BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.(MD)No.13175 of 2019

and

W.M.P.(MD)Nos.9814 and 12599 of 2019

Indian Shipping and Logistics Facility Pvt. Ltd.,
Rep.by its Director,
No.3/188/5A, MSP Towers,
Palayamkottai main Road,
Periyanayagapuram,
Tuticorin 628 01. ... Petitioner

Vs.

1.V.O.Chidambaranar Port Trust,
Rep.by its Chairman,
Administrative Office,
Harbour Estate,
Tuticorin 628 004.

2.The Traffic Manager,
V.O.Chidambanar Port Trust,
Administrative Office,
Harbour Estate,
Tuticorin 628 004.
... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the issuance of the impugned communication No.TRA-ZBTZB-MIS - ROOMS - VI - 17(43477)/D.1242, dated 27.05.2019, by the 2nd respondent and quash the same as arbitrary, illegal and unjustified and direct the respondents to pass allotment order, allotting open space inside the security wall at Zone-B, of the VOC Port, to the petitioner without incorporating the pre conditions.

For Petitioner : Mr.Radhakrishnan, S.C.for
Mr.S.Kadarkarai
For Respondents : Mr.T.Lajapathi Roy

O R D E R

The prayer in the Writ petition is for a Writ of Certiorarified Mandamus, to call for the records relating to the issuance of the impugned communication No.TRA-ZBTZB-MIS - ROOMS - VI - 17(43477)/D.1242, dated 27.05.2019, by the 2nd respondent and quash the same as arbitrary, illegal and unjustified and direct the respondents to pass allotment order, allotting open space inside the security wall at Zone-B, of the VOC Port, to the petitioner without incorporating the pre conditions.

2.Heard Mr.Radhakrishnan, learned Senior Counsel appearing for the petitioner and Mr.T.Lajapathi Roy, learned standing counsel for the respondents.

3.The short facts which are required to be noticed for the disposal of the Writ petition are as follows:-
That the petitioner is the clearing agent, working with the respondents / Port Trust. The petitioner has already been allotted a space by the respondents / Port Trust by allotment order dated 07.07.2018 to the extent of 1500 sq.meters in Zone - B inside security wall on monthly rental basis as per the Scale Of Rates fixed by the authority concerned and accordingly, they have been utilizing the space against the rental fixed by the respondents / Port Trust as per the said order.

4.The petitioner, in order to enhance his export activity, required more space to be allotted and in this regard, the petitioner seems to have made an application to the respondents / Port Trust to allot 3000 sq.meter additional space in the very same Zone - B inside the security wall of the respondent / Port Trust area. The respondents having considered the said application passed an allotment order on 27.05.2019 allotting 2334 sq.meter in Zone - B within the security wall area as additional space. However, in the said order, apart from the rental payable by the petitioner, as per scale of rates, the respondent / Port Trust had imposed two more conditions, under which, a minimum guarantee cargo to be handled by the petitioner had been fixed under two heads, namely, for coastal area and for foreign countries. Accordingly, for the entire 11 months period, ie., the allotted lease period, under the said order, a rate has been fixed, for which, bank guarantee was directed to be given. Therefore, aggrieved over the said conditions imposed by the respondent / Port Trust in the said allotment order dated 27.05.2019, this Writ petition has been filed, challenging the said conditions made by the respondents / Port Trust, in the said order.

5.I have heard the learned Senior Counsel appearing for the petitioner, who would submit that, insofar as the allotment of space is concerned, under the earlier order dated 07.07.2018, the petitioner had already been allotted 1500 sq.meter in the very same Zone-B inside the security wall on the basis of the scale of rate and no other conditions have been imposed. Similar orders also had been passed in respect of other cargo handlers some time in January 2019, where also no other conditions as the one impugned herein, had been imposed by the respondent / Port Trust. While that being so, first time, the respondent / Port Trust had imposed such a condition, which according to the learned Senior Counsel for the petitioner, is not only unauthorized, but also unlawful besides onerous.

6.In this context, the learned Senior Counsel submitted that, under Section 2(aa) of the Major Port Trust Act, 1963 (herein after called the Act), the word "authority" has been defined, which means Tariff Authority for major ports constituted under Section 47(A).

7.Accordingly under Section 47(A) of the Act, a Tariff Authority for all major ports throughout the country, had been constituted and under Section 49, the functions of the Tariff Authority especially, in the context of scale of rates and statement of conditions for use of property belonging to the Port Trust, has been made. Accordingly, the learned Senior Counsel for the petitioner would submit that, the Tariff Authority for major ports, constituted under Section 47(A) of the Act, has fixed the scale of rates dated 29.03.2019 where under the heading licence (storage fee) in 3.3, the rate for covered area, open space within the security wall and out side the security wall, has been separately fixed.

