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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2022

DELIVERED ON : 07.06.2022

CORAM :

THE HON'BLE MR.JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

W.A.NOS.227 & 229 OF 2022
AND
C.M.P.NOS.1649, 1658, 1660,
1652, 1653 & 1656 OF 2022

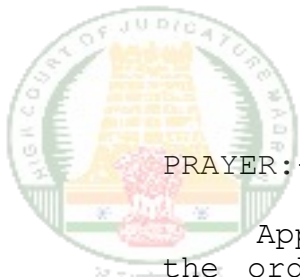
PSA SICAL Terminals Limited,
Having its Registered Office at
South India House,
36-40, Armenian Street,
Chennai - 600 001.
Represented by its Authorized Signatory,
Suresh Amirapu.

... Appellant in
both the W.A's

.Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Ports,
Shipping and Waterways,
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.

... Respondent in
both the W.A's



PRAYER:-

Appeals filed under Clause 15 of the Letters Patent against the order dated 19.01.2022 passed in W.P.Nos.26119 & 26121 of 2021.

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PRAYER IN W.P.NO.26119 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent culminating in the impugned office memorandum dated 11th November 2021, bearing No.PD-13/18/2020-PPP/e-338899, disbanding the committee constituted by the first respondent and to quash the same as being arbitrary unilateral and against the principles of natural justice and to consequently direct the first respondent to set out the policy/the manner in which the disputes/issues between the petitioner and the second respondent are to be settled within a time frame to be determined by the Honourable Court.

PRAYER IN W.P.NO.26121 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the first respondent to ensure that the members of the committee expeditiously proceed with the process/proceedings initiated by the first respondent vide Office Memorandum dated 21st July 2020, for settlement of disputes between the petitioner and second respondent including by issuing necessary directions to submit its report/recommendations to the first respondents suggesting the way forward and solutions to the issues within a time frame fixed by the Honourable Court after granting the petitioner an opportunity to be heard and making representations and after considering the issue raised by the petitioner.

For Appellant : Dr.Abishek Manu Singhvi
(in both W.As) Senior Counsel

Mr.P.H.Arvind Pandian
Senior Counsel
For Mr.S.Raghunathan

Ms.Ruby Karanjawala
Mr.Zerick Dastur
Ms.Sharanya Vaidhiyanathan
Ms.Archana Upuluri
Ms.Deepti Sarin
Mr.Vinay Dutta



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For Respondent : Mr.R.Sankara Narayanan,
(in both W.As) Additional Solicitor General
Assisted by
Mr.A.R.Sakthivel
(For R1)

Mr.Yashod Varadhan
Senior Counsel
For Mr.S.Yaswanth
(For R2)

C O M M O N J U D G M E N T

M.DURAI SWAMY, J.

The above Writ Appeals have been filed by the appellant challenging the common order passed by the learned Single Judge dated 19.01.2022 made in W.P.Nos.26121 & 26119 of 2021.

2. Since the issues involved in both the Writ Appeals are common, the appeals are disposed of by this common judgment.

3. The appellant filed the Writ Petition in W.P.No.26121 of 2021 to issue a Writ of Mandamus to direct the 1st respondent to ensure that the members of the Committee expeditiously proceed with the process/proceedings initiated by the 1st respondent vide Office Memorandum dated 21.07.2020 for settlement of disputes between the appellant and the 2nd respondent, including by issuing necessary directions to submit report/recommendations to the 1st respondent suggesting the way forward and solutions to the issues within a time frame fixed by this Court, after granting the appellant an opportunity to be heard and making representations and after considering the issues raised by the appellant.

4. The appellant also filed a Writ Petition in W.P.No.26119 of 2021 to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent, culminating in the impugned Office Memorandum dated 11.11.2021 disbanding the Committee constituted by the 1st respondent and to quash the same and to consequently direct the 1st respondent to set out the policy/the manner in which the disputes/issues between the appellant and the 2nd respondent are to be settled within a time frame to be determined by this Court.



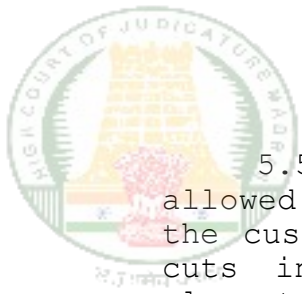
5. The brief case of the appellant is as follows:

5.1. According to the appellant, they are one of the oldest and most reputed Container Terminal Operators, operating at the 2nd respondent - Port Trust. The 2nd respondent, in March 1997, issued a global notice inviting bids for the purpose of development of Berth-VII of the Tuticorin Port as a Container Terminal and for the operation and maintenance of the terminal for a period of 30 years on a Build, Operate and Transfer (in short "BOT") basis.

5.2. According to the appellant, being a successful bidder in the tender process, they were awarded the contract. Pursuant to which, Licence Agreement dated 15.07.1998 was entered into between the parties to design, engineer, finance, erect, operate, replace Container Handling Equipment and to maintain and repair the Container Terminal at Tuticorin Port for a period of 30 years. The appellant has been operating in the Terminal for over a period of 20 years and has played a vital role in augmenting commercial activities, which in turn, was revenue for the 2nd respondent - Port Trust.

5.3. The appellant had performed their obligations under the said Agreement and had made substantial investments and had also paid huge amounts by way of royalty to the 2nd respondent. The terms of the Licence as contained in the Licence Agreement contemplated an escalating royalty for all the years. The bid itself was submitted based on the tariff indicated in the bid documents. The annexures to the bid documents contained the scale of rates prevailing in Chennai Port Trust at that point of time, which was cost based. It was also stated in the bid document that the tariff would be revised by the Government/Tariff Regulator, viz., Tariff Authority for Major Ports (in short "TAMP") once in three years and for any increase from the prevailing scale, the licensee has to apply to the licensor for revision of tariff.

