



WEB COPY



W.P.No.7936 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.7936 of 2014

and

M.P.No.2 of 2014

Hari & Co

Exporters and Importers

Shipping & Stevedoring Agents,

Clearing & Forwarding Agents,

Feet & Heavy Equipment Operators,

Rep by its General Manager,

R.Arul Murugan

... Petitioner

Vs.

The Traffic Manager (Operations),

Chennai Port Trust,

Rajaji Salai,

Chennai – 600 001.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records in respect of the respondent's letters (i) Reference No:01/318/2011/To, communication dated 10.02.2014 – in connection with damages to the trust vehicle bearing Registration No.TN-04 F8238 – claiming damages of Rs.2,75,750/- and (ii) Reference No:07/367/2011/To, communication dated 10.02.2014 – in connection with damages to the Aluminum Partition Panel with glass at WQ-



W.P.No.7936 of 2014

iv Scanning Room, claiming Rs.1,85,286/- (iii) Reference No:07/065/2012/To, communication dated 10.02.2014 – in connection with damages to the Column Fabricated Rail Barricades in WQ-IV Passengers Terminal Shed (GF) claiming Rs.11,44,914/-, and quash the same.

For Petitioner : Mr.S.Vijayan

For Respondent : Mr.R.Bharanidharan

ORDER

This is the third round of litigation before this Court. Earlier the petitioner had filed the writ petition in W.P.No.587 of 2009 which came to be allowed by an order dated 09.06.2011. In the said writ petition, the petitioner had challenged the proceedings bearing No.C5/346/2007/T. After considering the submission of the petitioner, at that stage, this Court was allowed the writ petition with the following directions:-

“4.Though learned counsel for the respondents produced some of the communications issued by the Traffic Manger/2nd respondent herein to show that while on physical verification on 21.12.2007, the Traffic Manager has observed that the petitioner had stacked the empty containers for the purpose of stuffing of maize in a zigzag manner unauthorizedly occupying the trust area, this has not reflected in the impugned order. Further, learned counsel for the respondents has drawn my notice to the letter dated 29.12.2007 bearing reference No.C5/346//2007/T addressed by the Traffic Manager to the petitioner, wherein the



WEB COPY



W.P.No.7936 of 2014

respondent has advised the petitioner company to vacate immediately the unauthorised occupied area, since the petitioner unauthorisedly stacked empty containers at NCFS in the open developed spaces Mg.1494 sq.mt at northern side of NCFS & Mg 3196 sq.m. at Southern side of NCFS from 21.12.2007 till 29.12.2007. The petitioner company, in turn, by letter dated 03.01.2008, have given their reply stating that they did not have any empty containers stacked at the above mentioned space, since the above mentioned space was vacated and further it says that the respondent letter reference No.C5/346/2007/T, dated 29.12.2007 was received by them only on 03.01.2008 and since the petitioner has already taken a stand that they have vacated the above mentioned space, the impugned order should have mentioned the letter dated 03.01.2008. In spite of the letter dated 03.01.2008, yet the 2nd respondent imposed a penalty from 22.12.2007 to 16.01.2008, which indicates that the respondents port trust have not properly considered the case of the petitioner.

5.Further, a mere perusal of the impugned order, as rightly contended by the learned counsel for the petitioner, shows that as it is a brief order, has not dealt with on what date the petitioner has used the excess area, so as to impose the penalty of Rs.10,71,000/- towards occupation of open developed space for the period from 22.12.2007 to 16.01.2008. As nothing has been made, on what basis they have come to the conclusion for imposing a huge penalty of Rs.10,71,000/-, I am of the considered view that the penalty imposed needs to be re-examined by the respondents.

6.Further, it is pertinent to note that the petitioner has addressed a letter dated 17.03.2008 stating that they have off loaded the container only once in the NCFS area on 23.12.2007 and 24.12.2007 by hiring movable crane from the customs authority only once for unloading the containers. In respect of this stand, the petitioner enclosed the CCTL movable crane handling bill and customs O.T. Forms. These documents, which are standing as testimony



W.P.No.7936 of 2014

to say that the petitioner has off loaded the containers only once in the NCFS area on 23.12.2007 and 24.12.2007, cannot be easily brushed aside. But, these documents issued by the customs authority also have not been properly considered by the respondents, while passing the impugned order.

7.In that view of the matter, the impugned order passed by the 2nd respondent is set aside and the respondents are directed to reconsider the issue afresh by giving reasonable opportunity to the petitioner and pass appropriate orders on merits within a period of two months from the date of receipt of a copy of this order.”

2. Thereafter, the petitioner has filed another writ petition in W.P.No.34773 of 2013 for the following relief:-

“To call for the records in respect of the respondent's letter (i) Reference No:01/318/2011/To, communication dated 30.11.2011, - in connection with damages to the trust vehicle bearing Registration No:TN 04 F 8238- Claiming damages of Rs.2,75,750/- and (ii) Reference No:07/367/2011/To, communication dated 08.03.2012 in connection with damages to the Aluminium Partition Panel with glass at WQ-iv Scanning Room, Claiming Rs.1,90,000/- and (iii) Reference No:07/065/2012/To, communication dated 05.03.2012 in connection with damages to the Column Fabricated Rail Barricades in WQ-IV Passengers Terminal Shed (GF) claiming Rs.11,44,914/- and quash the same.”

The learned counsel for the petitioner submitted that he has no instructions



W.P.No.7936 of 2014

from the petitioner. Thereafter, the writ petition was dismissed for non-prosecution, as it is evident from the reading of the order dated 29.06.2018.

Thereafter, the petitioner has received notice dated 10.02.2014, as detailed below:-

“Please refer to the letter cited wherein you have been advised to remit a sum of Rs.1,85,286/- including service tax to the Trust towards the cost of the above, damage. You have not remitted the amount till dated.

You are therefore advised to remit the above amount immediately failing which action will be taken as per Trust rules.

Please refer to the letter cited wherein you have been advised to remit a sum of Rs.11,44,914/- including service tax to the Trust towards the cost of the above, damage. You have not remitted the amount till date.

You are therefore advised to remit the above amount immediately failing which action will be taken as per Trust rules.

Please refer to the above, wherein you have been advised to remit a sum of Rs.2,75,750/- including service tax to the Trust towards the cost of the above damage. You have neither remitted the amount nor responded to this office letter till date.

You are therefore advised to remit the above amount immediately failing which action will be taken as per Trust rules.”

3.A reading of the impugned communication makes it clear that it is not an order. It merely calls upon the petitioner to remit the amounts mentioned therein.



W.P.No.7936 of 2014

WEB COPY

4.If it is a case of the port trust, the petitioner has damaged its vehicle, the port trust as to recover the amount from the petitioner in the manner known to law by filing a suit under any agreement entered between the petitioner and the respondent/Port Trust. The present dispute relates to a Commercial disputes. Therefore, the writ petition filed earlier and also the present writ petition are without merits.

5.Under these circumstances, this writ petition is dismissed. However, liberty is given to the respondent/Port Trust to initiate appropriate proceedings to recover the amount by filing a suit before the Court. In such proceedings, it is open for the petitioner to defend itself. The respondents are at liberty initiate appropriate proceedings for cancelling the contract, in case, the petitioner fails to defend itself in the proposed proceeding.



W.P.No.7936 of 2014

WEB COPY

6.This writ petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
jas

To

The Traffic Manager (Operations),
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.



WEB COPY



W.P.No.7936 of 2014

C.SARAVANAN, J.

jas

W.P.No.7936 of 2014
and
M.P.No.2 of 2014

17.10.2022