

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 554 of 2021

with

CAN 1 of 2021

(Through Video Conference)

Reserved on : 10.11.2022

Pronounced on: 23.12.2022

Kolkata Port Trust & Ors.

...Appellants

-Vs-

Prabir Kumar Dhali & Ors.

...Respondents

Present:-

Mr. Tilak Kumar Bose, Senior Advocate

Mr. Ashok Kumar Jena, Advocate

... for the Appellants

Mr. Sabyasachi Chaudhury,

Mr. Saptarshi Banerjee,

Mr. Satadru Lahiri, Advocates

..... for the Respondent Nos. 1 to 5

Mr. Mainak Ganguly, Advocate

.....for the Respondent No.11

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, the correctness of the judgement of the learned Single Judge dated 07.04.2021 passed in W.P.A. No 15632 of 2019 (Sri Prabir Kumar Dhali and others-versus-Kolkata Port Trust and others) has been questioned by the appellants/respondent Nos. 1 to 3 of the writ petition.

2. The facts of the case are that the appellant No. 1, the Kolkata Port Trust (KoPT), is a statutory body constituted under the Major Port Trust Act 1963. The appellant No. 1 controls and manages the affairs of the Ports in Kolkata which comprises of the Kolkata Dock System and the Haldia Dock Complex. In the Kolkata Dock System, there are three docks, namely the Netaji Subhash Dock (hereinafter referred to as “NSD”), the Kidderpore Dock (hereinafter referred to as “KPD”) and the Petroleum Wharves at Budge-Budge.

3. The respondents’ No. 1-8/writ petitioners herein are the Berthing Masters (Dock Pilots) and Assistant Dock Masters who operate the vessel once it crosses the lock gate as per the codified Duties of the Officers and Employees and take ships in and out through lock gates.

4. The Harbour Master (Port) issued a Circular being No 8/2014 indicating that the maximum dimension of vessels acceptable at NSD was 565 feet LoA x 80 feet beam, and for KPD it was 515 feet LoA x 70 feet beam. The said dimensions for both NSD and KPD also appeared in the Bore Tide Notifications for the years 2015, 2016 and 2017 issued on behalf of Harbour Master (Port). On June 1, 2018, the appellant No.3 herein the Director, Marine Department convened a meeting of officers where it was held that a trial operation for a period of six months is to be held to evaluate the prospect of admitting the vessels exceeding the permissible beam of 80 feet, but not exceeding 82 feet with a view to enhance its operational capability in the interest of trade.

5. On June 7, 2018 a “Technical Committee” was constituted at the initiative of the appellant No.3 the Director, Marine Department with the approval of appellant No.2, Chairman, Kolkata Port Trust and such increments were granted to the writ petitioners herein for the Dock Pilots to smoothly operate

movement of vessels above 80 feet but below 82 feet. The Committee recorded agreement on trial operations being held for a period of six months to evaluate the prospect of admitting vessels exceeding the existing permissible beam width of 80 feet. After six days the Technical Committee sat for revising the operational parameters, both at NSD and KPD. By its report dated June 25, 2018, the Committee increased the beam width at NSD to 82 feet however; it did not increase the existing limit for KPD.

6. A trade notice was issued on July 10, 2018 communicating the decision of the appellant No.1. By reason of the said trade notice, container ships above 80 feet but below 82 feet beam length which were already coming on a regular basis till 2014 and on isolated basis between 2014 and 2018 stated coming to the Netaji Subhas Dock on a regular basis.

7. In the meantime, the appellant No.1 through appellant No.3 issued another circular granting incentive to officers of berthing services who would be willing to handle vessels up to 82 feet beam at NSD and up to 72 feet beam at KPD.

8. By notice dated May 24, 2019 the appellant took action against the respondent No. 6 herein the Assistant Dock Master on grounds of dereliction of duty and gross misconduct in accordance with the Kolkata Port Trust Employees' (Conduct) Regulations 1987. But by an impugned order by the Learned Single Judge dated January 15, 2020 in W.P. No. 19 of 2020 the authorities were granted liberty to proceed with the disciplinary proceeding but not to pass any final order without obtaining leave of the Hon'ble Court.

9. Challenging the Trade Circular dated 10th July, 2018, Bore and Incentive Notice dated July 10, 2018, the writ petitioners filed a writ petition wherein the Learned Single Judge was pleased to refuse to pass any interim order. Challenging the said order dated August 14, 2019, the respondents/writ petitioners preferred an appeal wherein an interim order was passed and the appeal and application were disposed of by remanding the writ petition before the Learned Single Judge. On April 7, 2021 the writ petition was disposed of by

passing the impugned judgment wherein the impugned trade notice dated July 10, 2018 and all consequential notices pertaining to the increase of the beam width of vessels for NSD to 82 ft. were set aside. However, a stay on the judgement was granted by the Learned Single Judge for a period of 30 days from the date of the passing of the judgement. Hence, being aggrieved by the judgement passed by the Learned Single Judge the appellant/Kolkata Port Turst (KoPT) filled the said appeal.

