



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.07.2019

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No.542 of 2019

and

C.M.P. (MD) Nos.5752, 4905, 4578 to 4582 of 2019

PSA SICAL Terminals Limited,
having its registered office at:
South India House,
36-40, Armenian Street,
Chennai 600 001

Represented by its Authorized Signatory,
Mr.Suresh Narayana Amirapu

... Appellant / Petitioner
in W.P. (MD) No.7368
of 2019

Vs.

1) Union of India,
Represented by its Secretary,
Ministry of Shipping, Road
Transport and Highways,
Department of Shipping, Port Department,
Transport Bhawan No.1, Parliament Street,
New Delhi 110 001

2) The Board of Trustees of
V.O.Chidambaranar Port Trust,
Represented by its Chairman,
having its registered office at
Administrative Building, Tuticorin Port Trust,
Tuticorin 628 004

... Respondents 1 & 2/
Respondents 1 & 2

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act to set aside the order dated 23.04.2019 passed in W.P. (MD) No.7368 of 2019 and allow this Writ Appeal in terms of the relief sought for in W.P. (MD) No.7368 of 2019.

Prayer in WP (MD). 7368/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus , direction of a like nature restraining the second respondent , its men, agents, servants and other persons claiming through or under them from in any manner discriminating against the



petitioner herein in the handling or operation of its container Terminal at Berth VII at the VOC Port, by providing preferential treatment to any other party operating in any other Berth in the said port, so that all the parties are on a level playing field and to consequently direct the second respondent to deepen the draught of Berth VII to the same level as that of Berth No.VIII or allot any other berth having a similar draught and to carry out any necessary extension or piling work to achieve the deepening of the draught in Berth No.VII and until such time, permit the petitioner to carry out its operations from an alternate berth with a draught similar to what is offered to the other parties operating the Constainer Terminal in Tuticorin and till such time dispense with the obligation of minimum monthly guaranteed through put under the License Agreement and permit the petitioner to pay the royalty on the actual TEUs handled, and to forbear the second respondent, their men, Agents and Servants from demanding, recovering or initiating any coercive action against the petitioner including by way of invoking the Bank Guarantee dated 8th July, 2016 bearing No.04620BG16008209 with a validity upto 14th October, 2019.

For Appellant : Mr.P.Aravind Pandian,
Senior Counsel
For Mr.S.Raghunathan

For R1 : Mr.S.Jeyasingh,
Central Government Standing Counsel

For R2 : Mr.Yashod Vardhan,
Senior Counsel
For Mr.S.Yaswanth

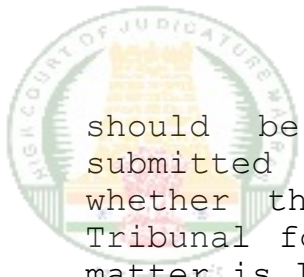
J U D G M E N T

(Judgment of this Court was made by SENTHILKUMAR RAMAMOORTHY, J.)

1. This Writ Appeal is directed against the order made in W.P (MD) No.7368 of 2019 dated 23.04.2019. By the said order, the Writ Court dismissed the Writ Petition, wherein the Appellant herein had prayed that the second Respondent should be restrained from in any manner discriminating against the Appellant herein in the handling or the operation of its Container Terminal Berth VII at the VOC Port, by providing preferential treatment to any other party operating in any other Berth in the said Port and to consequently direct the second Respondent to deepen the draught of Berth VII to the same level as that of Berth VII, etc.

2. The Writ Appeal was taken up for hearing on 15.07.2019 and both parties advanced arguments in respect of the matter. During the course of hearing, we expressed the view that because there is an Arbitration clause in the contract between the parties, the dispute

<https://hcservices.ecourts.gov.in/hcservices/>



should be referred for Arbitration. Therefore, both parties submitted that they would obtain necessary instructions as to whether they are willing to refer the dispute to the Arbitral Tribunal for adjudication. Accordingly, for the above purpose, the matter is listed today.

