

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.965 of 2018
and C.M.P.No.8184 of 2018

SYR Infrastructure
a Proprietary Concern, rep.by its Proprietor,
Mr.K.Yougandhar,
Bye Pass Road (Opp.Mitsuba Company),
Gummidipoondi, Thiruvallur-601 201.
...

Appellant/Petitioner

-vs-

- 1.Chennai Port Trust
rep.by its Chairman,
Rajaji Salai, Chennai-600 001.
- 2.The Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai, Chennai-600 001.
- 3.MSTC Limited
(A Govt.of India Enterprise)
Leelavathi Building, Second Floor,
69, Armenian Street,
Chennai-600 001.
- 4.The Inspector of Police,
Central Bureau of Investigation,
CBI ACB, Chennai.
(Crime No.RC MA1 2017 A 0011)
(R-4 impleaded as party respondent vide
order of this Court dated 08.06.2018 in
C.M.P.No.8661 of 2018 in W.A.No.965
of 2018).

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Respondents/Respondent

Appeal filed under Clause 15 of Letters Patent, against the
order passed by this Court in W.P.No.13934 of 2017 dated
06.02.2018.

WP.NO.13934/2017:

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari and Mandamus call for the impugned order of the 2nd respondent bearing No.MEE/F3/160040/ 16/MM dated 16.5.2017 quash the same and consequently direct the respondents one and two to permit the petitioner to evacuate and lift the balance 89 649.740 Metric Tons out of 132300 Metric Tons of Iron Ore Fines and lumps at iron ore plots of BD II at Chennai Port Trust in Conformity with the delivery order No.MSTC/ SRO/ 16-17/ 1828/5917 dated 27.1.2017 issued by the 3rd respondent and delivery order bearing No. MEE/ F3/ 160040/16/MM dated 27.1.2017 issued by the 2nd respondent pursuant to the e-auction TenderNo.MEE/ T/F3/ e-72/16/MM held on 30.12.2016

For Appellant :: Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.S.D.Venkateswaran

For Respondents:: Mr.Haja Mohideen Gisthi for
R1 and R2

Mr.C.Vijayakumar for R3

Mr.K.Srinivasan(CBI) for R4

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant has filed a writ petition in WP.No.13934 of 2017 against the order dated 16.05.2017 passed by the second respondent, whereby, the evacuation/delivery of top layer Iron ore fines carried out by the appellant was suspended from 30.03.2017 onwards due to administrative reason, until further intimation from the Port Trust. By an order dated 06.02.2018, the learned Single Judge has dismissed the said writ petition, on the ground that a criminal case has been registered by the CBI against the appellant as well as the Port Trust Officials, alleging that all of them have conspired to get the contract awarded in favour of the appellant for the sale of iron ore based on a very low reserve price, more particularly, by permitting the unsuccessful bidder viz., H3 bidder, M/s.Eastern Bulk Trading & Shipping Pvt. Ltd to pay the money on behalf of the appellant, due to which, the Port Trust has to face loss, while the appellant was made to get a wrongful gain. It was further observed therein that the investigation is still pending

and the entire records are seized by the said Investigating Agency. Aggrieved over the same, the appellant has come up with the present writ appeal.

2. When this matter came up before this Court earlier, the learned counsel for the respondents 1 and 2 has submitted that the Port Trust has suffered a loss of about Rs.7 crores. Hence, we directed the learned senior counsel for the appellant to furnish a bank guarantee for the said sum to the credit of Chennai Port Trust.

3. Today, the learned senior counsel appearing for the appellant has submitted that leniency must be shown with regard to the amount of bank guarantee to be furnished. However, the learned counsel for the CBI has submitted that they leave it to the discretion of the Court to take a decision in the matter. The learned counsel for the first and second respondents/Port Trust has filed a reply to the memo filed by the appellant for furnishing bank guarantee, stating that the Port Trust has already handed over the case to CBI for investigation and further investigation is under progress. It is stated further that if the appellant is allowed to remove the iron ore left over, it will affect the investigation.

4. Already as per the contract, an amount of Rs.600/- per tonne was fixed, after auctioning in the public to remove the iron ore fines. However, the learned counsel for the respondents 1 and 2 has submitted that the amount per tonne should have been auctioned not below the sum of Rs.1,000/- but it has been fixed at a very low price of Rs.600/- which is only due to the conspiracy among the officials and hence suspecting conspiracy, FIR has been filed.

5. However, it seems that the auction purchaser has lifted most of the goods as per the terms and conditions of the auction and the present situation is that the Port Trust also needs lifting of these materials as it is occupying more space. In these circumstances, according to Mr.A.R.L.Sundaresan, learned senior counsel for the appellant, at this juncture, all of a sudden, the authorities cannot take an 'U' turn and lodge a complaint against the contractor after several months and long lapse of time and that the FIR is filed with ulterior motive. He also submitted that the actual amount as stated by the Port Trust as loss, is Rs.7,10,45,100/- and the said amount is an exaggerated one without any basis.

