

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO.70 OF 2019

1. Shashikant Suresh Parab
and 4 Ors., Petitioners.

V/s.

1. Mormugao Port Trust/Board
of Trustees, thr. its Managing
Trustees and 4 Ors. Respondents.

Mr. Vishnuprasad A. Lawande, Advocate for the petitioners.

Mr. Y.V. Nadkarni and Mr. Sanket Kamat, Advocates for the
respondent no.1.

Mr. S.S. Katak, Senior Advocate with Ms. Preetam Talaulikar and
E.O. Mendes, Advocates for the respondent no.2.

Mr. Manish Damodar Salkar, Government Advocate for the
respondents no.4 and 5.

Mr. D. Lawande with Mr. P. Gangui, Advocates for the respondent
no.6.

**Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.**

Date : 6th January, 2020.

Oral Order: (Per M.S. Sonak, J.) :

Heard the learned Counsel for the parties.

2. By this petition, the petitioners, in public interest had sought for an appropriate writ directing the respondent no.1 to transfer the Naphtha only by shipment through the sea and by no other mode or by transferring the Naphtha to Berth no.8 to the tanks at Bits Pilani for safe storage.

3. In the petition, it was alleged that the storage of Naphtha by the respondent no.1 MPT in the tanks maintained by Ganesh Benzoplast Limited (GBL) – the respondent no.2, was totally improper, since, the GBL had no proper arrangements and permissions for storage of Naphtha.

4. By our Order dated 17th December, 2019 we had directed the Collector, the Director of Fire and Emergency Services and the Officials of the Goa State Pollution Control Board, (GSPCB) to visit the site in order to ascertain whether Naphtha has been stored at the authorized location and further, whether, GBL has the necessary statutory permissions to store the same. We made it clear that our main concern in this matter was safety, since, it was pointed out that Naphtha is quite a combustible substance, which if, not

handled properly has the potential of wrecking severe havoc, in terms of human safety and environment. We also directed GBL to file an Affidavit or in any case to produce on record compilation of all permissions on the basis of which it was storing this Naphtha in its tanks.

5. On 18th December, 2019 the learned Advocate General as well as Mr. Dattaprasad Lawande, the learned Counsel for GSPCB pointed out that consent to operate issued in favour of GBL in whose tanks Naphtha was stored, had already expired on 30.11.2019. In fact, therefore, the submission was that the storage of Naphtha by GBL, was not authorized or not backed by any clearances from the GSPCB. The learned Counsel also pointed out that though GBL had applied for renewal on 6.11.2019, there was no provision for any deemed renewal. Even Mr. Mendes, the learned Counsel who appeared for GBL on the said date, was unable to point out any provision on basis on which any deemed renewal or deemed extension would be claimed. Clearly therefore, both the MPT as well as the GBL were not justified in ordering and storing Naphtha in tanks or installations, the consent to operate for which, had already expired. The MPT was required to verify the position and not merely go by the assurances given by GBL that they had all the necessary permissions from all the statutory authorities to store the Naphtha in

its tanks. We noted in our Order that both the MPT and GBL had virtually created a situation of *fait accompli*. At that stage we clarified that our observations were only *prima facie*.

6. In our Order dated 18th December, 2019 we also made it clear that the entire responsibility of ensuring safety at the tanks of GBL shall be that of the GBL at the first instance and the MPT in the second. We also directed the MPT not to make any payments to GBL in respect of storage of Naphtha until further orders.

7. Today, it is reported by Mr. Nadkarni, the learned Counsel for MPT that the Naphtha in question has been removed from the tanks and transported by sea to some other destination, beyond the limits of the Mormugao Port. This position has been confirmed by Mr. Kantak, the learned Senior Advocate who now appears on behalf of GBL along with Mr. Mendes. This position has been confirmed by Mr. Salkar, the learned Government Advocate as also Mr. V.A. Lawande, the learned Counsel for the petitioners.

8. According to us, in view of the aforesaid position, one of the main reliefs in this petition, stands substantially worked out and there is no necessity for making any further orders on the issue of either storage or shipment of Naphtha through the sea route.