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3. The learned senior counsel appearing for the Appellant and the learned senior counsel appearing for the second Respondent submitted that they have obtained necessary instructions and that they are willing to refer the dispute for Arbitration. In this regard, we find that the Contract between the parties contains the following Arbitration clause:

"15.3 Arbitration

15.3.1 Arbitrators

Failing Amicable Settlement, the dispute or differences or claim as the case may be, except the matters covered under Article 15.2 of this Agreement and/or where the Licensor's decision is final and binding under the provisions of this Agreement, shall be referred to the Chairman of The Port for his/her decision who shall on receipt of notice of any dispute, difference or claim give his/her decision within 60 Days after receipt thereof by him. If the Chairman does not give any decision within 60 Days, and/or if either Party is not satisfied with the decisions of the Chairman, the dispute may be referred to arbitration within 90 Days after the expiry of 60 Days as referred to above to two arbitrators, one to be appointed by each Party and a third Arbitrator to be appointed by the two arbitrators appointed by the Parties. Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (India) or any statutory amendments or modifications thereof. A Party requiring arbitration shall appoint an Arbitrator in writing and inform the other Party about the said appointment calling upon such other Party to appoint its Arbitrator within 30 days from the receipt of letter. If the Other Party fails to appoint its Arbitrator, the Party appointing Arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996."

4. Both parties submitted that they explored the possibility of an amicable settlement but such settlement could not be reached. It was further submitted that all applicable pre-arbitration requirements were exhausted or waived. Accordingly, they submitted that each party would appoint an arbitrator on or before 16.08.2019. As regards the appointment of the Presiding Arbitrator, both parties consented to the appointment of Mr. Justice K.P. Sivasubramaniam, retired Judge of this Court, as the Presiding Arbitrator and further submitted that his consent for such appointment had been obtained.



5. Accordingly, without expressing any view on the merits of the dispute, we dispose of the Writ Appeal by issuing the following directions:

(i) Each party shall appoint its Arbitrator on or before 16.08.2019;

(ii) By consent of both parties, Mr. Justice K.P. Sivasubramaniam is appointed as the Presiding Arbitrator;

(iii) Both parties are granted leave to raise all contentions, including those raised before the Writ Court and the Arbitral Tribunal shall decide the dispute uninfluenced by any observations made by the Writ Court;

(iv) The interim order passed by this Court on 30.04.2019 shall continue to be in operation for a period of twelve (12) weeks from the date of receipt of a copy of this order; and

(v) Upon constitution of the Arbitral Tribunal in the manner aforesaid, such Arbitral Tribunal is directed to conduct the first meeting preferably within a period of two (02) weeks from the date of its constitution.

6. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

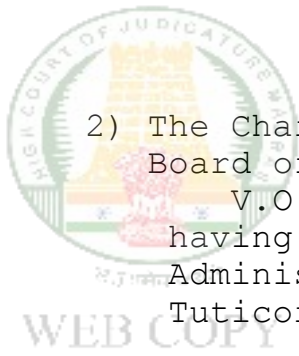
Assistant Registrar

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Sub Assistant Registrar (CS)

To

- 1) The Secretary,
Union of India,
Ministry of Shipping, Road
Transport and Highways,
Department of Shipping, Port Department,
Transport Bhawan No.1, Parliament Street,
New Delhi 110 001



2) The Chairman,
Board of Trustees of
V.O.Chidambaranar Port Trust,
having its registered office at
Administrative Building, Tuticorin Port Trust,
Tuticorin 628 004

+1 CC to M/s.S.JEYASINGH, Advocate (SR-78299[F] dated 29/07/2019)

+1 CC to M/s.S.YASWANTH, Advocate (SR-78309[F] dated 29/07/2019)

+1 CC to M/s.S.RAGHUNATHAN, Advocate (SR-78340[F] dated
29/07/2019)

Judgment made in
W.A.(MD) No.542 of 2019
Dated:
29.07.2019

sts
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