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W.P.No.10697 of 2013 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.10697,2644,6320,21887,25448,25449 & 27565 of 2013
and M.P.No.1 of 2015, 2 of 2013, 3 of 2013, 2 of 2013, 1 and 1 of
2013, 2 & 2 of 2013, 3 & 3 of 2013, 1 of 2013 and 2 of 2013 and
W.M.P.Nos. 567 to 571 of 2018

W.P.No.10967 of 2013

M/s Seaport Logistics Private Limited,
Rep. By its Director,
Shri.M.S.Saifudeen,
No.42, 1st Floor, Moore Street,
Chennai – 600 001.

.. Petitioner

vs

1.Union of India
Rep. By its Secretary
to Government Ministry of Shipping (Ports Wing),
Transport Bhawan,
New Delhi – 110 001.

2.The Chennai Port Trust,
Rep. By its Chairman,
No.1, Rajaji Salai,
Chennai – 600 001.

3.The Traffic Manager
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.

.. Respondents

(and etc batch)

Prayer in W.P.No.10697 of 2013 : Petition filed under Article 226 of
the Constitution of India praying to issue a writ of certiorari calling
for the records relating to the order under Ref : C4/881/2010/T



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dated 29.06.2012 along with the working statement of the 3rd respondent, and the letter B3/965/2012/T dated 19.03.2013 of the 3rd respondent herein and quash the same.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.Rajesh Vivekanandan
Deputy Solicitor General
for R1

Mr.R.Sankara Narayanan
Additional Solicitor General
assisted by
Mr.Haja Mohideen Gisti
for R2, R3

COMMON ORDER

This batch of writ petitions has been filed by Stevedores who render services of obtaining storage spaces on licence basis from the Chennai Port Trust (hereinafter and in short referred to as 'CPT') for storage of bulk cargo, being iron and coal.

2. The petitioners entered into agreements of lease with various port trusts in terms of the which allotment orders were issued providing for the licence fees to be remitted. The fixation of licence fees in all cases is as per the determination of the Tariff Authority of Major Ports (in short, 'TAMP') in line with the prescription under Section 49 of the Major Port Trusts Act, 1963 (in short 'Act').

3. The fixation of rentals is based on the land policy for major ports as revised and framed by the Government of India from time



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to time. The Central Government draws the authority for framing of such land policy in terms of Section 111 of the Act which vests in it, power to issue directions to the Board. Section 111 states that without prejudice to the foregoing provisions of that Chapter, being Chapter IX titled '*Supervision and Control of Central Government*', the authority i.e., TAMP and every Board (of the port trusts) shall, in the discharge of their functions under the Act be bound by such directions on questions of policy as the Central Government may issue in writing from time to time.

4. The proviso to Section 111(1) states that the authority or the Board, as the case may be, shall be given an opportunity to express their views before a policy decision is taken by the Central Government. Thereafter, the decision of the Central Government, whether touching on policy or otherwise, is stated to be final.

5. The TAMP is not arrayed as respondent in any of these writ petitions seeing as there has been no fixation of rates by TAMP in terms of Section 49 of the Act at any time after the fixation at the original instance.

6. All petitioners assail a communication from CPT dated 1.12.2008 consequent upon which a demand has been raised in respect of the licence fee for the period 01.04.2001 and 01.04.2004 onwards till 01.12.2008, retrospectively.



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7. Though the demands under the impugned communications continue beyond 01.12.2008, the petitioners do not challenge such demands, and restrict their ambit of challenge only to the period 01.04.2004 to 30.11.2008, for which the rentals have been enhanced retrospectively.

8. As per the Scheme of the Act, the fixation of rates by the TAMP is to be based on the land policy formulated by the Central Government. The Central Government had, in 2004, fixed land policy for major ports, amending the same on 08.03.2004 with effect from the same date.

9. The relevant and applicable clauses of the land policy (in short '2004 land policy') are extracted below:-

"5.Land Allotment Policy

....

