IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.6505 of 2009 and
MP.No.1 of 2009 & 1 & 2 of 2011

Chennai Essential Oil and Aromatics,
Represented by its Proprietor ... Petitioner

Vs

1.The District Forest Officer,
Sathyamangalam Division,
Sathyamangalam.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai-9. ... Respondents
(R2 impleaded as per order dated 18.7.2011 by
this Court in MP.No.3 of 2011 in WP.No.6505 of 2009)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in Proc.No.L/5886/99 dated 16.8.2007 and quash the entire proceedings and issue directions to the respondent to release the goods of 14,0000 MT of sandalwood for Rs.51,86,500/- purchased by the petitioner in the pubic auction held in Government Sandalwood Sale Depot Sathyamangalam, Erode District to the petitioner.

For Petitioner : Mr.T.Saikrishnan

For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

The petitioner is a sole proprietary, engaged in the business of manufacture of essential oils and aromatics. It had participated in an auction for purchase of 14 MTs of sandalwood conducted by the sole respondent and had been a successful bidder. The petitioner had, prior to participating in the auction, remitted the Earnest Money Deposit (EMD) and the sale had taken place on 25.06.1999.

2.The sandalwood was valued at a sum of Rs.51,86,500/-, and 20% of the sale amount including EMD of a sum of Rs.1,00,000/- was paid at the fall of the hammer, amounting to a sum of Rs.12,00,000/-. Confirmation of the sale was issued on 02.07.1999 duly received by the petitioner on 08.07.1999. As per the order of confirmation, 30% of the sale amount was to be paid within a period of 15 days from the date of confirmation, that is, on or before

22.07.1999. The balance of 50% was to be paid within 45 days from the date of confirmation, that is, on or before 21.08.1999.

3.The petitioner did not, admittedly, remit the amount as per the slabs set out above, and with the elapse of 60 and 120 days provided, for removal of sandalwood with demurrage, an order of forfeiture came to be passed on 03.01.2000. On the representation of the petitioner for leniency, a Government Order in G.O.269, E & F (FR-IV) Department came to be issued on 24.08.2001 granting extension of 30 days to the petitioner to lift the sandalwood. Inter alia, 5% of penalty on total sale value was required to be paid within 30 days as well.

4. Also inter alia, demurrage had been levied and the petitioner, thus, came to challenge the G.O. dated 24.08.2001 restricted to the demand of demurrage alone, in W.P.No.20532 of 2001. It was relevant to note that the entirety of the demand as regards the penal interest as well as the balance of the sale consideration had come to be accepted by the petitioner even at that juncture.

5. W.P.No.20532 of 2001 was pending on the file of this Court till 03.01.2007, when, after the completion of pleadings, it came to be allowed by an order of a learned Single Judge. The basis on which the demand of

demurrage came to be quashed was touched upon an interpretation of the relevant clause in the notification which stated that the levy of demurrage was conditional on the failure of the tenderer to take delivery of the wood after all amounts due on the wood was paid within the time stipulated.

6. This Court, by order dated 15.06.2001, had taken the view in the case of *Sri Mahalakshmi Flour Mills Vs the State of Tamil Nadu*, that where payment had been remitted, a duty was cast upon the Government to keep the product under double lock or single key and thus, the Government's position became that of a bailee with a duty to ensure security of the products.

7. It, thus, became entitled to a reasonable charge for that service which had been quantified as a demurrage. Since in the present case, the balance of the consideration had not been paid, the Court proceeded on the basis that the Government could well have chosen to re-sell the goods and in such an event, was not entitled to demand demurrage.

8. The Writ Petition was allowed to the extent to which it is related to demurrage. Notably, there was no interim order pending writ petition and thus it was open to the petitioner to have remitted the entirety of the balance sale

consideration and penal interest insofar as the same constituted admitted payments, even pending writ petition.

9. To be noted that despite such non-payment, the State did not take any action to recover the amounts from the petitioner. However and in my considered view, this factor would not exonerate the petitioner from the responsibility/liability to make the balance payments.