5.4. According to the appellant, when the Licence Agreement was entered between the appellant and the 2nd respondent, it was a common understanding between the parties that the tariff to be charged by the appellant would include the royalty payable to the 2nd respondent as an admissible costs. This was also clearly indicated in the tariff order passed by TAMP in December 1999 in the case of the appellant and the other correspondences between the appellant and the 2nd respondent. The appellant had entered into the agreement and made the royalty bid under the reasonable expectation that royalty would be allowed as an element of cost while fixing tariff.



5.5. According to the appellant, until 2002, they were allowed royalty as an admissible cost in the tariff charged from the customers. Between 2002 and 2008, TAMP has drastically made cuts in tariffs and disallowed inclusion of royalty as an element of cost while fixing the tariff. The Tariff Order dated 20.09.2002 rejected the appellant's tariff proposal for an increase in tariff and instead, directed an across-the-board reduction in the existing scale of rates. The reduction was so drastic that it financially affected the appellant. The 2002 Tariff Order, not only failed to take into account the royalty paid as a cost item, but various expenditures, such as expenditure on operating system. Aggrieved over the 2002 Tariff Order, the appellant filed Writ Petitions in W.P.Nos.40637 to 40639 of 2002 before this Court and by order dated 08.11.2002, this Court granted an order of stay and the appellant was permitted to collect tariff at the rates prevailing since 1999, for which a Memorandum of Compromise dated 17.08.2005 was also entered.

5.6. By Notification dated 29.07.2003, the 1st respondent had stated that as a matter of policy, the revenue sharing/royalty payment shall not be considered as cost for fixation or revision of tariff by TAMP and the same shall be indicated in the subsequent bid documents while inviting bids for private sector participation at Major Ports.

5.7. In 2005 Tariff Guidelines dated 31.03.2005 issued by TAMP, it was provided that the tariff computation in BOT cases, where bidding process was finalized before 29.07.2003, will take into account royalty/revenue sharing as cost for tariff fixation, in order to avoid loss to the operator on account of royalty/revenue sharing not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. Thereafter, the Government of India passed a Directive dated 17.04.2006 and further, TAMP passed another Tariff Order on 23.08.2006 (2006 Tariff Order), drastically reducing the appellant's scale of rates. Aggrieved by the 2006 Tariff Order, the appellant filed Writ Petitions in W.P.Nos.38845 & 38846 of 2006 before this Court. By order dated 22.08.2007, this Court allowed the Writ Petitions, setting aside the Directive dated 17.04.2006 and 2006 Tariff Order.

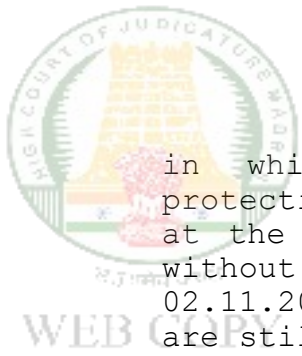
5.8. On 20.02.2008, the Government of India issued another Directive and on 17.12.2008, TAMP passed another Tariff Order (2008 Tariff Order), reducing the tariff chargeable by the appellant for the years 2009, 2010 and 2011. The appellant filed Writ Petitions in W.P.Nos.1350 & 1351 of 2009 before this Court challenging the Directive and the Tariff Order. This Court, by order dated 15.10.2009, directed TAMP to issue fresh tariff orders for the years 2009, 2010 and 2011, after giving an



opportunity of hearing to the appellant. Aggrieved by the said order, the appellant as well as TAMP, preferred appeals before this Court, which are still pending.

5.9. According to the appellant, by the Tariff Orders, there were significant cuts in the rates of tariff, which were allowed to be charged by the appellant, whereas the royalty payable to the 2nd respondent in terms of the Licence Agreement continued to escalate every year. Over a period of time, the royalty exceeded the average container handling charges allowed to be charged by the appellant, which constrained the appellant to approach the District Court, Tuticorin, for relief under Section 9 of the Arbitration and Conciliation Act, 1996. By order dated 30.06.2011, interim injunction was granted, restraining the 2nd respondent from charging royalty at an escalated rate from 15.07.2011. Subsequently, by order dated 30.04.2012, the arbitration petition was allowed and the interim injunction granted on 30.06.2011 in favour of the appellant was made absolute. In view of the same, the appellant initiated arbitration proceedings against the 2nd respondent by issuing a notice dated 19.11.2012. An Award was passed on 14.02.2014 in favour of the appellant, which was upheld by the District Court and the order of District Court was subsequently challenged before this Court as well as before the Hon'ble Supreme Court. By judgment dated 28.07.2021, the Hon'ble Supreme Court dismissed the Civil Appeals, confining the issue as regards the validity of the Award, while leaving all the other issues open. According to the appellant, the Hon'ble Supreme Court had considered and decided only the issue of validity of the Award and not other issues between the appellant and the 2nd respondent.