6. In the said circumstance, we are of the view that since the amount of loss as stated by the Port Trust, nearly comes to Rs.7 Crore and since half of the materials have been lifted already, it would not be appropriate to stop removal of the remaining materials. Further, the material dumped also causes

hardship to the Port Trust for want of space and further it attracts demurrage charges. Hence, to safeguard the interest of both parties, we hereby direct the appellant to furnish bank guarantees to the tune of Rs.7,10,45,100/- to the credit of the Chennai Port Trust, in two equal instalments. The first bank guarantee shall be furnished within a period of 15 days from today and the second bank guarantee for the remaining amount shall be furnished within three months after the first bank guarantee has been submitted. We also make it clear that, if necessary the bank guarantees need to be extended. After furnishing the first bank guarantees, lifting of the materials in question shall take place. If the contractor is found to be innocent, and there is no camouflage, the bank guarantees shall be released in favour of the appellant in accordance with law, after the CBI report is submitted or after the finding of the Criminal Court.

7.Thus, in the result, the appellant is permitted to lift the materials as per the terms and conditions of the Contract, subject to furnishing of first bank guarantee as stated above, within a period of 15 days from today and the second bank guarantee as stated above, shall be furnished within three months after the first bank guarantee has been submitted. Thereafter, the matter shall be decided between the parties, as per the outcome of the investigation by the CBI.

8.The writ appeal is disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

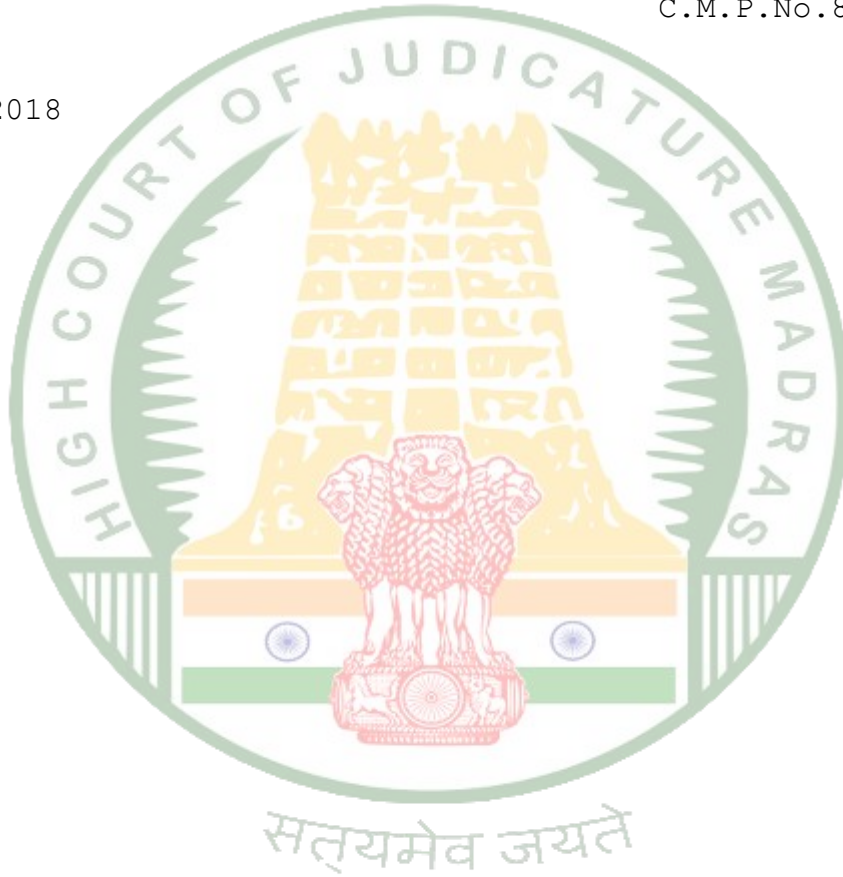
- 1.The Chairman,
Chennai Port Trust
Rajaji Salai, Chennai-600 001.
- 2.The Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai, Chennai-600 001.

3.The Inspector of Police,
Central Bureau of Investigation,
CBI ACB, Chennai.

+1cc to Mr.Haja Mohideen Gisthi, Advocate sr.no.52769
+2cc to Mr.S.D.Venkateswaran, Advocate sr.no.52184
+1cc to Mr.C.Vijayakumar, Advocate sr.no.52502

W.A.No.965 of 2018
and
C.M.P.No.8184 of 2018

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