5.1.2 Renewal of Existing leases:

- a) If there is no option for renewal in the existing lease agreement, guidelines governing fresh allotment shall apply.*
- b) If the renewal option is there and if land is not required by port for its own use, the port should then assess whether it is required for the purpose for which it was originally leased. If it is so required, it should be renewed for as short a period as possible and preferably in accordance with the SoR/rates approved by competent authority.*

.....

5.2.1.2 Renewal of Existing Leases

- a) The port should first identify if land is required for its own used.*
- b) If land is not required by port for its own*



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use, the port should then identify whether land is required for the purpose for which it was originally leased or any other purpose consistent with the Land Use Plan. If it is so required and if renewal is provided for in the existing lease agreement, it should be renewed with the approval of the Board for a period not exceeding thirty years. The lease rent/upfront premium should not be less than the prevailing SoR/rates approved by the competent authority and or market value, as the case may be. No compensation will be payable by the port in the event of refusal to renew the lease.

(c) If the option for renewal is not provided in the existing lease agreement, the port at its discretion, may decide to grant a fresh lease in favour of the existing lessee at the terms to be approved by the Board without public auction/tender. The lease rent/upfront premium should not be lower than the SoR duly updated or the market value as the case may be. In addition, a premium amounting to one year's rental as per the prevailing SoR shall be collected by the port.

(d) After the expiry/termination/determination of lease, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the lease rent in accordance with the prevailing SoR till vacant possession is obtained.

(e) For existing leases, at the time of expiry/termination/determination of lease, the provisions related to remove of structures will be applicable. If no such provisions exist, the lessee shall remove all structures at his own cost within three (3) months of expiry/termination/determination, failing which these will vest with the port free of all encumbrances. If the port so desires, it may also take over the structures on mutually agreed terms with the leaseholder."



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10. Despite the land policy stipulating the fixation of rates by TAMP in accordance with the prescription under Section 49, admittedly, TAMP has fixed Schedule of Rates (SoR). Thus, the petitioners admittedly continue to remit the licence fee as per original agreements entered into by them with CPT.

11. The 2004 land policy was superseded by the land policy for major ports 2010 with effect from the date of policy being 13.01.2011 (in short, '2011 policy') that has, by virtue of Clause 3 thereof, been made applicable to all Major Port Trusts and Ennore Port Trust except for land relating to Gandhidham Township of Kandla Port Trust.

12. The terms for renewal of existing leases as set out in Clause 6.1.2, reads as follows:-

"6.1.2 Renewal of existing leases: The following procedure will be adopted for renewal of leases of land inside the custom bound area. Such leases may have been given by some ports much before the guidelines issued in 2004 come into force. The said guidelines prohibit the allotment of land in custom bound area on lease basis.

a) If there is no option for renewal in the existing lease agreement, guidelines governing fresh allotment shall apply. However, the right of refusal may be given to the present lessee subject to the condition that he is a bonafide lessee without any default. The renewal shall be subject to payment of rent at the prevailing SoR or the market value, whichever is higher.



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b) If the renewal option is there in the lease agreement, the port should assess if the land is required by the port for its own use. In case it is not required by it, the port should then assess whether it is required for the purpose for which it was originally leased. If it is so required, it should be renewed for as short a period as possible and preferably in accordance with the SoR or the Market value, whichever is higher. Any concession shall be given only with the approval of the Board.

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6.2.3 General – Applicable to existing and new leases

a) The lessee may be allowed to transfer the lease after obtaining prior approval of the Board of Trustees provided the transferee takes over the liability of the original lessee / allottee. Such transfer shall be for the remaining duration of the lease and for purposes in accordance with the Land Use Plan of the port. To allow this transfer, the port shall recover:-

(1) In case of leases granted on upfront basis
In the case of those lands which were originally given on lease on upfront basis (rent), the transfer may be allowed subject to the transferee agreeing to pay

(i) the revised lease rent as prevalent at the time of transfer, subject to revision from time to time in the light of provisions contained in the original lease agreement; and

(ii) A fee equal to 50% of the difference between the current upfront premium and the original upfront premium, calculated for the balance lease period. For example, if land was originally allotted on premium (A) for 30 years and after expiry of 12 years, it is proposed to transfer the land in question and at the time of transfer if the prevalent premium for 30 years lease period is (B), then the transfer fee shall be 50% of the amount $(B-A) \times 18/30$ or One (1) year's lease rentals based on present SoR,



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whichever is higher.