8.Relying upon the said fixation, the learned Senior Counsel would submit that, insofar as the petitioner's case is concerned, it comes under the category of open space, that too, within the security wall and in that case, the per month rent for square meter is Rs.5.51/- alone for Zone-B and if at all the said rate, as fixed by the Tariff Authority, is fixed by the respondents in the impugned order of allotment to be payable by the petitioner, the learned Senior Counsel would submit that, the petitioner may not have any grievance. However, apart from the rental as per the scale of rate fixed by the Tariff Authority, the respondents / Port Trust, through the impugned order, had imposed a new onerous condition as stated above, under which, a sum of Rs.45,44,429/- and a sum of Rs.75,74,049/- had been fixed as a minimum guarantee wharfage payable by the petitioner for coastal as well as foreign cargo movements respectively. Only the imposition of this condition in the impugned order and consequential direction to give the bank guarantee to the said amount, are impugned, according to the petitioner and therefore, said condition imposed by the respondents, through the impugned order, is without the authority of law as the Traffic Manager, who passed the impugned order, on behalf of the port, has no power to impose such a condition. Hence, on that ground also the learned Senior Counsel wants to assail the impugned condition in the order dated 27.05.2109.

9.I have heard Mr.T.Lajapathi Roy, learned standing counsel appearing for the respondents / Port Trust, who would submit that, insofar as the allotment of open space or covered space of the respondents / Port Trust on rental basis is concerned, as per the policy guidelines of the year 2014, it shall be done only by way of tender cum auction and only in exceptional cases, for the reasons to be recorded, without resorting to the method of tender cum auction, such allotment could be made, based on the scale of pay fixed by the Tariff Authority under Section 47A of the Act.

10.Learned standing counsel would further submit that, though the said policy guidelines had been issued in the year 2014, the respondents / Port Trust had decided to implement the same in letter and spirit only recently ie., on April 2019, ie., for the financial year 2019 - 2020 onwards. As per the said decision taken by the respondents / Port Trust, no lease or licence could be given in violation of the said policy guidelines to any private parties, without resorting to the method of tender cum auction. He would further submit that, however, in this context, it is to be noted that the respondents / Port Trust some time in March 2019 ie., on 26.03.2019, has sent a recommendatory note to the Chairman of the Port Trust, which reads thus -

> "I refer to the representation dated 25.03.2019 received from M/s. Indian Shipping and Logistics Facility Private Limited, Tuticorin on the above. in the letter, they have requested my immediate intervention as the request made by them to Port authorities for allotment of additional space inside the security wall at Zone-B has not been considered so far. They have further stated that there is an immediate shipment of Stone Boulders from Zone B for Vizhinjam Port and the bargexpected to call around 1st week of April 2019. The total quantity of shipment is around 10 lakhs M Tons spanning over a period of 2 years. They have submitted me the copy of the letters dated 24.01.2019 and dated 18.02.2019 addressed to Traffic Manager, VOC Port Trust, Tuticorin. They have also produced me the copy of their letter dated 14.03.2019 addressed to The Deputy Chairman, VOC Port Trust, Tuticorin and also of letter dated 13.03.2019 written by Shri P.Kathirvel, Trustee to Deputy Chairman, VOC port, Tuticorin who appears to have submitted it in person. Copy enclosed.
>
> The volume projected in the letter is substantial which in turn will generate more revenue to Port. Most of the Ports are starving for funds and the volume of this kind has to be encouraged. It is in the interest of the development of the Port, the representation of this kind having good potential for growth, timely, disposal of the request is of utmost important. In this case, regret, no action has been taken for the last 2 months and therefore, it has necessitated the trade to bring the matter to my knowledge for my intervention.
>
> I am given to understand that some of the allotees are keeping the yeard allotted to them inside Zone B as vacant for months by paying the rental charges regularly. In the instant case, they will not only pay the rent but also the

levy and port dues. The revenue by way of levy and Port dues for 10 lakhs M.Tons will be Substantial. The Principles of Economics if applied, the subject case without any iota of doubt would deserve consideration.
I find there is a force in their request and merit consideration. Accordingly, I request your intervention in the matter and the necessary direction may kind be issued for immediate allotment of 3000 sq.meter of additional space inside the security wall at Zone B.
Much obliged if the request is considered on priority."