10. Much is made by learned counsel for the petitioner of the statement in para No.7 of the writ affidavit, wherein the petitioner has expressed willingness to remit the component of 5% penalty apart from other payments such as balance sale consideration and interest.

11. However, a mere statement expressing readiness cannot be equated to actual payment, which admittedly has not been done till date, despite there being no interim order granted by this Court pending W.P.No.20532 of 2001. The conduct of the petitioner, in this connection, will have a serious bearing on the decision to be arrived at in the matter.

12. As against the order of this Court on 03.01.2007, the State filed a writ appeal in W.A.No.1132 of 2007 and that appeal came to be dismissed on 30.03.2009 confirming the order of learned Single Judge. While dismissing the

writ appeal, the Bench also noticed that the learned Single Judge had made it clear that order would not stand in the way of the Forest Department taking appropriate action to which they are legally entitled in respect of the balance of amounts. The aforesaid observation was left undisturbed by the Division Bench.

13. In the meantime, on 30.09.2001, the respondent had issued a communication to the petitioner calling upon it to remit the amount due, which letter had been returned with the postal endorsement 'left'.

14. The present writ petition has been filed challenging the order passed by the respondent on 16.08.2007 forfeiting the EMD and also intimating the petitioner that the sandalwood would be resold at its risk. Interim orders have been granted protecting the interests of the petitioner, at the time of admission.

15. The submissions of learned counsel for the petitioner are to the effect that, upon receipt of EMD and 20% of the sale consideration, the sale stands concluded on 25.06.1999, and a right vests in the petitioner in respect of the sandalwood purchased. In this context, they refer to a judgment of three judges of the Hon'ble Supreme Court in the case of *Consolidated Coffee Limited and Another Vs Coffee Board, Banglore* [1980 (3) SCC 358] particularly para No.25. They would also urge that the frustration of the purchase was only on

account of the levy of demurrage by the State which itself has been found to be illegal and hence quashed.

16. Thus, according to them, the petitioner should not made to suffer for an illegal act of the respondent and must be permitted to remit the balance sale consideration with penalty and 18% interest from date of confirmation of sale till date of actual remittance, computed by the petitioner at an amount of Rs.2,10,00,077/-.

17. Learned Additional Advocate General appearing for the State would seriously contest the prayer as well as the legal submissions made. There is no dispute in the facts per se, except in regard to one aspect of the matter. According to the petitioner, their readiness to remit their amounts would be clear from the statement made by them in W.P.No.20532 of 2001 which I have referred to earlier.

18. They have also, according to them, being writing regularly to the respondents expressing their readiness to remit the amount. My attention is drawn to a communication dated 31.01.2007 stated to be sent by RPAD, wherein, in conclusion, they have asked the respondents to confirm the balance

amount and the date on which the goods will be delivered upon receipt of the balance consideration.

19. To be noted that there is no acknowledgment available in regard to the receipt of this communication by the respondents. They also refer to subsequent communications that have been issued to the respondents reiterating their willingness to take delivery of the amount upon quantification of the balance consideration. There is no specific denial of the receipt of these communications by the respondents in the counter.

20. However, it appears to the Court that the willingness expressed by the petitioner ought to have been supported by definitive actions such as remittance of the amount itself either with the respondents under protest, or to the credit of this writ petition in Court. This would have indeed crystallized the intention of the petitioner as a bonafide purchaser and have supported its case in regard to its entitlement. I am thus wholly unconvinced by the tepid statements made by the petitioner in this regard and reject this argument.

21. The respondents, for their part, would rely on the policy of the State formulated over the years, where sandalwood, as a commodity, is not freely marketable. As early as on 31.08.2015, the State had taken a decision that, with

effect from that date, the sale of sandalwood must only be with the prior consent of the District Forest Officer.

