions of Major Port Trusts Act, 1963. It is also further sated in the counter-affidavit that as per Section 49(b) of the Major Porn Trusts Act, the Tariff Authority shall from time to time by notification in the official gazette, fix Port dues on vessels entering the Port. Fishing harbor, is a part of Port and any vessel that enter Port has to pay Port dues. Thus, it is not an additional component of tariff. All the facilities are provided on payment basis. When Port expressed its' difficulty for

providing electricity or water, there is no point in raising a contention that vessel charges cannot be increased.

6. A perusal of the averments made in the affidavit filed in support of the writ petitions and the counter-affidavit filed on behalf of the 4th respondent as far as fixation of vessel charges is concerned, it is in the exclusive domain of 3rd respondent i.e. Tariff Authority for Major Port Trusts represented by its Director, New Delhi. For variation in the tariff, it depends on infrastructure facility that is provided by Port, such as, providing electricity, water facility for users of Fishing Harbors etc. During the course of arguments, it is brought to the notice of the Court that two out of three petitioners i.e. first and second petitioners in W.P.No.9088 of 2003 have already withdrawn the writ petition. The learned counsel for the petitioners submitted that in spite of writing letters, there is no response from the petitioners. Be that as it may, it is placed on record that the petitioners have submitted representations, dated 09.12.2000, 19.07.2001, 26.07.2001 and 19.08.2001 to the Director, Tariff Authority for Major Port Trusts, New Delhi as well as the Chairman, Visakhapatnam Port Trust i.e. respondents 3 and 4 requesting to reduce the vessel charges and continue to charge only the old rates existing prior to 16.05.2001 plus 15% increase which the petitioners and others have accepted in the meeting held on 08.12.2000. Therefore, the learned counsel representing the petitioners requested the Court to

direct the respondents 3 and 4 to consider the said representations and pass appropriate orders.

7. Keeping in view the submissions made by the learned counsel for the petitioners and also the averments made in the counter-affidavit, this Court feels appropriate to direct the respondents 3 and 4 to consider the aforesaid representations made by the petitioners relating to the enhancement of the vessel charges and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

8. With the above directions, all the four writ petitions are disposed of. There shall be no order as to costs.

The miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE P. KESHAVA RAO

Date:20.12.2017
ccm

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