9. Mr. Dattaprasad Lawande, the learned Counsel for GSPCB has now handed in a copy of Renewal of Consent to Operate dated 3.1.2020 issued to GBL in respect of its operations, which include storage of imported and exported liquid products, as also temporary storage of Naphtha unloaded from the Vessel MT NU SHI NALINI (3521KL). From this, it is quite clear that GBL had no authority to store Naphtha in its tanks at least up to 3.1.2020. Such storage by Naphtha by GBL, possibly on account of commercial considerations, was an authorized act particularly, since, the same, might have occasioned some serious consequences. The fact that no such serious consequences ensued, is hardly some mitigating circumstance. The MPT should have also verified in advance whether GBL had all the necessary permissions and not gone by the statements made on behalf of GBL that they did have all such permissions and clearances.

10. Mr. Vishnuprasad A. Lawande, the learned Counsel for the petitioners points out that though the Naphtha lines are required to be underground, at some places the same are found to be overground. He submits that this is likely to cause pollution. According to us, it will not be proper for us to go into this issue in the present petition. However, we grant the present petitioners liberty to point out this aspect to the concerned authorities including the

GSPCB by lodging a formal complaint. If the authorities receive any such formal complaint, then, they are required to look into the same and dispose of such complaint, no doubt by complying with the principles of natural justice and fair play.

11. Mr. Vishnuprasad A. Lawande, pointed out that in the consent to operate dated 3.1.2020 issued by GSPCB, there are several conditions which GBL is required to comply with and suitable directions be issued to GBL to comply with the same. We note that the consent to operate dated 3.1.2020 no doubt imposes several conditions upon GBL but also grants GBL sometime for compliance. Mr. Kantak, the learned Senior Counsel for GBL on the basis of instructions states that GBL will duly comply with these conditions. This statement is accepted as the statement made to this Court. Even otherwise, the consent to operate is conditional upon compliance with the conditions imposed in its various clauses. Therefore, if there is no compliance, it is expected that the GSPCB will take such action as is permissible under the law in the matter.

12. Insofar as the directions to MPT to refrain from making any payments to GBL for storage of Naphtha are concerned, the learned Counsel for the petitioner contends that such directions may be made absolute. At one stage, Mr. Nadkarni, the learned Counsel

for MPT did attempt to suggest that some reasonable payments can be made to GBL for the storage, particularly, since, in the course of the proceedings it was stated that this amount would be in the range of 10 to 15 lakhs or thereabouts. However, when on behalf of GBL, it was sought to be suggested that this amount might be in the range of about 65 lakhs or thereabouts, Mr. Y.V. Nadkarni also submitted that the directions issued in the Order dated 18th December, 2019 may be made absolute.

13. At one stage, we were inclined to direct the payments not exceeding 10 to 20 lakhs may be made by the MPT to GBL if and when MPT succeeds in recovering this amount from the sale of the Vessel MT NU SHI NALINI or the owners from such vessel in proceedings, which we are informed are pending at Bombay. However, taking into consideration the fact that GBL had absolutely no authority to store Naphtha in its tanks for the period between 1/12/2019 and 3/1/2020 and the GBL, incorrectly represented to MPT that it has all the necessary permissions and clearances, which would obviously include the consent to operate from GSPCB, we feel that the GBL should not be paid any amounts for storage.

14. GBL, virtually created a situation of fait accompli regardless of the consequences of its action. It is apparent that GBL

went by only commercial considerations, which is evident from the fact that in this Court itself, the claims were enhanced from Rs.20,00,000/- or thereabouts to Rs.65,00,000/-. We accept the contention of Mr. Nadkarni, the learned Counsel for MPT that the MPT went by the representation which was held out by GBL that it had all permissions, clearances, etc. to store Naphtha. We also accept Mr. Nadkarni's contentions that in these circumstances, the GBL, should not be entitled to claim any amounts from MPT in respect of the storage of Naphtha.

15. Accordingly, we make absolute our direction that the MPT is not liable to pay any amounts to GBL for storage of Naphtha, which in any case, was for very short duration and throughout almost the entire duration, the BGL, had no authorization from GSPCB for storage of Naphtha or for operation of storage facility. We direct accordingly.

16. According to us, the aforesaid directions redress substantially the issues raised in this petition. Therefore, we dispose of this petition. In the facts of the present case, there shall be no Order as to costs.

SMT. M.S. JAWALKAR, J. M. S. SONAK, J.

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