10. Learned Counsel appearing for the appellants submit:

- I. The present case relating to movement of vessels in and out of lock gates on the basis of a document having no legal force cannot be the subject matter of writ petition as it does not violate Article 14 and 21 of the Constitution. The Respondents/writ petitioners have no locus standi to file a writ petition regarding personal safety issues. The Learned Single Judge has exceeded jurisdiction in passing the order and judgment.
- II. The well-informed decision to increase the maximum permissible beam width for vessels from the previously existing width of 80 ft. to 82 ft. has been taken by the Competent Authority. The appellant No.1 is an autonomous body under the control of the Ministry of Shipping which is governed by The Indian Ports Act 1908 and The Major Port Trusts Act 1963. The Board of Trustee of the Kolkata Port Trust headed by the Chairman, Kolkata Port Trust being appellant No.2 is appointed by the Central Government under the provision of Clause- 7 of the Indian Ports Act 1908. This body is solely responsible for providing necessary infrastructure for safe movement of all vessels in the port. The Board of Trustees decide the size, category of vessels to be called in this port, in relation to available facilities, width and depth of channels and size of locks. The Director General of Shipping being the appellant No.3 is vested with the power by law to manage and control the movement, entry

and exit of vessels. An employee cannot challenge the decision of an employer unless specific particulars are disclosed as to how and why such decision affects the fundamental rights of the employee.

- III. The decision to increase the maximum permissible beam width for vessels from the previously existing width of 80 ft. to 82 ft. is made on the basis of the recommendation of the Technical Committee, practical reports from handling such vessels since 2001 and subsequent reports made by experts in the field. A Technical Committee was constituted at the initiative of the appellant No.3 and after the approval of appellant No.2 on June 7, 2018. The increments were granted only after the respondent Nos. 1-7 and Assistant Berthing Master had assured on June 1, 2018 to smoothly operate movement of vessels above 80 feet but below 82 feet during day time and at night. In addition, an Expert Report of Ocean Engineering prepared by IIT (Madras) where it has been found that vessels up to 25.24 meters of beam length can be accommodated at the NSD which is more than 82 feet, has been relied upon detailing such allowable vessel dimensions.
- IV. The notice to initiate movement of 82 ft. vessels and also to test movement of such vessels is in the nature of an administrative policy decision of the appellants. As a general rule, policy decisions and administrative actions, as long as those adhere to the principle of reasonableness and have not been shown to be tainted by any mala fide intention, ought not to have intervened with by the Court.
- V. Keeping in view of the safety and welfare of the employees, the appellants have incurred extensive expenditures amounting to Rs 14.38 crore for the upgradation and maintenance of lock gates.
- VI. The respondents/writ petitioners have established no specific instances of accident in Lock Gates without any evidence or basis. The writ petition does not disclose the hazard or danger being faced

by the Respondents/Writ petitioners due to the increase of beam width. The allegations made by the Respondents/Writ petitioners are, thus, vague in nature because no specific case of mala fide action on the part of appellants or particulars of alleged mala fide or arbitrariness or illegality with regard to the Trade Notice and other notices relating to movement of ships of 82 ft. beam width has been made out in the writ petition. The writ petition does not disclose the hazard or danger being faced by the respondents/writ petitioners due to the increase of beam width. The reference to the incidents by the respondents / writ petitioners involving two vessels namely PAC AQUARIUS and TZAREVETZ is made in a malafide manner by the petitioners. As per records, TZAREVETZ caused damage to a fender at the approached jetty in the year 2007 and PAC AQUARIUS caused falling of a stone of the approached jetty in the year 2010. Both the incidents took place before the entry of the vessel in the lock when it was under pilotage by a Harbour Pilot without a dock pilot on board.

- VII. The lock-gate is admittedly 90 ft. wide and the beam width has been fixed at 82 ft., leaving 8 ft. space to maneuver. Such change will ensure the benefit of the trade and commerce of the Port and the non-allowance of vessel of beam length of 82 ft. will result in huge loss to the trade and commerce. The Port is a revenue-generating authority and has to consider evolving at every stage. Vessels have become technically advanced, considering which the impugned direction was passed. Beam width had been sought to be increased with a commercial intent and the same cannot be faulted for being commercial in nature and violative of Article 14 & 21 of the Constitution of India.

11. Submissions of the Learned Counsel for the respondents are that:

- I. The appellants by issuing trade notices allowed vessels upto 82 feet when admitted by lock gate width is 90ft and the increase of maximum permissible beam width for vessels at the Netaji Subhas Dock (NSD) from the previous existing width of 80ft to 82ft, without any scientific study or data analysis, forced the respondent No.1/writ petitioners and other dock workers to unnecessary risk of life and limb.
- II. On June 1, 2018 a six-member committee was formed, in order to identify the issue that needed to be addressed for taking vessels in excess of the existing maximum permissible limit of 80 ft. but not exceeding 82ft. inside NSD. The committee recorded agreement on trial operations being held for a period of six months to evaluate the prospect of admitting vessels exceeding the existing permissible beam width of 80 ft. Such period of six months was to expire on December 1, 2018. However, instead of waiting for six months, after only six days, the Director constituted a “Technical Committee” for revision of operational parameters both in the NSD and the Kidderpore Dock (KPD) was unjust and without any reasonable basis.
- III. The report of the “Technical Committee” dated June 25, 2018 increased the beam width of vessels of NSD to 82 ft. but did not increase the existing limit for KPD. Thus, there is no reasonable basis for such patent contradiction with the decision dated June 1, 2018 of the earlier committee of six members.
- IV. The increase of beam width is patently dangerous since the Kolkata Port Docks are more than 150 years old and have not undergone any modernization to suit the increase of beam width of vessels. Operations are still being carried out manually for controlling and navigating the ships inside the Port by tugs.