22. Thereafter, an order in G.O.Ms.No.17 Environment and Forests (FR-4) Department dated 20.02.2017 had been issued reading thus:

> *"2. In the letter 3rd read above, the Principal Chief Conservator of Forests has stated that it is essential that the sale of this scarce commodity is streamlined and restricted so that it is available for genuine public demand for a considerable period of time. Fresh stock of sandalwood is expected in Forest Department depots only after about 30-40 years from now, when the plantations raised under the recently announced scheme by the Hon'ble Chief Minister on Sandalwood namely "Raising of Sandal Plantations in Reserved Forests and Patta lands in the traditional natural sandal areas is harvested.*
>
> *3. ** the Sandalwood stock of 174.326 Metric Tonnes available in the Depots and to issue appropriate necessary orders to streamline the retail sale of sandalwood by the Government and requested to issue the following orders:-*
>
> *To withdraw the Government Order No. 429, Environment and Forests (FR4) Department dated 24 10.97 and Government Order No 37. Environment and Forests (FR 4) Department, dated 10.02.1999 where District Forest Officers were Empowered retail sale of Sandalwood upto 10 Metric Tonnes to restrict and Streamline the remaining stock of sandalwood (174.326 Metric Tonnes) by allowing retail sale of Sandalwood as follows:*
>
> *i) Sale to Individuals-up to 2 Kilograms*

ii) Sale to Temples and for other religious purpose - 20 Kilograms.

iii) To restrict the annual retail sale of sandalwood to 4 Metric Tonnes per year so that the present stock of sandalwood is available for next 40 years.

iv) Preference is given to temples under Hindu Religious and Charitable Endowments Department and other important Temples in the State as decided by Government.

v) Authority for issue of orders for retail sale of sandalwood will be the prerogative of the Government in order to maintain Government's priority.

To restrict the allotment of sapwood to Tamil Nadu Medicinal Plant Farms and Herbal Medicine Corporation Ltd., (TAMPCOL), The Indian Medical Practitioners Co-operative Pharmacy and Stores Ltd., (IMPCOPS), Khadi Industries, Temples, considering the limited stock available at present and also requested to take early steps for its disposal. The above measures will help in ensuring the limited stock of sandalwood is available to the frequent genuine users like Temples, Khadhi Industries, TAMPCOL etc.. and individuals at a reasonable affordable rates, till the stock is replaced with fresh stock in coming 30-40 years."

(illegible print starred (**))

23. This proposal has been accepted by the Government upon condition that the sale as proposed is affected after the sale price is fixed on an annual basis by the State. Thus, at para No.4 of the G.O. above, the State states thus:

"4. After careful examination, the Government have decided to accept the proposal of the Principal Chief Conservator of Forests, on the condition that the sale is

effected after fixing up of the sale price for 2016-2017 for streaming the retail sale of sandalwood and ordered as follows:-

To withdraw the Government Order No.429, Environment and Forests (FR.4) Department, dated 24.10.97 and Government Order No.37. Environment and Forests (FR.4) Department, dated 10.02.1999 where District Forest Officers were Empowered retail sale of Sandalwood upto 10 Metric Tonnes. To restrict and Streamline the remaining stock of sandalwood (174.326 Metric Tonnes) by allowing retail sale of Sandalwood as follows:-

i) Sale to Individuals - up to 2 Kilograms.
ii) Sale to Temples and for other religious purpose - 20 Kilograms.
iii) To restrict the annual retail sale of sandalwood to 4 Metric Tonnes per year.
iv) Preference be given to temples under Hindu Religious and Charitable Endowments Department and other important Temples in the State as decided by Government.
v) Authority for issue of orders for retail sale of sandalwood will be the prerogative of the Government in order to maintain Government's priority.

