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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-01-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP NO.16365 OF 2011

AND

MP NO.1 OF 2011

M/s.Hari and Co.,
Represented by its Partner Mr.A.Hariharan,
Represented by its Power of Attorney Holder,
Mr.R.Arul Murugan,
General Manager,
New No.48, III Floor,
Rajaji Salai,
Chennai - 600 001.

.. Petitioner

vs.

1. Chennai Port Trust,
Represented by its Chairman,
Port Trust, Rajaji Salai,
Chennai - 600 001.
2. The Deputy Conservator,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.
3. M/s.Olam International Limited,
No.9, Temasek Boulevard,
11-02, Suntea Tower Two,
Singapore, 038989, Represented by
its Manager Mr.S.Umesh,
No.F-33, Spring Blossom,
Anna Nagar East,
Chennai - 600 102.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the Letter/Demand Notice dated 23.06.2011 on the file of the second respondent herein and quash the same.



For Petitioner : Mr.G.Masilamani,
Senior Counsel for
Mr.Mani Sundargopal.

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For Respondents-1 and 2 : Mr.R.Karthikeyan

For Respondent-3 : Mr.Anirudh Krishnan

O R D E R

The lis on hand has been instituted questioning the validity of the demand notice dated 23.06.2011 issued by Chennai Port Trust to remit the outstanding amount of Rs.44,35,33,691/- within 21 days from the date of receipt of the final demand notice.

2. In nutshell, the Vessel M.V. SAN GIORGIO sailed from the Port of West Africa with Cargo 12,800 Cbm of Timber developed sickness. Owner of Vessel failed to attend. M/s.Olam International Limited, owner of the Cargo towed her to Chennai. On the application moved by Bank of Beirut (UK) Ltd (Mortgagee of the Vessel), the Bombay High Court passed an order of arrest of the Vessel, M.V. SAN GIORGIO-1 in Admiralty Suit No.13/2007. M/s.Olam International Limited, Singapore (Sub-Charterer of the Vessel, M.V. SAN GIORGIO-1 and also the owner of Cargo in the said Vessel) requested Chennai Port Trust to permit the Vessel to discharge the Cargo and assured that the Vessel will be taken out of Port Trust once the Cargo is discharged. Further, M/s.Olam International Limited also expressed their willingness to give 'any suitable undertaking that the Port may require to protect its interest'. M/s.Olam International Limited on 11.04.2007 appointed the petitioner as its Steamer Agent to handle their Timber Cargo Vessel M.V. SAN GIORGIO-1 at Chennai Port. The petitioner-Agent was authorised to handle Customs/Port/Immigration/MMD and all ship related formalities.

3. On 12.04.2007, Chennai Port Trust also permitted the petitioner to act as a Steamer Agent. On 16.04.2007, M/s.Olam Export (India) Limited (a Sister/Subsidiary Company of M/s.Olam International Limited-R3) executed Indemnity Bond in favour of the Chennai Port Trust stating that 'they take full responsibility for payment of all dues, charges, expenses, accrued and accruing, including loss of revenue to the Port arising through berths/navigable approach channel not being available for use and any impediment caused for safe navigation/berthing of vessels through any mishap to the M.V. SAN GIORGIO-1'.



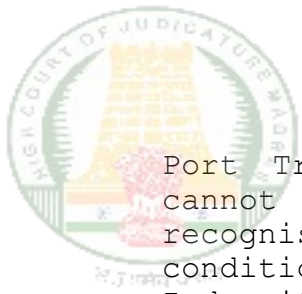
4. Many events occurred during the year 2007 itself and Chennai Port Trust moved M.V. SAN GIORGIO-1 Vessel under arrest from one berth to another vacant berth in the Ambedkar Dock. The charges for moving the ship were collected from the ship. The berth to which the Ship was moved was only vacant without any loading or unloading activities. The Vessel M.V. SAN GIORGIO-1 was moved out of the Ambedkar Dock and taken to Chokkani Jetty. The said Jetty was never used as berth since they were only Jetties with one Wharf (Platform) alongside berth. The movement charges were credited to the account of the Ship. Chokkani Jetty (C.J.) was never offered as berth for berthing of the Ships in Chennai Port as per the berth details furnished in the Website in Chennai Port. In between the years 2008 to 2010, the Vessel M.V. SAN GIORGIO-1 was moved to Coast Guard Berth, which was vacant.

