

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.02.2018

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.No.2979 of 2018

and

WMP Nos.3626 and 3627 of 2018

Indianocean Shipping Pvt. Ltd.,
Represented by its
Head of Insurance and Legal
Mr.Anil T.Saigal,
15B, ChanderMukhi,
Nariman Point,
Mumbai 400 021,
India.

....Petitioner

vs

1.The Kamarajar Port Limited,
Ennore,
Rep. by its Chairman,
4th Floor, Super Speciality Diabetic Centre,
Rajaji Salai,
Chennai-600 001.

2.The District Collector,
Tiruvallur.

3.The Director of Fisheries,
Teynampet, Chennai-6.

(R2 and R3 are suo motu impleaded
as per order dated 12.02.2018 by KRCBJ
in W.P.No.2979/2018)

....Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the respondent order dated 01.02.2018 quash the same and direct the respondent to grant Port Clearance to allow the Vessel MT DAWN KANCHIPURAM lying at the Ennore Port to be towed to Visakhapatnam to carry out repairs.

For petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.S.Vasudevan

For Respondents : Mr.Krishna Ravindran for R1
Mr.Vijay Narayan
Advocate General
Assisted by
Mr.R.Govindasamy for R2
Special Government Pleader
Mr.E.Manoharan for R3
Additional Government Pleader

O R D E R

This writ petition is filed challenging the order of the first respondent dated 01.02.2018 and consequently seeking for a direction to the first respondent to grant Port Clearance to allow the vessel MT Dawn Kanchipuram lying at the Ennore Port to resort to Visakhapatnam to carry out repairs.

2.The Short facts that are necessary for deciding the present writ petition, as projected by the respective parties, are as follows:

a) The petitioner is the owner of the vessel M.T. Dawn Kanchipuram. On 26.01.2017, the said vessel chartered to Bharat Petroleum Corporation Limited and arrived at Ennore Port to discharge a cargo of about 33,000 Metric Tons of Motor Gasoline and high speed diesel. On 28.01.2017, at about 03.43 hours, another vessel BW Maple collided with the petitioner vessel MT Dawn Kanchipuram. The master of the petitioner vessel immediately reported the incident to the Kamarajar Port Trust, Directorate General of Shipping and other authorities. Resulting out of such collision, there was a breach from the Port side bunker tanks of the vessel Dawn Kanchipuram resulting in the spillage of the fuel oil. Proceedings are now pending before the Hon'ble National Green Tribunal resulting out of such oil spillage and consequential claim for compensation. Several petitioners including representatives of fishermen have moved the National Green Tribunal by filing several applications. The responsibility and liability of the respective parties towards the incident as well as the compensation payable are the issues pending before the National Green Tribunal. The Hon'ble National Green Tribunal has passed several interim orders and in one such order passed on 06.07.2017, the Directorate General of Shipping was appointed as Authority to supervise all activities including the claims made by the members of the Fishermen community and file a status report. The Directorate General of Shipping is vested with supervision in respect of the process of settling the claims by the order dated 06.07.2017 and the said order continues to be in force till date.

b) The petitioner has so far paid/settled a total of RS.11,24,86,469.57 to the Statutory Authorities including the first respondent herein together with the replacement of the boom of the first respondent. The Fisheries Department on behalf of the fishermen had submitted a report to the National Green Tribunal in the pending matters that they have claimed a sum of Rs.203.22 crores as compensation arising out of 1,15,000 claims of fishermen. The owners of BW Maple furnished a bank guarantee in favour of the Directorate General of Shipping dated 31.08.2017, as security towards the fisheries claim for a sum of Rs.203,22,00,000/-. The Directorate General of Shipping was, thereafter, pleased to grant an order dated 14.09.2017, permitting the said vessel viz., BW Maple to leave the port and sail upon furnishing the said bank guarantee.

c) The said order of the Directorate General of Shipping was challenged by way of a Public Interest Litigation before this Court in W.P.No.25813 of 2017. The Hon'ble Division Bench of this Court, after hearing all the parties, passed an order on 10.10.2017, dismissing the writ petition and upholding the order of the Directorate General of Shipping dated 14.09.2017, permitting BW Maple to sail. The Hon'ble Division Bench in the said order directed the Directorate General of Shipping and the police authorities to complete the investigation into the incident for fixing the responsibility.