5.10. According to the appellant, in the year 2016, the 2nd respondent had appointed a Consultant, who, upon analyzing the matters, had submitted a report, wherein it has been stated that since 2004, all terminals in the Port sector are on revenue share model. It was further stated that royalty payment per Twenty-foot Equivalent Unit (in short "TEU") in the appellant Terminal is in the increasing order and the tariff is less than the royalty paid to the Port and hence, revenue share model is more business friendly and conducive for growth in revenue. Based on the report, the appellant, by letter dated 17.01.2017, had expressed their willingness to explore the possibilities of a mutually acceptable settlement. According to the appellant, the 2nd respondent had issued Trade Notices dated 22.11.2018 and 31.12.2018, declaring a deeper draught for the adjacent Berth No.VIII Terminal, which discriminated the appellant and as a result, majority of the business of the appellant had shifted to the neighbouring Berth No.VIII. Aggrieved by the same, the appellant had approached the Madurai Bench of Madras High Court,

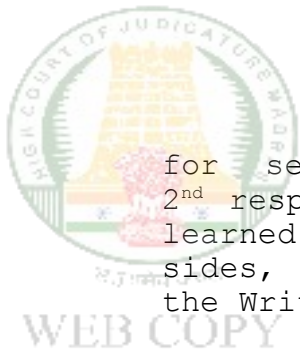


in which proceedings, the appellant was granted interim protection. According to the appellant, they are paying royalty at the rate of Rs.1.5 crores per month to the 2nd respondent, without any default or delay in terms of the interim order dated 02.11.2019 passed by the Arbitral Tribunal, which proceedings are still pending.

5.11. According to the appellant, during the pendency of the arbitral proceedings, the 1st respondent, by an Office Memorandum dated 21.07.2020, constituted a Committee for settling the disputes/Court cases between the appellant and the Port Trusts. In spite of various correspondences by the appellant to the respondents, there was no response. According to the appellant, they filed an application under the Right to Information Act, 2005 and thereafter, they were provided with certain information. Further according to the appellant, by letter dated 04.02.2021, the 1st respondent had suggested ways for settling the disputes between the appellant and the 2nd respondent outside the litigation process. It was stated that the 2nd respondent had objected to the resolution process in view of the pending proceedings before the Hon'ble Supreme Court. Subsequently, on 28.07.2021, the Hon'ble Supreme Court had passed orders without interfering with the issues on losses suffered by the appellant and viability of the project. By letter dated 04.08.2021, the 2nd respondent had addressed a letter to the appellant annexing statement for royalty, interest and penalty for Rs.1027,37,09,260/-. Subsequently, the appellant had sent a letter dated 11.08.2021 requesting the 1st respondent to proceed with the terms of the Memorandum dated 21.07.2020 and to grant an opportunity of hearing.

5.12. According to the appellant, since there was no progress, the appellant filed Writ Petitions in W.P.Nos.18671 & 18676 of 2021 seeking for a direction to the 1st respondent to proceed with the settlement of disputes contemplated in the Office Memorandum dated 21.07.2020. Even during the pendency of the Writ Petitions, the 2nd respondent issued a notice of Intent to Terminate dated 06.10.2021, invoking Article 13.4.1 of the Licence Agreement, alleging royalty dues and also an Office Memorandum dated 11.11.2021, disbanding the Committee constituted in view of the Office Memorandum dated 21.07.2020 of the 1st respondent.

5.13. According to the appellant, the decision of the 1st respondent disbanding the Committee had not even been communicated to the appellant, in spite of various letters being addressed by the appellant. Aggrieved over the fact that no opportunity of hearing was given to them before the Committee constituted for settling their disputes and the Office Memorandum dated 11.11.2021 disbanding the Committee constituted



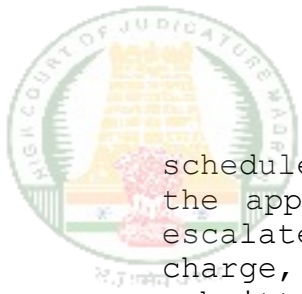
for settling the dispute between the appellant and the 2nd respondent, the appellant has filed the Writ Petitions. The learned Single Judge, taking into consideration the case of both sides, dismissed the Writ Petitions. Aggrieved over the same, the Writ Petitioner has filed the above Writ Appeals.

6. Heard Dr.Abishek Manu Singhvi, learned senior counsel, Mr.P.H.Arvind Pandian, learned senior counsel appearing on behalf of Mr.S.Raghunathan, learned counsel for the appellant, Mr.R.Sankara Narayanan, learned Additional Solicitor General assisted by Mr.A.R.Sakthivel, learned counsel for the 1st respondent and Mr.Yashod Varadhan, learned senior counsel for Mr.S.Yaswanth, learned counsel for the 2nd respondent.

7. Dr.Abishek Manu Singhvi, learned senior counsel and Mr.P.H.Arvind Pandian, learned senior counsel appearing for the appellant submitted that the appellant was neither given access to the Committee, which was constituted for the purpose of settling the disputes between the appellant and the Port Trusts nor given an opportunity of hearing. The learned senior counsels further submitted that the Office Memorandum dated 21.07.2020 and the 1st respondent's letter dated 04.02.2021 envisage a consultative process, which includes negotiations with the appellant as well as amicable solution mechanism acceptable to both parties. The learned senior counsels also submitted that the 1st respondent, being an instrumentality of the State, cannot, on the one hand constitute a Committee and on the other hand, disband the Committee without affording the appellant any opportunity to represent itself.

7.1. The learned senior counsels for the appellant further submitted that during the pendency of the Writ Appeals, for the first time, the respondents filed a letter dated 05.04.2022 stating that the dispute relating to royalty cannot be reviewed by the Committee. The learned senior counsels further contended that the respondents failed to file any counter affidavit in the Writ Petitions when certain inconsistencies were raised. They also contended that certain documents, which were sought for by them through RTI, were suppressed by the respondents in the Writ Petitions.