- V. Furthermore, the appellant no.3 does not have the authority to unilaterally take such a decision, which squarely violates Article 21 of the Constitution of India and seriously jeopardizes the lives of the writ petitioners and all other dock workers, apart from causing threat to the Port property.
- VI. The appellant authorities sought to legitimize such illegal increase by providing incentives for the dock pilots and other officers who are willing to handle oversized vessels while, on the other hand, withdrawing legitimate allowances of the dock pilots and other officers and issuing show-cause notices to the writ petitioners and other persons not willing to take such risk, who are otherwise entitled, by reason of their refusal to handle oversized vessels.
- VII. There have been at least two specific instances of accident and the Accident Register was called for but not produced by the appellant/respondent authorities. It has also not been explained by the authorities as to why no such vessel was permitted after the year 2013. Certain illegal entries of oversized vessels on previous occasions cannot be cited as justification for increasing the regular maximum permissible size merely for the purpose of increasing the trade of the appellant/respondents.
- VIII. Rule 12 of the Kolkata Port Rules empowers the Director General to prescribe the manner in which a person shall moor a sea-going vessel, and not to determine the dimensions of the vessels to be allowed through the lock gate of the NSD. Such a decision, having grave impact on the safety standards, ought to have been taken at the highest level, at least involving the Board of Trustees and Chairman of the KoPT, that too, after extensive research on the safety measures and infrastructural development as well as modernization required for increasing the beam width. In the absence of any such measures, the Director, Marine Department

shall not have the authority to implement such a major decision in hot haste, thereby endangering the lives of the employees.

- IX. The added respondent *i.e.* the respondent no.6 is the sole employee of the KoPT against whom departmental proceedings have been initiated for alleged non-compliance and violation of the decision to allow vessels beyond 80 ft. beam width to ply inside the lock gate at NSD and has been placed under suspension by an order dated July 9, 2019, which is still continuing. As a result, the added respondent is receiving only substantial allowance at present. The added respondent therefore, cannot be coerced with purported disciplinary proceedings or threat of suspension to succumb to illegal acts that exposes the respondents to serious threat to life.

12. Having heard the learned counsel for the parties and on perusal of the records this Court finds that there is no document on record showing the loss of life of any Dock master or Berthing Master (Dock pilot) owing to any accident caused due to increase in the beam size of the vessels. Thus, the Learned Single Judge was incorrect in appreciating that the fundamental right to life and personal liberty as enshrined under Article 21 of the Constitution of India of the writ petitioners were infringed. Moreover, the writ petitioners/ respondents have handled many vessels over 80 ft. beam at NSD prior to the issuance of the circular in 2018 without any accident. Therefore, there could be no better audit than the practical experiences gained from more than 330 movements till 2018. Moreover, the trade circular issued by the appellant No.1, Kolkata Port Trust (KoPT) is purely a decision taken by an administrative authority and as decided in *T.C. Tanwar v. High Court for the States of Punjab & Haryana* reported in (2013) SCC Online P&H 16009, a writ court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. In

the present case, this Court shall not go into the merits of the trade circular dated July 10, 2018 issued by the KoPT on other technical issues as the decision is based on the reports of a Technical Committee that was constituted with the approval of the competent authorities for the purpose of considering and vetting a study report initiated through the Department of Ocean Engineering, IIT Madras to consider the maximum dimension of vessel that could be acceptable at the lock barrel of KoPT and NSD. According to the report referred to the Technical Committee vessels up to 25.24 meters of beam length can be accommodated at the NSD, which is more than 82 ft. Therefore, as decided in *Vasu Dev Singh v. Union of India* reported in (2006) 12 SCC 753 and in *Neha Indurkha v. M.P. Board of Secondary Education, Bhopal* reported in (2003) SCC MP 261 that when an expert body has already examined the questions herein the upper limit of the beam length, it is not open for the Courts to interfere into the matter as there is no material on record to negate in judicial review.

13. Therefore, this Court shall not interfere with the trade circular dated July 10, 2018 issued by the Kolkata Port Trust (KoPT) herein the appellant No.1 as it is an administrative action adhered with the principle of reasonableness and not tainted by any *mala fide* intention. Thus, the impugned order passed by the Learned Single Judge is set aside and quashed.

14. For the foregoing reasons, the appeal is allowed. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
23.12.2022
PA(BS)