d) The petitioner vessel has been lying at at the Coal Berth of Kamarajar Port for more than a year and is in dire need of repairs. On 14.05.2017, the petitioner had made a request for permission for the vessel to proceed to Colombo for dry-docking to carry out permanent repairs. On 20.11.2017, the petitioner again renewed its request to accord urgent approval to issue a single voyage permission for the vessel to proceed to Hindustan Shipyard, Vishakhapatnam to carry out the pending repairs to the vessel. The Directorate General of Shipping granted a single voyage permission subject to certain conditions vide its order dated 21.01.2018. Accordingly, the petitioner requested the first respondent to grant sailing permission for the said vessel in pursuant to a communication issued by the Directorate General of Shipping dated 21.01.2018. However, the first respondent sent a reply on 01.02.2018, which is impugned in this writ petition, informing the petitioner that they were instructed not to allow the subject matter ship to move from the harbour without obtaining No Objection Certificate from the Fisheries Department, Government of Tamil Nadu, the District Collector and National Green Tribunal, Southern Zone. Hence, the present writ petition is filed by the petitioner with the relief as stated supra.

3. When the matter was taken up for admission on 12.02.2018, Mr.Krishna Ravindran learned counsel, who took notice for the first respondent, submitted that the first respondent as such is not having any objection for the release of the subject matter vessel, subject to the petitioner complying with the other formalities. However, he further submitted that because of the objections raised by the officials of the Tamilnadu Government, viz., the District Collector, Tiruvallur and the Director of Fisheries, Teynampet, Chennai-6, the first respondent Port is not in a position to release the vessel.

4. In view of the above submissions made by the learned counsel for the first respondent, this Court felt that the presence of those two officials is necessary before this Court in order to decide the writ petition in a just and proper manner. Accordingly, this Court suo motu impleaded the said officials viz., the District Collector, Tiruvallur and the Director of Fisheries, Teynampet, Chennai-6, as party respondents. Consequently, the Government Pleader was directed to take notice on behalf of the respondents 2 and 3 and get instructions. Thus, the matter is adjourned for further hearing to 13.02.2018 (today).

5. Today, when the matter is taken up for hearing, the learned Advocate General appeared for the respondents 2 and 3 and submitted in the forenoon a Note on oil spill claim, signed by the Deputy Director of Fisheries, Chennai-6, disclosing various facts and circumstances of the case leading to the filing of the present writ petition as well as the matters, which are now pending before the National Green Tribunal. However, this Court directed the respondents 2 and 3 to file an affidavit to indicate as to what conditions that could be imposed for release of the vessel only for the purpose to carry out the repair, so that such conditions would also safeguard the interest of the respondents 2 and 3, since it is stated that the Insurance given to the subject matter vessel is also going to expire on 15.02.2018.

6. Consequently, the matter is taken up again in the afternoon and the respondents 2 and 3 filed an affidavit accordingly. In the said affidavit, after narrating various facts and circumstances about the case in hand and the matters which are pending before the National Green Tribunal as already stated in the Note filed by the Deputy Director of Fisheries, at paragraph No.14, it has been stated as follows:

"14. It is submitted that based on the submission made by the petitioner before the Hon'ble Court to reconsider the amount to be deposited by them to permit the ship to sail to Vishakapatnam, the respondent-Fisheries Department, may be

permitted to deduct Rs.15 crores, that was already paid by the petitioner from the total liability amount of Rs.240 crores and the petitioner can accordingly effect the payment towards Rs.225 crores. In the light of the above the petitioner shall make the committed settlement as deposit of Rs.126 crores (Rs.141 crores - Rs.15 crores) at the earliest and to provide irrevocable and unconditional bank guarantee for the balance amount of Rs.99 crores of the total claim."

7. The first respondent also filed a Memo dated 13.02.2018 signed by their counsel, wherein it is stated as follows:

"The 1st Respondent states as follows:

1. The 1st Respondent states that without prejudice to the rights available to Kamarajar Port Limited (KPL), KPL has no objection to release the vessel, Dawn Kanchipuram subject to payment/ assurance of payment of the following by the vessel owner and / or the P&I Club:-

(i) Reimbursement of the amount of Rs.5.68 crores paid to the Director, Department of Environment, Government of Tamilnadu towards Environmental Impact Assessment.