7.2. The learned senior counsels appearing for the appellant further contended that the respondents misconceived that the royalty/revenue share dispute had attained finality before the Hon'ble Supreme Court and that the same cannot be reviewed by the Committee. They further submitted that it was the contention of the appellant before the Hon'ble Supreme Court that since 2011 itself, the royalty under the Licence Agreement was



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scheduled to exceed the tariff that was allowed to be charged by the appellant. Every year the royalty was scheduled to further escalate and exceed the revenues, the appellant was allowed to charge, which results in the operations impossible. They also submitted that the Committee would deal with all the issues, including the tariff issues. The tariff proposal of the appellant, including the royalty as part of the tariff, was supported by the 2nd respondent. The Hon'ble Supreme Court, in its judgment had also recorded that the appellant is still collecting tariff at the 1999 rates, but on the other hand, the royalty escalates every year and is far in excess of the tariff permitted to be collected. The 1999 tariff is in the range of Rs.2138/TEU, whereas, the royalty exceeds the said tariff rate in 2011 itself, which was Rs.2264/TEU. The current royalty rate is Rs.3863/TEU, which is far in excess of the tariff being collected. The overall solution could be reached only through the Committee, which includes the members of TAMP and also by considering the representations of the appellant. The letter dated 10.12.2020 from the Indian Ports Association shows that the 2nd respondent itself had referred the tariff issue and the disputes with TAMP to the Committee consisting of the Member (Finance) and the Tariff Authority for Major Port Trust (TAMP) and the intention of the Ministry to arrive at an overall solution on tariff and royalty related issues. The learned senior counsels also submitted that even according to the respondents, the objective of the Committee was to suggest recommendations to the Ministry for mutual discussion, but the appellant was not given an opportunity, either to appear before the Committee or for any mutual discussion. When the 1st respondent had constituted the Committee, specifically for the purpose of exploring the possibilities of settlement of disputes between the appellant and the 2nd respondent, the 2nd respondent, being a statutory body, is bound by the directions issued by the 1st respondent. The 2nd respondent itself had referred the disputes concerning the alleged royalty dues of Rs.1027 crores and the tariff related issues to the Committee and is estopped from claiming otherwise.

7.3. The learned senior counsels appearing for the appellant submitted that the appellant have legitimate expectation in getting a fair consideration before the Committee and the objective of the Office Memorandum dated 21.07.2020 should be given effect to. Once a Memorandum is issued, the Government cannot ignore the same and depart from it arbitrarily. Even if the memorandum is in the nature of an administrative instruction, the same could not be departed without rational justification and discretion cannot be exercised by the Government, ignoring relevant consideration to frustrate the object of conferring such discretion. The learned senior counsels further contended that inspite of a specific Committee



being constituted for the settlement of their disputes with the 2nd respondent, they are being denied access to the Committee or making representation before the Committee and that they are discriminated from the other Terminal Operators across the Country. Even though the other Container Terminal Operators in India have availed a general mechanism in the form of Conciliation and Settlement Committee Guidelines, they are given full access and a number of disputes have been successfully settled.

7.4. The learned senior counsels also contended that during the period between 2011 and 2019, the appellant have paid 78% of the revenue earned by them as a royalty amount to the 2nd respondent. The same is far in excess of the amounts paid to a Port Trust by any other Container Terminal in India. The highest amount paid in India is only 55.19% of the revenue earned and majority of the Container Terminal Operators in India pay the amounts only in the range of 35 to 40% of the revenue earned. They also contended that the observations made in the Writ Petitions with regard to the alleged liability of royalty dues and alleged liability of the holding Company of the appellant, which was not even a party to the agreement or to any proceedings or any disputes, are beyond the scope of Writ Petitions, when the same were not admitted by the appellant and even disputed by the respondents. Further, the learned senior counsels contended that even on the side of the respondents there was no mention as regards the holding company of the appellant.

7.5. In support of their contentions, the learned senior counsels appearing for the appellant, relied upon the following judgments:

(i) (1975) 3 Supreme Court Cases 503 [Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and others], wherein the Hon'ble Supreme Court held as follows:

"...

8. Now, it is true that clause (2)(ii) of the memorandum dated October 25, 1965 was not a statutory provision having the force of law and was merely an administrative instruction issued by the State Government in exercise of its executive power. But that does not present any difficulty, for it is now well-settled by several decisions of this Court that where no statutory rules are made regulating recruitment or conditions of service, the State Government always can in exercise of its executive power issue administrative instructions providing for recruitment and laying down conditions of



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service. Vide B.N. Nagarajan v. State of Mysore [AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698] and Sant Ram Sharma v. State of Rajasthan [AIR 1967 SC 1910 : (1968) 1 SCR 111 : (1968) 2 LLJ 830] . It was, therefore, competent to the State Government to issue clause (2) (ii) of the memorandum dated October 25, 1965 in exercise of its executive power laying down the principle to be followed in adjusting inter se seniority of the officers in the integrated service."

(ii) (1986) 2 Supreme Court Cases 679 [Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another Vs. K.S.Jagannathan and another], wherein the Apex Court held as follows:

"...

18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission—both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath v. ITO [AIR 1966 SC 81 : (1965) 3 SCR 536, 540] this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In Hochtief Gammon v. State of Orissa



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[(1975) 2 SCC 649 : 1975 SCC (L&S) 362 : AIR 1975 SC 2226 : (1976) 1 SCR 667, 676] this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in *Mayor of Rochester v. Regina* [1858 EB & E 1024, 1032, 1034] said:

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute: Comyn's Digest, Mandamus (A).... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *King v. Revising Barrister for the Borough of Hanley* [(1912) 3 KB 518, 528-9, 531]. In *Hochtief Gammon case* [(1975) 2 SCC 649 : 1975 SCC (L&S) 362 : AIR 1975 SC 2226 : (1976) 1 SCR 667, 676] this Court pointed out (at p. 675 of Reports: SCC p. 656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised



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or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield v. Minister of Agriculture, Fisheries and Food* [1968 AC 997] the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus

"is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

...

