

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.445 of 2012 and

M.P.Nos.1 & 2 of 2012

M/s.Dineshbabu Transport
Handling and Transport
Contractor functioning at
Room No.19, III Floor,
Kumbhat Commercial Complex,
699, Periyar EVR High Road,
Aminjikarai,
Chennai 600 029.
Rep by its Managing
Partner V.K.Sukumaran
Son of V.K.Kalyanasundaram.

Vs

... Petitioner

- 1.The General Manager,
Southern Railway,
Office of the General Manager,
Park Town,
Chennai 600 003.
- 2.The Senior Divisional Commercial Manager,
Southern Railway,
Park Town,
Chennai 600 003.
- 3.The Chief Goods Supervisor,
City Good Shed,
Southern Railway,
Royapuram Good Shed,
Chennai 600 013.
- 4.The Senior Regional Manager (North)
Tamil Nadu Civil Supplies Corporation,
Gopalapuram,
Chennai 600 086.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the respondents 1 to 3 to refund the funds that had been collected from the petitioner vide Freight Credit Note No.760120 duly paid to the 3rd respondent under the caption of demurrage and wharfage charges.

For Petitioner : Mr.D.Ashok Kumar
For Respondents : Mr.P.T.Ramkumar for RR1 to 3
: No appearance for R4

O R D E R

Heard Mr.D.Ashok Kumar, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned counsel appearing for the respondents 1 to 3.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Mandamus, to direct the respondents 1 to 3 to refund the funds that had been collected from the petitioner vide Freight Credit Note No.760120 duly paid to the 3rd respondent under the caption of demurrage and wharfage charges."

3. The case of the petitioner is as follows:-

A similar issue came up for consideration before this Court in W.P.Nos.25441, 25493 and 25537 of 2011 and the learned Judge of this Court vide order dated 23.01.2012, has dismissed the above said writ petitions as not maintainable.

4. The learned counsel appearing for the respondents would draw the attention of this Court to paragraph 4 and 8 of the aforesaid order, which is reproduced below:-

"4. The learned counsel for the respondents drew the notice of this Court that the petitioners are only transport contractors and they have nothing to do with the orders of the Railways. Their actual work will start only after the clearance given by the consignee. As far as payment of demurrage charges is concerned, it was recovered only from the consignee and therefore, the writ petition is not maintainable. Hence the main writ petition is liable to be dismissed.

8. In view of the fact that the respondents have very clearly stated that demurrage charges will be collected only from the consignee, petitioners will in no way be affected or prejudiced by imposition of demurrage charges if the goods are kept beyond 48 hours. In view of the above clarification given by the respondents, no further order is necessary in the writ petitions. The writ petitions are accordingly disposed of as not maintainable."

5. The present writ petition is filed by the petitioner who was also a petitioner in one of the aforementioned writ petitions. Since it is an admitted fact that the demurrage and other charges were recovered from the consignee viz., the Tamil Nadu Civil Supplies Corporation, if at all the petitioner is aggrieved by levy of demurrage charges which according to the petitioner, has been recovered from the bills payable to the petitioner by Tamil Nadu Civil Supplies Corporation, the petitioner can lay a claim only against the Tamil Nadu Civil Supplies Corporation and not against the respondents 1 to 3.

6. In view of the decision of this Court under similar circumstances, holding that the writ petition was not maintainable, the petitioner herein cannot maintain the present writ petition as against the respondents 1 to 3 herein as there is no any previty of contact between the respondents 1 to 3 and the petitioner herein. In any event, the demurrage and other charges were actually recovered by Railways from the consignee and it is always open to the petitioner to make a claim against the 3rd party viz., the Tamil Nadu Civil Supplies Corporation, if the amount towards levy of demurrage charges have been recovered from their bills.

7. Therefore, the present prayer sought against the respondents 1 to 3 is clearly not maintainable and therefore, the writ petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gsk

To

1.The General Manager,
Southern Railway,
Office of the General Manager,
Park Town,
Chennai 600 003.

2.The Senior Divisional Commercial Manager,
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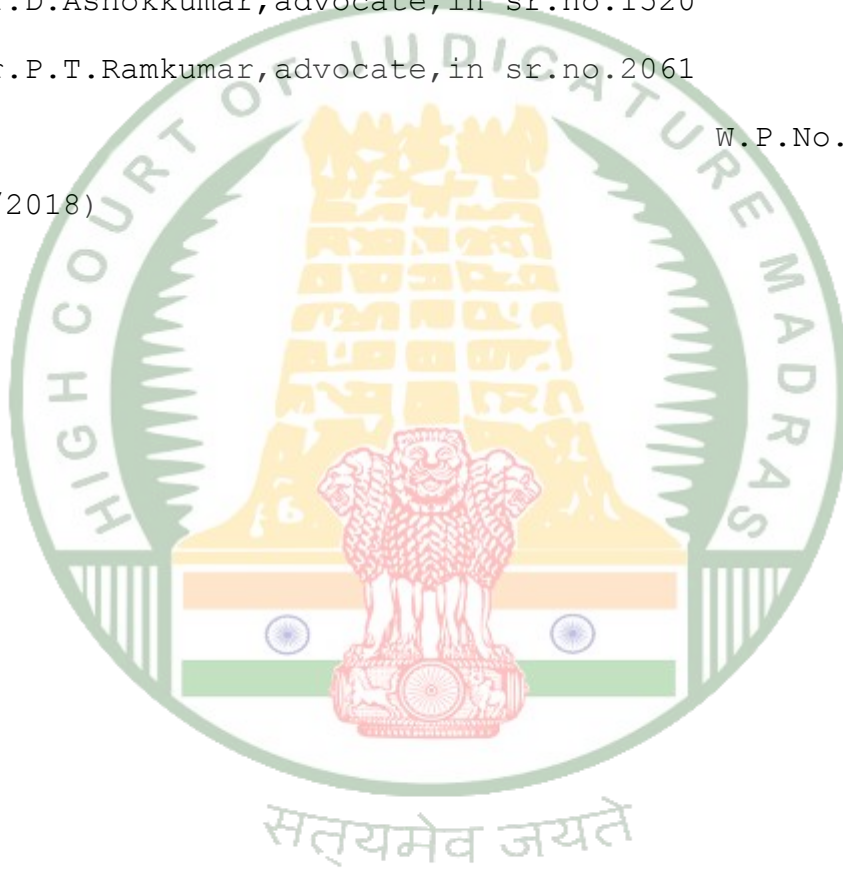
4.The Senior Regional Manager (North)
Tamil Nadu Civil Supplies Corporation,
Gopalapuram,
Chennai 600 086.

+1cc to Mr.D.Ashokkumar,advocate,in sr.no.1520

+1cc to Mr.P.T.Ramkumar,advocate,in sr.no.2061

W.P.No.445 of 2012

br(co)
GSP(17/02/2018)



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