(ii) The due of Rs.7.86 crores (as on 13.02.2018) payable by the Vessel to KPL towards berth hire charges and subsequent Port charges till the date of sailing of the vessel.

(iii) Any future claim made by the Director, Dept. of Environment, Government of Tamil Nadu based on the study being carried out by them towards mitigation of environmental damages.

2. The 1st Respondent states that apart from the above, the Petitioner may be directed to comply with any further conditions that may be imposed by this Hon'ble Court including the grant of no objection by the impleaded 2nd and 3rd Respondents.

It is prayed that this Hon'ble court may be pleased to record the above memo and pass suitable orders and thus render justice."

8. It is the contention of the petitioner that the subject matter vessel, which was severely damaged due to the above said collision took place as early as on 28.01.2017, is lying in the first respondent Port for more than a year and unless it is repaired immediately without loss of further time, the petitioner would lose the value of the very vessel itself,

more particularly, when the Insurance cover granted in favour of the said vessel is also going to expire very shortly. It is the further contention of the petitioner that the fixing of the liability is an issue which has to be considered and decided by the National Green Tribunal and only when such decision is taken, it will be known as to who is liable to pay viz., whether the petitioner or the said foreign vessel BW Maple. Therefore, it is contended that when the other foreign vessel was permitted to sail out of the Indian soil on furnishing bank guarantee of Rs.203 crores, the respondents 2 and 3 cannot prevent the first respondent from granting permission to the petitioner to sail the vessel to Vishakhapatnam Port for doing the repair work. However, the learned Senior Counsel for the petitioner fairly submitted that the petitioner, if directed, will be in a position to comply with reasonable conditions for sailing the ship out of the first respondent Port however without prejudice to their statutory defences before the Green Tribunal and other Forums as provided under law. He further submitted that the National Green Tribunal has not passed any prohibitory order against the petitioner vessel from moving out of the first respondent port.

9. On the other hand, the learned Advocate General appearing for the respondents 2 and 3 submitted that if the petitioner is permitted to sail without protecting the interest of the respondents 2 and 3, they will not be in a position to realise any amount from the petitioner, in the event of their failure before the Green Tribunal, once the liability is fixed by such forum. Therefore, he submitted that, as stated in the affidavit filed by the respondents 2 and 3 more particularly, at paragraph No.14, as extracted supra, the petitioner may be directed to safeguard the interest of the respondents 2 and 3 by making a deposit of Rs.126 crores and also to provide unconditional bank guarantee for the balance of Rs.99 crores.

10. Learned counsel appearing for the first respondent submitted that if the petitioner comply with the conditions stated in the Memo filed by the first respondent today before this Court, there will not be any difficulty for the first respondent to allow the vessel to sail to Vishakhapatnam Port, subject to clearance by the respondents 2 and 3.

11. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.Krishna Ravindran, learned counsel appearing for the first respondent and Mr.Vijay Narayan, the learned Advocate General appearing for the respondents 2 and 3.

12. There is no dispute to the fact that there was a collision between two vessels viz., BW Maple and MT Dawn

Kanchipuram, on 28.01.2017, which has resulted in heavy oil spillage. It is also admitted by both sides that the National Green Tribunal, Southern Zone has seized of the matter to fix the liability on either of the parties and consequential compensation payable by the erring party. It is also not in dispute that the other vessel viz., BW Maple was allowed by the Directorate General of Shipping by its order dated 21.01.2018 to sail out of the Indian soil on furnishing bank guarantee for a sum of Rs.203,22,00,000/-. It is also not in dispute that the said order was challenged before the Hon'ble Division Bench by way of Public Interest Litigation and the Hon'ble First Bench of this Court dismissed the writ petition on 10.10.2017. Therefore, now it is evident that one of the vessel viz., BW Maple, pending litigation before the National Green Tribunal, was allowed to sail out of the Indian water on furnishing such bank guarantee. I am not traversing on many other facts and circumstances as narrated by both parties in this writ petition except to refer certain, owing to the limited prayer sought for herein and the scope of the same, more particularly when those are the matters for the National Green Tribunal to consider and decide.