21. It is now necessary to examine the nature of the discretion conferred by the said Office Memorandum dated January 21, 1977—"Whether it is a discretionary power simpliciter or a discretionary power coupled with a duty?" From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be



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exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 37 of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaza Fazal Ali, J., in *State of Kerala v. N. M. Thomas* [(1976) 2 SCC 310, 379 : 1976 SCC (L&S) 227 : AIR 1976 SC 490 : (1976) 1 SCR 906, 966] (at p. 996 of the Reports: SCC p. 379, para 164) "the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles".

(iii) (1993) 1 Supreme Court Cases 71 [Food Corporation of India Vs. M/s.Kamdhenu Cattle Feed Industries], wherein the Hon'ble Supreme Court held as follows:

"...

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to



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challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

(iv) (2000) 1 Supreme Court Cases 600 [A.P. Aggarwal Vs. Govt. of NCT of Delhi and another], wherein the Hon'ble Supreme Court held as follows:

"...

11. In our opinion, this is a case of conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even if it is to be said that the instructions contained in the office memorandum dated 14-5-1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is



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conferred and also satisfy the mandatory requirement of the statute. It is not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection.

12. It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us (vide *Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742])."

(v) 2016 SCC Online Cal 6525 [*Subrata Chakravarty Vs. Union of India & Ors.*], wherein the High Court of Calcutta held as follows:

"...

19. In the facts of the instant case, the recommendation of scrapping of the panel made by the concerned Ministry on 29th May, 2015 - without following the prescribed guidelines as contained in the Office Memorandum of the Secretariat of the ACC dated 22nd October, 2014 - therefore, was unconstitutional, being wholly illegal and arbitrary. Even if the guidelines contained in the Office Memorandum dated 22nd October, 2014 was not based on any statutory provision and was merely an administrative instruction issued by the Secretariat of the ACC in exercise of its executive power, such guidelines or administrative instructions will continue to have the force of statute in the absence of any statutory rules regulating the recruitment process in question. In this context one may take notice of the judgment rendered by the Supreme Court in the case of *Dr. Amarjit Singh Ahluwalia* (supra) (paragraph 8). It was the bounden duty of the concerned Ministry to follow the prescribed guidelines as issued by the ACC from time to time unless those guidelines were contrary to any specific statutory rules in force. Having not adhered to the prescribed guidelines while issuing the letter dated 29th May, 2015, the action of the



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concerned Ministry falls susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution of India and basic to the rule of law, the system which governs us (see *Kumari Shrilekha Vidyarthi v. State of UP* reported in (1991) 1 SCC 212), which has been referred to and relied upon by the Supreme Court in its latter decision rendered in the case of *A.P. Aggarwal* (supra) (paragraph 12). Since the recommendation for scrapping of the panel is unconstitutional, being illegal and arbitrary, the consequential action of the ACC granting approval to such recommendation for scrapping of the panel cannot have any effect, the recommendation by itself being void ab initio. In this context, one may take notice of the observations made by the Supreme Court in paragraph 21 of *A.K. Kraipak's* case (supra).

20. Undoubtedly, the petitioner had a legitimate expectation of getting a fair consideration in the selection process for appointment as Chairman-cum-Managing Director, ECL. The recommendation for scrapping of the panel made by the concerned Ministry on 29th May, 2015, has resulted in denial of such legitimate expectation. In the case of *Food Corporation of India v. Kamdhenu Cattle Feed Industries* (supra), it has been held, inter alia, as follows:

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority



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reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

21. The facts of the case, as narrated earlier, palpably demonstrate that the decision of the concerned Ministry to scrap the panel was so unreasonable that no reasonable authority could have come to such conclusion. The Court, in such circumstances, has power to interfere. In this context, one may take notice of the well-known principles of law laid down in *Wednesbury Corporation's case* (supra). Even if it is held that the concerned Ministry had discretion to recommend scrapping of the panel, such discretion was exercised palpably wrongly based on irrelevant considerations upon ignoring relevant considerations and materials. This is one such case which is a classic example of where the High Court ought to exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India and issue an appropriate writ of mandamus or a writ in the nature of mandamus in order to do justice. The observations made by the Supreme Court in *Comptroller and Auditor General's case* (supra) which are of significance in the facts of the instant case are set out herein below:

"There is no doubt that the High Courts of India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion of the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the



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nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order to give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

22. By recommending scrapping of the panel on 29th May, 2015, (i.e., much before its validity expired), the concerned Ministry denuded the right of the writ petitioner from even being considered for appointment by the ACC. Even if he did not finally secure his appointment as the Chairman-cum-Managing Director of ECL, at least he would have got a fair consideration by the ACC which was denied due to the illegal and arbitrary action of the concerned Ministry. In the facts of the instant case, therefore, the ratio of the judgment of the Supreme Court in the case of Director, SCTI for Medical Science & Technology (supra), while upholding the decision of the High Court and dismissing the appeal, is clearly applicable.

...

29. On the other hand, as discussed hereinbefore, the writ petitioner has referred to Dr. Amarjit Singh Ahluwalia's case (supra) which has been rendered by a three Judge Bench. It has been, inter alia, held therein to the effect that even an administrative instruction, not having the force of law, cannot be departed from, by the State at its sweet will, without rational justification and such departure would be clearly violative of Articles 14 and 16 of the Constitution of India. The sweep of Articles 14 and 16 is wide and pervasive. These two Articles embody the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the State. Where the State departs from a principle which finds its place in administrative instructions and such departure is without reason or arbitrary, it would directly infringe guarantee of equality under Articles 14 and 16 of the Constitution of India. As stated hereinbefore, the facts of the instant case clearly demonstrate such arbitrariness on the part of the



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concerned Ministry which has departed from the timelines, as prescribed in the applicable guidelines, without giving even an iota of reason. In this context, it may be worthwhile to quote paragraphs 35 and 36 of Kumari Shrilekha Vidyarthi's case (supra) which has been referred to and relied upon in A.P. Aggarwal's case (supra).

