

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 402 of 2018

**Rashmi Metaliks Limited and another
Vs.
Union of India and others**

For the petitioners : Mr. Saptanshu Basu,
Mr. Sayantan Basu,
Mr. Raghunath Ghose,
Ms. Pritha Ghose.

For the
Kolkata Port Trust : Mr. Abhrajit Mitra,
Mr. Somnath Bose

Hearing concluded on : 14.06.2022

Judgment on : 21.06.2022

The Court:

1. The present writ petition has been filed, challenging an order dated August 28, 2017 passed by the General Manager (Traffic) - IC in respect of two plots, bearing Plate No. CUP - 353 CS and Plate No. CUP - 518 CS, thereby dismissing the petitioners' plea to waive compensation charges levied on the petitioners as penal rent on the ground that the petitioners had failed to fulfill their obligation to export minimum volume of cargo as per the KoPT's guideline for allotments of plot on short-term license basis, even after repeated extension of their licences.
2. By the said order, the KoPT narrated that the licences of the petitioners in respect of the aforesaid plates were terminated and

compensation was levied for continued unauthorised occupation of the same. The period of such occupation was from May 19, 2012 in respect of CUP – 353CS and October 28, 2011 in respect of CUP – 518 CS. The vacant possession of the said plots was handed over by the petitioners to the port authorities on July 7, 2013 and July 1, 2013 respectively.

3. The learned Senior Advocate appearing for the petitioners submits that the levy of exorbitant amounts as penal rents on the petitioners was discriminatory, since other occupants had been given relaxation by waiving their penal rents.
4. It is further contended that the MGT (Minimum Guaranteed Tonnage) plots were given the benefit of waiver in an unbridled manner, whereas a cut-off date for granting such waiver was fixed as April 1, 2014 in respect of the CUP (Common User Plates).
5. It is submitted that the cut-off date was artificial and arrived at without any material basis whatsoever.
6. The learned Senior Advocate appearing for the KoPT, on the other hand, contends that the cut-off dated of April 1, 2014 was part of a policy decision of the port-authorities. Learned counsel cites *Census Commissioner and others Vs. R. Krishnamurti*, reported at (2015) 2 SCC 796, in support of the proposition that interference with a policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. It is not within the domain of the Court to legislate. The Courts do interpret the law and, in such interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional, that too, where

it is called for. The courts may also fill up the gaps in certain spheres, applying the doctrine of constitutional silence or abeyance. However, the Supreme Court held that the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. It was further observed that if a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution, but when the same was not assailed and is in consonance with the statute, it was unfathomable how the High Court could issue directions as to the matter in which a Census would be carried out by adding certain aspects.

7. The Learned Senior Advocate submits that other occupants/licencees who were granted the benefit of extension were primarily MGT Plots, for which the benefit of waiver was extended in consonance with the applicable norms for such plots. As such, it is contended that neither the cut-off date was artificial nor was the grant of waiver to others discriminatory in any manner.
8. By placing reliance on the Licences, appearing at pages 89 and 97 of the paper-book, the learned Senior Advocate for the KoPT argues that the allotments were limited in nature and, as such, could not automatically be extended by the KoPT-Authorities.
9. As regards the nuance of the petitioners' arguments that the KoPT took security deposits as applicable to MGT plots but are contending that the petitioners' occupied plots were CUP in nature, it is submitted that the petitioners themselves, in their communications, admitted the said nature of the plots.

10. That apart, it is contended by the KoPT that several renewals were granted to the petitioners, as reflected in the impugned order itself.
11. Upon hearing learned counsel for the parties, it is seen that as per the recommendations of the Committee of Trustees of KoPT to examine problems related to export of iron ore to HDC dated September 5, 2014 (appearing at pages 276-281 of the paper-book), it was resolved in Clause 1.4(a) to extend the existing licences of MGT linked plots whose licence had expired on June 24, 2014 till December 31, 2014 against the same MGT commitment and bank guarantee. However, in respect of MGT linked plots whose licence would be expiring on November 21, 2014, the case would be reviewed during October/November, 2014 depending upon the condition/situation prevailing at that time.
12. Sub-clause (b) of Clause 1.4, however, specified that in respect of the existing Common User Plot (CUP) occupiers (without bank guarantee) whose plot licences were valid on or after April 1, 2014, the same would be extended till December 31, 2014 (against specific appeal of the users) without imposition of the compensation charges. The KoPT has produced an 'appeal' for review of MGT policy by the Iron Ore Exporters Association (appearing at page 328 of the paper-book) dated December 16, 2011, which was one of the stimuli for the Committee of Trustees of KoPT to make the aforementioned recommendations.
13. The minutes of a meeting dated July 1, 2014 of the Committee of Trustees has also been annexed at pages 333 and 334 of the paper-book, which is in consonance with the recommendation of the Committee. As such, there was no inconsistency and/or dearth of

justification for a limited waiver of compensation charges being extended to a section of the CUP occupiers.

14. Hence, in line with the ratio of *Census Commissioner* (supra), there is no scope for this Court to interfere unnecessarily with such policy decision of the KoPT-Authorities.
15. That apart, it is evident from the licences given to the petitioners that both the plots-in-question were referred to as Common User Plots (CUP). As such, there could not have been any doubt that such licences were given to the petitioners on the premise that they were CUP occupiers and not MGT occupiers.
16. The licences were granted for a limited period and had expired prior to the cut-off date of April 1, 2014 in terms of the recommendations of the Board, which were never challenged.
17. Thus, there cannot arise any question of any discrimination or arbitrariness on the part of the KoPT-Authorities in levying the penal rents by way of compensation on the petitioners for having occupied the property despite repeated renewals and opportunities to vacate.
18. In fact, in the first page of the impugned order dated August 28, 2017, a chart is given indicating the number of renewals granted to the petitioners. For CUP-353CS, as many as ten renewals had been granted previously and for CUP-518CS, three had been granted.
19. Hence, it cannot be said that there was any arbitrariness behind the act of the KoPT in levying penal rents/compensation on the petitioner.
20. In such view of the matter, there is no scope of interference in the present writ petition. Accordingly, W.P.O. No.402 of 2018 is dismissed on contest.

- 21.** There will be no order as to costs.
- 22.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)