11.Based on the said recommendatory note, given by one of the Trustee of the Board as the said Trustee has specifically mentioned therein that the total quantity of shipment is around 10 lakhs matric tones standing over a period of 2 years to be handled or undertaken by the petitioner, their request to allot additional space can be considered as the priority basis or as a special case, since the additional revenue by way of wharfage can also be augmented, if the additional space is allotted to the petitioner. Accordingly, the respondents / Port Trust through the impugned order decided to allot additional space to the petitioner in the very same Zone-B within the security wall to the extent of 2.334 sq.mtrs. Insofar as this additional space is concerned, even though it is given for rental as per the scale of rate fixed by the authority, that would fetch only a minimum revenue and for the said minimum revenue, if such a large space that too in the Zone - B area within the security wall is allotted, the respondents / Port Trust will loose heavy revenue. Instead, if the land is allotted as the additional area for the petitioner, for getting wharfage fee also depending upon the minimum cargo movement to the costal area as well as the foreign countries that would definitely augment much revenue to the respondents / Port Trust and this has exactly been recommended by the trustee in his recommendatory note dated 26.03.2019, which only triggered the respondents / Port Trust to take a decision to allot the additional space to the petitioner that is why the impugned order has been passed, whereby additional space of 2334 sq.met in Zone - B was allotted to the petitioner, of course on rental basis, based on the scale of pay additionally with the provision for wharfage and accordingly, the said amount of Rs.45 lakhs and odd and Rs.75 lakhs and odd had been fixed for costal and foreign cargo movement respectively by the respondents and accordingly, bank guarantee to that amount was directed to be paid.

12.The learned standing counsel for the respondents / Port Trust in this context would also make further submissions stating that, even though the petitioner had already allotted a space of 1500 sq.meter by allotment order earlier on 07.07.2018, where the petitioner has been utilizing the said land by placing the stone boulders and the same has been kept unmoved for several months due to various reasons not attributable to the respondents / Port Trust and in this context, in the affidavit filed in this Writ petition, the averments made by the petitioner has been very much relied upon by the learned counsel appearing for the respondents / Port Trust.

13.He would rely upon the following averments made in the affidavit, which reads thus:

> "I submit that during 2018, owing to the internal Presidential Elections in Maldives, the export movement was sluggish. Consequently, the stone boulders were held as stock of the petitioner, for around 4 months. After the elections in the Maldives, we expected that the export would revive. Besides, one of the exporter had approached us for handling Stone Boulders for movement to Vizhinjam Port. Considering in all, we requested the 2nd respondent to allot an additional area of 3000 sq.m.in the same Zone-B, in the month of January, 2019."

14.Therefore, it is the admitted case on the part of the petitioner that, due to some reasons, stone boulders placed in the allotted place to the petitioner by the respondents / Port Trust could not be moved and therefore, by only paying the rental, the petitioner is enjoying the space and thereby, by collecting the very minimum rental as has been fixed by the Tariff Authority, a larger extent of protected area in this zone, within the security wall is being leased out to the petitioner. Thus, the revenue possibly expected by the respondents / Port Trust is getting affected.

15.Therefore, citing all these reasons, the learned standing counsel appearing for the respondents / Port Trust would submit that, since the case of the petitioner has been considered as a special case, or as an exceptional case, merely on the basis of the recommendatory note given by one of the trustees on the basis of a possible imposition of wharfage, on the basis of the minimum guaranteed cargo movement to be undertaken by the petitioner and accordingly, allotment of additional space had been given to the petitioner with conditions. Therefore, the same cannot be tinkered with and the petitioner, after getting the order of allotment, cannot challenge the conditions attached with the said allotment order, as without that condition, the allotment cannot be given to the petitioner, since the said allotment has been given without resorting to the method of tender cum auction as per the policy of the Government, which is being implemented by the respondents / Port Trust atleast from April 2019.

16.I have considered the said submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondents and perused the materials placed before this Court.

17.The main contention raised by the learned Senior Counsel appearing for the petitioner is that since the Tariff Authority constituted under Section 47A of the Act, has already fixed the rates and only based on such rates fixed by the authority, the allotment order is given by the Port Trust, rental alone has to be charged. In the case in hand, it is the stand of the petitioner that the rental, even though fixed according to the scale of rates, by way of wharfage, additional amount had been fixed to the extent of several lakhs of rupees, which is impermissible and unauthorized. In this context, it is the contention of the learned Senior Counsel appearing for the petitioner that, the impugned order i.e, the allotment order, passed by the Traffic Manager of the respondents / Port Trust, who is not empowered to fix any additional amount or impose any additional condition while making the allotment of additional place apart from the rate i.e, scale of rate fixed by the Tariff Authority.

18.In order to meet the said contention, the learned standing counsel appearing for the respondents / Port Trust would rely upon Clause 6(4) which reads thus:

> "6.4 To Authorize the Traffic Manager of the Port to allot open space for storage of Import / Export cargo inside Customs Bonded area as per Scale 3.3 of the General SoR and submit to Board once in a quarter for ratification."

19.The said power / authorization given to the Traffic Manager by the Port Trust was made by Resolution No.80 of the respondents / Port Trust dated 28.09.2018. Therefore, the learned standing counsel for respondents / Port Trust would submit that, since the Traffic Manager is authorized / empowered to make an allotment of space, he can fix the rate and the wharfage rate fixed in this regard, by way of the conditions attached with impugned order, is also within the purview of the Traffic Manager, who has been authorized to do so. Therefore, it cannot be said to be an un-authorized one or without jurisdiction.

