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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20.12.2017

\+ LPA 804/2017 & CM Nos.46598-46600/2017

INTEC INDIA LIMITED ..... Appellant
Through: Dr. Amit George with Mr. Prashant Sharma, Advs.

versus

UNION OF INDIA & ORS ..... Respondents
Through: Ms. Shubhra Parashar, Adv. for R-1/UOI.
Mr. Arun Kumar, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

S. RAVINDRA BHAT, J.(ORAL)

1. Complaining of arbitrariness, the appellant had sought the remedy under Article 226 of the Constitution in respect of the detention/demurrage charges for two months (from 14.08.2016 to 15.10.2016) claimed by the respondent (hereafter "CONCOR") to the extent of ₹6,04,686/-. The appellant's contention was that the materials on the record produced before the Single Judge revealed that CONCOR was beneficiary as lessee of public lands for which it paid an extremely subsidised fee. The learned Single Judge rejected the plea of arbitrariness and held that the detention charges claimed by

CONCOR and the private agency i.e. COSCO were justified. It was held also that COSCO was neither a State nor were its activities covered under Article 226 of the Constitution.

2. Dr. Amit George, learned counsel relies upon the decision in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282 to highlight especially the distinction made in the judgment between a licence and other charges to say that a licence charged by a Government agency has a bare nexus with the fee. It is thus contended that having regard to the extremely subsidised nature of lease charges that CONCOR bears for access to the public lands – to the tune of ₹44 crores on which its depot is located, the detention charges based upon tariffs fixed by it are arbitrary and unreasonable. Learned counsel also relied upon the judgment reported as *Ramana Dayaram Shetty v. The International Airport Authority of India and others* AIR 1979 SC 1628 to contend that when the State chooses to engage itself in a commercial activity, it has to act reasonably, having regard to the compulsions of its duty to offer welfare benefits and ensure widest reach to those entitled to the service.

3. The respondents, especially CONCOR, resist the appeal and contend that judicial review cannot be resorted to for examination of the charges fixed for the services rendered as is sought to be done. In the counter affidavit filed in answer to writ proceedings, it was clearly demonstrated that the tariff is not based on the alleged subsidised rates at which the lease was obtained but rather it is the

culmination of an elaborate process whereby proposed charges are paid at the rates fixed, and where no rates are so fixed, charges are paid at such rates as may be fixed by the authorities. It is submitted that for fixing the tariff at the relevant rates, a report consultation mechanism is resorted to whereby stakeholders such as shipping lines and other service providers' views are also taken into account. Learned counsel relied upon the counter affidavit to indicate some of the considerations that weighed with CONCOR and the authorities at the time of fixation.

4. The Court is of the opinion that there is no infirmity in the impugned judgment. Whilst fixation of licence fee for an activity which is akin to a sovereign function such as calculation of fee for providing licenses or registration to aircraft vessels and motor vehicles or even services which the State offers in its capacity as a sovereign entity, undoubtedly, have to bear a direct and perhaps an approximate nexus with the activity itself and therefore ought to be reasonable, even minimal, that restriction, however, in the opinion of the Court, does not imply that the State chooses to engage in what are purely 'commercial activities' that can be carried out by other entities. In such situation, the State exercises either by itself or through its agencies the powers that are fettered and also vested with all the rights as well as the obligations imposed on like entities who operate in the commercial field having regard to its choice under Article 298 of the Constitution. *Life Insurance Corporation of India v. Escorts Limited* 1986 (1) SCC 264 is an authority for proposition that when the State

chooses to operate commercially, it cannot be undoubtedly fettered and operates in the same level playing field as provided and authorized, with the added responsibility of broadly conforming to non-arbitrariness and discrimination. The record reveals that CONCOR routinely undertakes and reports exercise of tariff fixation on periodical basis which entails consultation with all stakeholders. Doubtlessly, importers and exporters are also part of such exercise. In the present case, the petitioner/appellant could not clear the goods for two months and was imposed deduction charges which it knew when it entered into the arrangement with CONCOR. Having regard to these factors, this Court is of the opinion that there is no infirmity in the impugned judgment.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

DECEMBER 20, 2017
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