5. All the above basic facts are not disputed between the parties. The Bombay High Court arrested the Vessel in Admiralty Suit. The petitioner-Company have stated that the Vessel was moved to a vacant berth and therefore, there was no loss of income to the Port. Thus, the additional berth hire charges are unreasonable and unjustified and against all canons of justice.

6. Several facts placed by the petitioner would reveal that the owner of the Vessel has not responded and the third respondent-M/s.Olam International Limited Cargo owner executed an Indemnity Bond to Chennai Port Trust and the regular berth charges were also settled in favour of the Port Trust. While-so, issuing a demand notice to the Steamer Agent is neither contemplated under the provisions of the Regulation or under the terms and conditions of the agreement.

7. The learned Senior Counsel for the petitioner placed the entire facts and circumstances in detail for a considerable length of time and those facts placed before the this Court through arguments and by way of pleadings would reveal that contractual obligations are involved between the parties. In short, owner of the Vessel has got certain rights and obligations. The Cargo owner M/s.Olam International Limited executed an Indemnity Bond in favour of Chennai Port Trust and appointed the petitioner as Steamer Agent. The terms and conditions of the Agreement are agreed between the parties. Certain occurrences are beyond the control of the parties as an Admiralty Suit was filed by Bank of Beirut (UK) Limited before the Bombay High Court and the Vessel was arrested.

8. The Steamer Agents are appointed pursuant to the Stevedores Regulations and on certain terms and conditions by the Port Trust. Thus, the Agents are also recognised by Chennai



Port Trust for performance of certain obligations and there cannot be any total exoneration in respect of Agent recognised/approved by Chennai Port Trust on certain terms and conditions. So also M/s.Olam International Limited executed an Indemnity Bond in favour of Chennai Port Trust, based on which Chennai Port Trust granted permission to berth the Vessel in Ambedkar Dock initially and subsequently at Chokkani Jetty. Finally, the Vessel was sold and the berth charges were collected from and out of the sale proceeds. However, the demand notice was issued mainly for recovery of additional berth hire charges, which is calculated as Rs.42,10,92,590/-.

9. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the petitioner has no obligation to settle additional berth hire charges. The arrest of Vessel by Bombay High Court, Indemnity Bond executed by the third respondent-M/s.Olam International Limited and obligations of the owner of the Vessel were not considered by Chennai Port Trust and the demand notice was issued to the petitioner alone. Merely because the petitioner is easily accessible to Chennai Port Trust at Chennai, such an action initiated is unsustainable and even as per the terms and conditions of the Agreement, the petitioner-Company is not liable to settle additional berth hire charges as the petitioner acted only as an Agent and not a owner or owner of the Cargo.

10. Relying Section 230 of the Indian Contract Act, 1872 the learned Senior Counsel reiterated that "in the absence of any contract to that effect, an Agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them".

11. In the present case, there was no specific contract between the petitioner and Chennai Port Trust. Chennai Port Trust itself recognised the petitioner as Steamer Agent to act on behalf of the owner of the Cargo and the Vessel. While-so, liability cannot be fastened on the petitioner in the absence of any specific contract to that effect. Thus, invoking Section 230 of the Indian Contract Act, 1872, the demand notice is liable to be set aside.

12. The learned Senior Counsel for the petitioner articulated by contending that the brief history of the Vessel would reveal that the petitioner-Agent was made as scapegoat, but the petitioner acted only as an Agent with reference to the terms and conditions agreed and thus, the demand notice is contrary to the terms and conditions of the Agreement between the parties.