"35. It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

...



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33. Having held that since the recommendation for scrapping of the panel is unconstitutional, being illegal and arbitrary, the consequential action of the ACC granting approval to such recommendation cannot have any effect - the recommendation by itself being void ab initio - this Court directs the Secretary, Ministry of Coal, to treat the panel valid as of date and take necessary steps to ensure that the proposal for appointment of the writ petitioner as the Chairman-cum-Managing Director of ECL, reaches the Secretariat of the ACC alongwith a copy of this judgment and order, within a period of a fortnight from date of communication of a photostat certified copy of this judgment and order. Once the proposal reaches the Secretariat of the ACC, the respondent no. 2, being the Establishment Officer of the ACC, shall ensure that the said proposal alongwith a copy of this judgment and order is placed before the ACC for its consideration not later than a fortnight therefrom to enable the ACC to take a final decision within the shortest possible time based on the observations made in this judgment and order. Considering the singular feature of this case, in the event the writ petitioner is denied appointment by the ACC, cogent reasons have to be supplied to the writ petitioner within a fortnight from the date of such denial. The timelines, as directed above, shall be strictly adhered to by the concerned respondents without any deviation therefrom under any circumstances."

8. Countering the submissions made by the learned senior counsels appearing for the appellant, Mr.R.Sankara Narayanan, learned Additional Solicitor General appearing for the 1st respondent submitted that the appellant is entitled to collect tariff from the customers at the rate fixed by the TAMP and have to pay the fixed royalty with periodic escalation. In order to avoid paying royalty to the 2nd respondent - Port Trust, the appellant initiated proceedings from the year 2012 seeking conversion of royalty to revenue sharing model, by altering the terms of the contract. In a meeting with the Ministry of State, Shipping in the World Economic Forum, Devos, the representatives of the appellant had requested the Ministry to explore the possibilities of settling the disputes between the different Ports and the appellant Group Company. Subsequently, a Committee was constituted, which was not meant for the 2nd respondent alone, to explore the possibilities of settling the disputes between the appellant and Port Trusts. Thereafter, the



Government of India had requested all the major Port Trusts, including the Indian Ports Association, to furnish the details of the disputes between the appellant and various Ports. Subsequent to the same, the appellant had referred two disputes with regard to royalty/ revenue sharing issue and disputes pertaining to the discriminatory treatment in connection with provision of draught at Berth-VII of the 2nd respondent.

8.1. The learned Additional Solicitor General for the 1st respondent submitted that the 2nd respondent had informed the Union of India that the matters could not be settled and the disputes are pending before the Courts. The Hon'ble Supreme Court, on being informed that no settlement was possible, proceeded to hear the appeals and held that the Award would come under the realm of patent illegality and it was rightly set aside by the High Court. It was also recorded that the appellant is continuing to levy charges on the basis of 1999 tariff order passed by TAMP. The Hon'ble Supreme Court had also observed that the notifications dated 17.12.2008 of TAMP with regard to price/tariff fixation and the subsequent direction, dated 20.02.2008, issued by the Government of India were challenged by the appellant in the Writ Petitions in W.P.Nos.1350 & 1351 of 2009 before the High Court. By order dated 15.10.2009, this Court had set aside the order of Government of India and the notification issued by TAMP and directed the issue to be considered afresh. The said order was challenged by the appellant and TAMP by way of appeals, which are still pending. While dismissing the appeals, the Hon'ble Supreme Court also confined their views as regards the validity of the Award and clarified that any observations made by the High Court with regard to other aspects of the matter, except the validity of the Award, would not come in the way of either of the parties raising their grievances in any of the proceedings which are pending. The learned Additional Solicitor General further submitted that the present Writ Appeals are an attempt to review the order that has been confirmed by the Hon'ble Supreme Court.

9. Mr.Yashod Varadhan, learned senior counsel appearing for the 2nd respondent submitted that the dispute that was referred for arbitration and finally decided by the Hon'ble Supreme Court is the same dispute, which the appellant seeks to refer to the Committee for settlement. The dispute with regard to royalty/ revenue sharing between the appellant and the 2nd respondent was referred to arbitration, but the Arbitral Award had changed the contractual term of the royalty payment into a revenue sharing model. The Award was set aside by this Court and the same was affirmed by the Hon'ble Supreme Court. The learned senior counsel for the 2nd respondent further submitted that the issue left open by the Hon'ble Supreme Court is not the dispute sought



to be referred to the Committee, on the request of the appellant, with regard to royalty/ revenue sharing. Since the Award was set aside on merits, liberty was not granted to re-arbitrate the issue. The learned senior counsel also submitted that the impugned order stating that when an issue has reached finality, the same cannot be referred for settlement, is valid. Similarly, when the Hon'ble Supreme Court has rendered a categorical finding on the issue of royalty, no authority can interpret the same and hence, prayed for dismissal of the appeals.