13. Now the petitioner seeks for release of their vessel for them to sail it to Vishakhapatnam Port that too, only for repairing the same. It is also not in dispute that the Insurance period is going to expire on 15.02.2018 within which time, the petitioner has to take some steps to repair the vessel, in order to get coverage under the existing insurance. Admittedly, the subject matter of vessel is kept idle at the first respondent Port for the past one year. There is no dispute to the fact that the subject matter vessel sustained severe damage and hence without doing the repair work, it cannot be put into operation for regular business. Keeping the said vessel at the first respondent Port any further without allowing the same to get the repair works done, till the matter is decided by the National Green Tribunal, it would serve no purpose in the interest of anybody and on the other hand, it would only further diminish the value of the subject matter vessel. Therefore, allowing the subject matter vessel to subject itself for repair works will not prejudice the interest of the respondents in any manner, provided their interest is safeguarded by passing appropriate orders. It is also not in dispute that the petitioner has already paid a sum of Rs.15 crores to the Fisheries Department. Considering the fact that the other vessel viz., BW Maple was allowed to sail out of the Indian water on furnishing the bank guarantee for Rs.203 crores, this Court is of the view that the petitioner can also be permitted to furnish a similar bank guarantee however for a sum of Rs.188 crores, as the petitioner has admittedly paid a sum of Rs.15 crores already. Apart from furnishing such bank guarantee

in favour of the Director of Fisheries, Government of Tamilnadu, Teynampet, Chennai-6, the petitioner should also comply with the conditions imposed by the first respondent, as stipulated in the Memo dated 13.02.2018. Under the above stated facts and circumstances and in the interest of justice, this Court is of the view that the interest of the respondents 2 and 3 will be safeguarded, if the following order is passed, so that the petitioner can also take the vessel for repair and the respondents 2 and 3 will also be protected in respect of their claim, which is pending adjudication before the National Green Tribunal.

14. Accordingly, the writ petition is disposed of in the following terms:

a) The petitioner shall furnish an unconditional and irrevocable bank guarantee for a sum of Rs.188 crores to the Director of Fisheries, Tamilnadu Government, Teynampet, Chennai-6, in respect of the subject matter in issue, for future realisation, if any, in the event of the petitioner's failure to succeed either in the National Green Tribunal or in any other forum.

b) The petitioner shall also comply with the conditions stipulated by the first respondent in the Memo filed before this Court dated 13.02.2018.

c) The petitioner shall furnish such bank guarantee within a period of seven days from the date of receipt of a copy of this order and keep it alive till all the dispute between the parties are finally decided or settled.

d) On furnishing of such bank guarantee by the petitioner, the respondents 2 and 3 shall inform the first respondent about their clearance or consent forthwith so as to enable the first respondent to proceed accordingly.

e) On receipt of such consent or clearance from the respondents 2 and 3, the first respondent shall permit the petitioner to sail the said vessel viz., MT Dawn Kanchipuram from the first respondent Port to Vishakhapatnam Port only for the repair work, subject to the petitioner further complying with the conditions imposed by the first respondent in their Memo as stated supra.

f) It is made clear that this order is passed without prejudice to the contentions of either parties before the National Green Tribunal including their statutory defences, if any, available to them, since this Court is inclined to pass the present order only for the limited purpose of allowing the vessel to undergo the repair work.

g) It is open to the petitioner to approach the appropriate forum and seek appropriate permission, if any, required in future, in accordance with law.
No costs. The connected miscellaneous petitions are closed.

Sd/- -
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Kamarajar Port Limited,
Ennore,
Rep. by its Chairman,
4th Floor, Super Speciality Diabetic Centre,
Rajaji Salai,
Chennai-600 001.

2.The District Collector,
Tiruvallur.

3.The Director of Fisheries,
Teynampet, Chennai-6.

4.The Section Officer,
Accounts Section,
High Court, Madras

+2cc to Mr.S.Vasudevan, Advocate Sr.No.11052

+1cc to Mr.Krishna Ravindran, Advocate Sr.No.11146

+1cc to Government Pleader SR.No.11302

+3cc to Mr.S.Vasudevan, Advocate Sr.No.11458 dt.15.2.2018

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W.P.No.2979 of 2018

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