The Principal Chief Conservator of Forests is requested to restrict the allotment of sapwood to Tamil Nadu Medicinal Plant Farms and Herbal Medicine Corporation Ltd. The Ladian Medical Practitioners Co-operative Pharmacy and Stores Ltd. Khadi Industries. Temples considering the limited *stock available at present till the stock is replaced with fresh stock in coming 30 - 40 years and considering that the available stock of sandalwood in 3 depots ramely Salem, Tirupattur and Sathyamangalani is meagre, the p stock lying in Salem and Sathyamangalam Sandalwood Depot are to be shifted to one of the Depots so that administrative costs, etc., can be minimized.*

5. This order issues with the concurrence of Finance Department vide its U.O. No.5479/17, dated 08.02.2017."

24. Learned Additional Advocate General would confirm that this policy continues and is being consistently followed by the State till date, with the sole modification of the sale price that is escalated from year to year depending on prevailing economic and other conditions.

25. To this, petitioner would submit that a change in policy cannot modify or take away the right that has accrued to the petitioner. According to the petitioner, there is a vested right in the product that has accrued as early as in 1999 and thus the change in policy that has been brought in by the State in 2015 cannot take away such right.

26. To this effect, reliance is placed on the judgments in *Southern Petrochemical Industries Company Limited Vs Electricity Inspector & ETIO and Others* [2007 (5) SCC 447] and *B.D.Shetty and Others Vs CEAT Limited and Another* [2002 (1) SCC 193].

27. Having heard the rival contentions and perused the cases relied upon, I am of the considered view that the petitioner has not made out a case to sustain its entitlement to the sandalwood of 14 M.T.'s that was auctioned in 1999. As far as the judgment in *Southern Petrochemical Industries Company Limited* (Supra) is concerned, that judgment dealt with the question as to whether consumers continue to have a vested right for exemption under the provisions of the Tamil Nadu Electricity (Taxation and Consumption) Act, 1962.

28. That Act stood repealed with the promulgation of the Electricity Act, 2003. This judgment really does not advance the case of the petitioners for the reason that the question that came up for consideration in that matter related to the vesting of a right by operation of Statute. In the present case, we are concerned with the question as to whether any right vests/accrues to the petitioner, by operation of a contract. For this purpose, one would have to test, not just terms of the contract itself but also the conduct of the petitioner in adhering to its part of the bargain under the contract.

29. As far as the judgment in *B.D.Shetty and Others* is concerned, that judgment dealt with appeal by employees of CEAT Limited, the respondent

company, and while deciding the matter adverse to the employees, the Court has rendered findings to the effect that delay caused by the employees cannot be taken advantage by the employees themselves.

30. The judgment has been cited to advance the proposition that an act of the State, the levy of demurrage in the present case, that was ultimately held illegal, must not frustrate the case of the petitioner. This judgment, in my view, will not advance the petitioner as it has been passed in a completely distinguishable factual and legal matrix.

31. In the present case, the petitioner was offended solely by the levy of demurrage and instituted W.P.No.20532 of 2001, restricting its prayer consciously to the aspect of demurrage alone. It was, thus, incumbent upon the petitioner to have remitted the sale consideration and all other charges pending as on that date. In my considered view, it is only this action that could/would have crystallized or secured any right that vested under the contract, in its favour.

32. This has not been done and I am unconvinced with the tentative statements made by the petitioner in the correspondences as well as in the writ

affidavit expressing willingness. I do believe that such self-serving statements would not result in the creation of any vested right in its favour.

33. In light of the discussion as aforesaid, I find no merit in this writ petition and confirm the impugned order qua the sale of the products, holding that the petitioner has no right in respect of the sandalwood quantified at 14 M.T.'s. Coming to the aspect of forfeiture of EMD, on balance, and there being no serious objection to the return of EMD and part consideration received, I direct that the EMD and 20% of the sale consideration that has been remitted by the petitioner, be paid over within a period of eight (8) weeks from the date of receipt of copy of this order.

34. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

kbs **14.12.2022**

Index : Yes
Speaking Order

To

1.The District Forest Officer,
Sathyamangalam Division,
Sathyamangalam.

2. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Environment and Forest Department,
   Fort St. George, Chennai-9.

Dr.ANITA SUMANTH, J.

kbs

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MP.No.1 of 2009 & 1 & 2 of 2011

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