13. The learned Senior Counsel for the petitioner is of an opinion that the third respondent-M/s.Olam International Limited is an established Company, having business over 50 countries throughout the world and 6,000 employees are working. But the Port Trust has failed to initiate any action against the third respondent-M/s.Olam International Company despite the fact that the third respondent executed an Indemnity Bond for the purpose of berthing the Vessel in Chennai Port Trust and for discharge of Cargo.

14. This Court is of the considered opinion that the entire facts and circumstances elaborately narrated on behalf of the petitioner unambiguously portrays that contractual obligations, terms and conditions of Agreement exist between the parties, namely, owner of the Vessel, owner of the Cargo/third respondent and Steamer Agent/petitioner. The case is made out based on the terms and conditions of the Agreement and also based on certain happenings occurred beyond the control of the parties.

15. The petitioner also urged this Court to apply the principles of equity. In this case, as the petitioner is absolutely unconnected with any of such events occurred beyond their control. At this juncture, this Court formed an opinion that such contractual obligations between the parties cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India. The power of Judicial Review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the Competent Authority in consonance with the provisions of the Statute and the Rules, but not the decision itself. Thus, an elaborate adjudication of contractual obligations cannot be undertaken in the writ proceedings. Such an adjudication, undoubtedly, required examination of documents in detail and evidences, including oral evidences. Certain occurrences are to be established beyond any pale of doubt for the purpose of forming an opinion. Such trial natured adjudication cannot be undertaken by the Writ Court, when the parties are raising several factual grounds based on the terms and conditions of the Agreement/Contract or otherwise. In such circumstances, the trial is imminent.

16. Presumably the High Court, if venture into an adjudication of contractual obligations between the parties, no doubt there is a possibility of error, omission or commission in the matter of arriving a finding. It may not be appropriate to provide a finding of facts merely based on the affidavit filed by the parties and few xerox copies of documents filed in the typed set of papers. That exactly is the reason why the Constitutional Courts are refusing to entertain writ petitions



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involving contractual obligations between the parties. Civil natured disputes cannot be adjudicated in the writ proceedings. No doubt, Chennai Port Trust is a 'State' within the meaning of Article 12 of the Constitution of India. However, the nature of dispute is relevant for the purpose of forming an opinion regarding the entertainability of a writ petition. Therefore, an amount of restraint is required, while entertaining such writ petitions involving examination of documents, evidences based on certain terms and conditions of contract and more specifically, trading or business transactions. No doubt the demand notice is issued claiming certain charges by the Port Trust. However, those charges are claimed on account of certain occurrences and those occurrences are to be decided by scrutinising the documents and evidences and with reference to the terms and conditions agreed between the parties and also based on the Indemnity Bond executed or otherwise. All these require a detailed adjudication and the High Court cannot undertake such adjudication in the writ proceedings.

17. Though an opinion is formed that the parties are bound to approach the Civil Court for resolving such issues, this Court is inclined to consider the prima facie grounds raised along with the facts by the petitioner for the purpose of assailing the impugned demand notice. Thus, this Court thought fit to consider the case in the interest of justice to the parties as they have filed the writ petition in the year 2011 and all along waiting for about 10 years. Thus this Court examined the limited aspects, which can be considered by this Court in the writ proceedings, so as to provide remedy to the parties, who all are waiting for number of years.

18. During the said process, this Court found that the Board of Trustees of Chennai Port Trust convened a meeting on 25.03.2009 and the Minutes of the Meeting No.8 of 2008-09 was filed before this Court. The said Minutes of the Meeting elaborately discuss about the report of the Sub-Committee of the Board Constituted to recommend the course of action to be taken on the representation of M/s.Olam International Limited for waiver of port charges. It is found that the imposition of additional berth charges are unreasonable and in clear terms based on the Resolution 143, which reads as under:-

"After careful deliberation and examination of the findings of the report submitted by the Sub-Committee, High Court's direction and the Maritime Experts' opinion, it was resolved and directed the Deputy Conservator to reassess/rework the Berth Hire Charges by levying normal berth hire charges to M/s.Olam International afresh.