10. On a careful consideration of the materials available on record, the submissions made by the learned senior counsels on either side and also the judgments relied upon by the learned senior counsels appearing for the appellant, it could be seen that though the learned senior counsels appearing for the respondents submitted that the Hon'ble Supreme Court in Civil Appeal Nos.3699-3700 of 2018 [PSA Sical Terminals Pvt. Ltd. Vs. The Board of Trustees of V.O.Chidambranar Port Trust, Tuticorin and others], by its judgment dated 28.07.2021, had already decided the issues involved in the above Writ Appeals, the filing of the present Writ Petitions is only an attempt to review the order that has already been confirmed by the Hon'ble Supreme Court. However, the learned senior counsels appearing for the appellant contended that the Hon'ble Supreme Court has dealt only with the Award and that it has not dealt with the royalty/revenue share being factored in as cost in the tariff order and therefore, the disbandment of the Committee is per se erroneous, since the issue has been left open by the Hon'ble Supreme Court. In order to get a clarity with regard to the contentions raised by the learned senior counsels on either side, it would be appropriate to extract the relevant portion of the order passed by the Apex Court in Civil Appeal Nos.3699-3700 of 2018, which reads as follows:

"...75.The said guidelines specifically provide that 'royalty/revenue share' payable to the landlord port by the private operator will not be allowed as an admissible cost for tariff computation as decided by the Government in the Ministry of Shipping vide its Order No.PR14019/6/2002PG dated 29th July, 2003. It further provided, that in those BOT cases where bidding process was finalized before 29th July, 2003, tariff computation will take into account royalty/revenue sharing as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty/revenue share not being taken into account. However, this was subjected only to a maximum of the amount quoted by



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the next lowest bidder. This was further subjected to be allowed for the period upto which such likely loss would arise. It further provided that this would not be applicable if there is provision in the concession agreement on treatment of royalty/revenue share.

76. A conjoint reading of all these documents would reveal that when the bid document was published in April 1997; SICAL tendered its bid in October, 1997 and submitted its financial offer in December, 1997; and the LoI was issued to SICAL on 29th January, 1998, there were no guidelines at all. Even the guidelines of February 1998 do not provide for royalty being factored as cost while fixation of tariff. On the contrary, the tariff order of 1999 specifically clarifies that it has left the royalty issue to be decided by TPT and the GoI. It has specifically clarified that the approval by TAMP should not be interpreted to be amounting to any implicit approval of royalty related issue. Further, the tariff order issued on 20th September, 2002 specifically rejects the claim of SICAL for factoring any royalty as cost while tariff/price fixation. As already stated herein above, SICAL has challenged the said order before the Madras High Court by way of writ petition, which petition has been allowed. It is also not in dispute, that on account of interim order passed by the Madras High Court dated 8th November, 2002, SICAL is still continuing to charge at rates notified in the 1999 tariff order.

77. In this scenario, the finding of the Arbitral Tribunal, that there was a law when the Agreement was entered into between the parties, which provided royalty as a pass through and that the said law has been changed for the first time in 2003 and subsequently again changed in 2005, in our view, is a finding based on 'no evidence'. Had the Arbitral Tribunal perused the tariff orders of 1999 and 2002, it would have found that in the 1999 tariff order TAMP has specifically observed that its approval of the tariff should not be construed as its implicit approval of royalty related issue and the 2002 tariff order specifically states that royalty was not permitted to be factored in the cost while determining tariff. The Arbitral Tribunal has totally failed to take into consideration this aspect of the matter.



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78. As such, we are of the view, that since the finding of the Arbitral Tribunal, that there was an existing law to the effect that the royalty payable shall be permitted as a pass through in cost while fixation of tariff, is based on 'no evidence' and the finding, that there was a change in law in 2003 and 2005 is based on without taking into consideration the relevant evidence, would come in the realm of perversity as explained by this Court in paragraph 31 of the Associate Builders (supra). The findings are based on 'no evidence' and 'ignorance of vital evidence' in arriving at its decision."

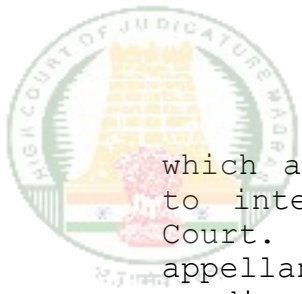
11. On a reading of the order passed by the Hon'ble Supreme Court, it is clear that the issue before it relates to royalty, which was being charged and by way of the Award, it was changed to revenue share basis and the Apex Court found fault with the finding of the Arbitral Tribunal, observing that when the Agreement provided for royalty at the acceptance of both parties, the same cannot be modified as revenue share basis without the concurrence of the other party, viz., the 2nd respondent. The Apex Court also observed that the tariff order of 1999 specifically left royalty issue to be decided by the respondents and that the 2nd respondent had not given its concurrence for factoring royalty as a cost while fixing tariff and the same having not been considered by the Tariff Authority, the finding of the Arbitral Tribunal that there was a law when Agreement was entered between the parties to provide royalty as a pass-through, is wholly erroneous and the same is based on no evidence. From the above observations made by the Apex Court to the effect that there was no change in law from the time of entering into Agreement in the year 1998, it is only royalty that is holding the field and not otherwise.

12. It is pertinent to note that the Hon'ble Supreme Court on being informed that no settlement was possible, the Apex Court heard the Civil Appeals and confirmed the order of the High Court, setting aside the Award of the Arbitral Tribunal. The Apex Court has not made any observation on settlement outside the Court and the subject matter of the Award and the order passed by the TAMP were considered by the Hon'ble Supreme Court. The guidelines issued by the authorities on the scope of settlement makes it clear that it is as per the Arbitration and Conciliation Act. As per Section 76 of the Arbitration and Conciliation Act, the conciliation should be terminated when one party to the conciliation proceedings expresses its inability to settle the matter. The 2nd respondent - Port Trust had