20.I am not impressed by the said argument advanced by the learned standing counsel appearing for the respondents / Port Trust. Inasmuch as the said authorization given to the Traffic Manager is concerned, such authorization has been given only for the purpose of allotment of open space for storage of import and export cargo inside the customs area as per Scale 3.3 of the General Scale of Rate.

21.The General Scale of Rate means, the scale of rate fixed by the Tariff Authority constituted under Section 47A of the Act. The said Tariff Authority already fixed the scale of rate and under 3.3, the scale of rate for leased land has been fixed, according to which, one square meter, within the security wall area in an open space in this zone will be given only for a rent of Rs.5.51/-.

22.It is to be noted that, there is no quarrel to fix the said rent and in this context there is no much controversy between the petitioner and the respondents / Port Trust as the learned standing counsel appearing for the respondents / Port Trust made a fair statement that the rate fixed to the petitioner insofar as the rental is concerned it is only Rs.5.51/- per square meter and not beyond that. However, the additional conditions under which, some amount by way of wharfage is imposed on the petitioner is concerned, whether such imposition would be within the purview of the Traffic Manager within the meaning of the authorization given by the Port Trust by Resolution No.80 dated 28.09.2018 especially, under Clause 6(4) is the moot question.

23.On perusal of the language used in the said resolution ie., Clause 6(4) is concerned, it does not empower the Traffic Manager of the respondents / Port Trust to fix any additional condition as the one now fixed in the impugned order.

24.When a specific question is posed to the learned standing counsel appearing for the respondents / Port Trust, as to whether any decision has been taken in the meeting of the respondents / Port Trust to impose such additional conditions, the learned standing counsel would submit that since the Traffic Manager has been authorized by the said resolution dated 28.09.2018, he only fixed the additional conditions which would be ratified by the respondents / Port Trust once in 3 months.

25.Therefore, it is quite clear that the decision to impose additional conditions has not been taken by the Trust Board, but only by the Traffic Manager, exercising his authority or power pursuant to the authorization given to him under Clause 6.4 of resolution No.80 dated 28.09.2018.

26.Since the said resolution does not authorize the Traffic Manager to impose any additional conditions, this Court is of the clear view that the additional conditions imposed in this impugned order cannot be said to be an authorized one falling within the meaning of Clause 6.4 of the Resolution and therefore, such conditions imposed by the Traffic Manager of the Port Trust cannot be accepted.

27.At the same time, since, under the impugned order, additional space has been allotted to the petitioner, which is a beneficial order in favour of the petitioner, this Court does not want to interfere with the impugned order either to quash it or to declare it as sustainable one except to state that the additional conditions imposed by the Traffic Manager should have been imposed only after decision of the respondents / Port Trust in its meeting by way of resolution.

28.In that view of the matter, this Court is of the view that, if at all any additional condition to be imposed in order to augment the revenue of the respondents / Port Trust, as per the viability policy, it is for the respondents / Port Trust to take a decision as to the nature of additional conditions to be imposed on the allottee either by way of wharfage charge or any other mode depending upon the nature of the lease.

29.In view of the aforesaid facts and circumstances and in view of the discussions made above, this Court is of the considered view that, this matter can be remanded back to the respondents / Port Trust for reconsideration insofar as imposition of additional conditions alone.

30.Resultantly, the following orders are passed in this Writ petition:

That the matter is remitted back to the respondents / Port Trust for reconsideration insofar as the imposition of the additional conditions in the impugned order dated 27.05.2019. On such reconsideration, it is for the respondents / Port Trust to take a decision either to impose additional conditions or modify some conditions as required to be imposed. While taking such decision, the respondents / Port Trust must evaluate the interest of the Port Trust as well as the interest of the petitioner without compromising the revenue aspects of the Port Trust.

31.The aforesaid exercise shall be undertaken by the respondents / Port Trust within a period of 8 weeks from the date of receipt of copy of this order or during the next Trust Board meeting, whichever is earlier. Till such a decision is taken by the respondents / Port Trust, the additional conditions imposed in the impugned order shall not be given effect to.

32.With the above directions, this Writ petition is disposed of. No costs. Consequently, connected W.M.Ps.are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

nbj

To

1.The Chairman,
V.O.Chidambaranar Port Trust,
Administrative Office,
Harbour Estate, Tuticorin 628 004.

2.The Traffic Manager,
V.O.Chidambanar Port Trust,
Administrative Office,
Harbour Estate, Tuticorin 628 004.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-77069[F] dated 24/07/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-77208[F] dated 24/07/2019)

W.P.(MD)No.13175 of 2019

23.07.2019

grl(CO)
TR(03.01.2020)10P 5C