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Also resolved and directed the Traffic Manager to levy normal demurrage charges on the Cargo lying in the transit area and to charge license fee for the area occupied by the Cargo from the date of shifting from the transit area to another location within the Port area till the entire Cargo is taken delivery by M/s.Olam International.

Board also resolved to take up these type of cases and the charges to be levied in future be referred to TAMP for fixation of separate SoR while fixing the tariff.

It was also resolved to inform the Hon'ble High Court."

19. The Resolution of the Board unambiguously clarifies that the Deputy Conservator was to reassess/rework the berth hire charges by levying normal berth hire charges to M/s.Olam International afresh.

20. The question arises whether the above resolution of the Board was implemented by the Deputy Conservator or not. Perusal of the demand notice impugned reveals that the Board Resolution was not at all considered in its real spirit. The Board considered the case of the petitioner positively and passed a Resolution, directing the Deputy Conservator to reassess/rework the berth hire charges by levying normal berth hire charges to M/s.Olam International afresh. Importantly, the berth hire charges are to be levied to the third respondent-M/s.Olam International Limited. Even the Board has not made any suggestion that such berth charges must be recovered from the Agent/petitioner. Therefore, the Board of Trustees of Chennai Port Trust formed a clear opinion that M/s.Olam International Limited is liable to pay berth hire charges and considering the Sub-Committee's Report and various other facts and circumstances and the occurrences happened, beyond control of the parties, and thus the normal berth hire charges are to be imposed.

21. Admittedly, in the present case, the normal berth hire charges were already paid to Chennai Port Trust, which is not disputed. The petitioner is also ready and willing to pay other normal charges except the additional berth hire charges, which is exorbitant and unreasonable. The petitioner, in clear terms, expressed that they are ready and willing to pay the routine normal berth hire charges and the said charges were already paid. However, they are not liable to pay the additional berth hire charges. The Board of Trustees also in its resolution directed the Deputy Conservator to reassess the berth hire charges afresh. However, no such deliberation had been made by the Deputy Conservator and contrarily, the Deputy Conservator



25. Taking note of the peculiar situation aroused in the case of the petitioner and further based on the resolution passed by the Board, which is not disputed, this Court thought fit that the Board should take a decision in respect of charging additional berth hire charges. In the case of the petitioner as the facts and details and the report of the Sub-Committee were considered by the Board itself and therefore, the present writ petition cannot be compared with other cases, where commercial transactions are involved and in all such cases and in normal



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circumstances, the Court would direct the parties to approach the Competent Civil Court of Law for resolving the issues. Even in respect of other issues relating to the contractual obligations and terms and conditions, the parties herein are at liberty to approach the Competent Civil Court of Law for appropriate relief. As far as the demand notice is concerned, this Court is inclined to consider the present writ petition to the limited extent of sending back the issues to the Board for reconsideration. This decision taken in the present case cannot be followed as a precedent for the purpose of entertaining the writ petition involving contractual obligations or otherwise.

26. Accordingly, the impugned demand notice dated 23.06.2011 passed by the second respondent is quashed and the first respondent is directed to place the files before the Board of Trustees, who in turn shall consider the issues taking note of the resolution No.143 dated 25.03.2009 and consider the case of the petitioner afresh and pass appropriate orders on merits and in accordance with law as expeditiously as possible. Even thereafter the petitioner is not satisfied then, the petitioner is at liberty to approach the Competent Civil Court of Law for redressal of its grievances.

27. With the abovesaid directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Chairman,
Chennai Port Trust,
Port Trust, Rajaji Salai,
Chennai - 600 001.



2. The Deputy Conservator,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.

+2ccs to Mr.Mani Sundargopal, Advocate, S.R.No.1933
+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.2310
+1cc to Mr.Anirudh Krishnan, Advocate, S.R.No.2538

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SRA (CO)
PM/27/01/2022