specifically expressed their inability to settle the matter. Further, the Committee that was constituted was concerned with pending disputes and not those that had already reached finality. When the Apex Court had passed a detailed order, the Committee cannot reconsider the issues that were already decided by the Apex Court. As rightly contended by the learned senior counsels for the respondents, there is no law that requires Union of India to set up the Committee to consider a dispute that has already been settled. The documents annexed to the typed set of papers would clearly indicate that the Committee was constituted to consider the disputes between the 2nd respondent and the appellant and other Ports with PSA. Further, it cannot be disputed that there is no provision in the contract to refer the matter for settlement before a Committee. The contract between the appellant and the Port provides for dispute resolution. Clause 15.1 of the contract provides for discussions between the parties for settlement of dispute. Clause 15.2 provides for settlement by expert. Clause 15.3 provides for arbitration. Clause 15.3.1 commences with the phrase "Failing amicable settlement". It is therefore clear that settlement talks between the parties through an expert precedes the arbitration. From the contract entered into between the parties it is clear that there is no contractual right available for demanding the matter to be considered by a Committee. The appellant contended that the Committee constituted by order dated 21.07.2020 has been disbanded. When the Committee constituted by order dated 21.07.2020 has been disbanded, the appellant cannot claim a vested right to reconstitute the Committee or refer it to another Committee. It is settled principle of law that a party has no vested right to a forum and that too, to a forum which is neither judicial nor quasi-judicial. By order dated 21.07.2020, the Committee was constituted not to adjudicate the disputes, but to bring about settlement between the parties. The 2nd respondent had expressed their views repeatedly that they were not inclined for a settlement. When this aspect was brought to the notice of the Hon'ble Supreme Court, the Apex Court heard the appeals on merits, without referring the parties to the settlement Committee.

13. It is also pertinent to note that only the royalty/revenue share dispute and the draught dispute pending in arbitration are the disputes between the appellant and the Port Trust. The tariff issue is a dispute that concerns the appellant, Government of India and Tariff Authority for Major Ports. It concerns the fixation of tariff by TAMP and the formulation of policy by the Government of India. When the Apex Court had finally adjudicated the issue with regard to royalty/revenue share dispute, the filing of the Writ Petitions,



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which are impugned in the above Writ Appeals would only amount to interfering with the order passed by the Hon'ble Supreme Court. The various exchange of communications between the appellant and the respondents would clearly establish that pending adjudication by the Apex Court on the royalty issue, talks were through, which did not reach an amicable solution, thereby, the parties had decided to have the matter settled before the Arbitration Tribunal and before the Hon'ble Supreme Court through judicial proceedings. The learned Single Judge rightly observed that merely because that the noting in the file, which have been obtained by the appellant under the Right to Information Act, does not reveal the disbandment of the Committee as being the consequence of the orders passed by the Apex Court, would not be suffice to hold that the disbandment was only for the purpose of a larger reference before another Committee with wider scope. Further, the learned Single Judge observed that the noting in the file that the existing Committee stood disbanded only due to the constitution of a new Committee and not due to the orders of the Hon'ble Supreme Court, would not give any benefit to the appellant as the scope of reference before the new Committee pertained only to matters which are pending adjudication. Once the Apex Court has pronounced an order holding that royalty holds the field and it has not been changed since entering into an Agreement between the parties, the purpose of constitution of the Committee on 21.07.2020 to consider the issue between the appellant and the 2nd respondent, having attained finality at the hands of the Apex court, nothing remains to be deliberated by the Committee, which resulted in the disbandment of the Committee. When the Hon'ble Supreme Court had decided the royalty issue as per the terms of the Agreement by setting aside the Award of the Arbitral Tribunal, thereby negating the revenue share basis, the said issue no longer survives for being dealt with by the Committee. Further, the constitution of a Committee is within the realm of the 1st respondent and it is not open to the appellant to seek for a direction to the 1st respondent to constitute a Committee to redress their grievance. The appellant cannot seek for continuance of the previous Committee, when the reference before the previous Committee having become infructuous for the reason that the Hon'ble Supreme Court had already adjudicated the said issues. It is also settled position of law that the Courts cannot direct the Government to frame a policy for settlement of disputes and that with regard to the policy decisions, the Courts, normally, shall not interfere. The appellant having accepted and entered into an Agreement with the 2nd respondent for payment of royalty with a provision for yearly escalation, they cannot now turn around and take a different stand.



14. So far as the finding of the learned Single Judge as to the payment of over Rs.1000 crores to the 2nd respondent is concerned, the learned senior counsels for the appellant have not made any submissions. This was also pointed out by the learned Additional Solicitor General at the time of making his submissions. The learned Single Judge has observed that the appellant and its holding Company are liable to pay a sum of over Rs.1000 crores to the 2nd respondent, which the appellant and its holding Company have not paid, but proceeding with the litigations. The learned Single Judge also observed that once the Hon'ble Supreme Court has rendered its decision, the appellant and its holding Company are bound to pay the sum due to the 2nd respondent and that through continuous litigative process, the appellant and its holding Company are preventing the 2nd respondent from collecting the huge amount due to it from the appellant. The learned Single Judge, taking into consideration all these aspects, found no perversity or arbitrariness in the act of the 2nd respondent and rightly dismissed the Writ Petitions.

15. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned senior counsels appearing for the appellant, since the facts and circumstances of the cases on hand are different, the same are not applicable.

16. For the reasons stated above, we do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeals are liable to be dismissed. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Ministry of Ports,
Shipping and Waterways,
New Delhi - 110 001.



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2. The Chairman,
The Board of Trustees of
V.O.Chidambaranar Port Trust,
Having its Registered Office at
Administrative Building,
Tuticorin Port Trust,
Tuticorin - 628 004.

+2ccs to Mr.S.Raghunathan, Advocate, S.R.Nos.32444 & 32445

+2ccs to Mr.A.R.Sakthivel, Advocate, S.R.Nos.32447 & 32448

+1cc to Mr.S.Raghunathan, Advocate, S.R.No.33515 (21/06/2022)

W.A.NOS.227 & 229 OF 2022 AND
C.M.P.NOS.1649, 1658, 1660,
1652, 1653 & 1656 OF 2022

JPL (CO)
PBS/07/06/2022