6.3(1) Market Value of land and Schedule of Rates (SoR)

(a) SoR for land will be recommended to the competent authority/TAMP, by a Committee as decided by the Board headed by the Chairman of the Port Trust. The Committee may take into account the applicable factors from among those listed below to determine the market value of port land:-

(i) State Government's ready reckoner of the land values in the area, if available.

(ii) Average rate of actual relevant transactions registered in last three years in the port's vicinity, adding 2% escalation per annum and in case of Mumbai Port Trust @ 4% escalation per month, as may be necessary.

(iii) Highest accepted tender of Port land for similar transactions.

(iv) Rate arrived at by an approved valuer appointed for the purpose by the Port.

(v) Any other relevant factor as may be identified by the Port.

(b) SoR shall be arrived at, taking 6% of market value as rent per annum.

(c) SoR shall be escalated by 2% per annum and in case of Mumbai Port Trust @ 4% escalation per annum, till such time that SoR is revised with the approval of the competent authority / TAMP.

(d) SoR will be revised every five years.

(e) SoR should vary in accordance with the purpose of land use. The Committee should recommend to the competent authority, varying SoR in accordance with the end use as reflected in the Land Use Plan.

(f) Insofar as fixing of SoR for Port land is concerned, TAMP shall have the jurisdiction for any land both within the customs bound area and outside it as long as the land is used



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exclusively for Port related activity. The SoR for all land of Major Ports will be fixed by TAMP."

13. Despite the 2011 policy that stipulates the manner in which enhancements in licence rent be effected, no revised schedule of rates was issued stipulating the enhancements. On 01.12.2008, the impugned order came to be passed by CPT and issued to the Petitioner Association, for their information and necessary action and reading thus:-

"
Chennai Port Trust
Centenary Building,
No.1, Rajaji Salai,
Chennai – 600 001.

C4/3983/2005/T 01.12.2008

From
The Traffic Manager

To
All Allottees

Sir,

Sub : Lands & Buildings – Revision of SoR licence fee as Per the Land Policy 2004 issued by Government of India – Reg.

Land Policy for Major Ports issued by the Government of India, vide clause 5 3(I)(c) insists that "SoR shall be escalated by 2% per annum till such time that SoR is revised with the approval of the competent authority / TAMP".

In view of the above, all fresh allotments will be levied with the revised SoR licence fee @ 2%



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on open spaces and & 5% on covered spaced w.e.f 01.04.2004 & 01.04.2001 respectively. Henceforth, licence fee of all the monthly allotments shall be escalated as on 1st April of every year.

With regard to the above, arrears of licence fee for the respective payments will be informed at a later date.

Thanking you,

*Yours faithfully,
for Traffic Manager"*

14. The first limb of paragraph 2 deals with the rates on fresh allotments with which the Petitioner is not concerned. However, CPT thereafter proceeds to enhance the existing lease rentals as well, and computes arrears retrospectively from 2001 and 2004.

15. The first question that arises is as to whether there is any provision in the Act or in the policy that could validate a retrospective levy. Section 49 of the Act dealing with the fixation of scale of rates and statement of conditions for use of property belonging to the Board is extracted below:-

49. Scale of rates and statement of conditions for use of property belonging to Board.- (1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:-



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- (a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;*
- (b) entering upon or plying for hire at or any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;*
- (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;*
- (d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.*
- (2) Different scales and conditions may be framed for different classes of goods and vessels.*
- (3) Notwithstanding anything contained in sub-section(1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at rate higher than that provided under sub-section(1).*

16. Section 49 vests authority in TAMP to revise/frame scale of rates from time to time and such rates would apply on an on-going basis, as and when revised. Section 49 does not provide for retrospective revision of the SoR.

17. In the present case, admittedly, TAMP has not fixed the schedule of rates at all. The land policies of 2004 and 2011 are applicable only from the dates of the policy. Thus, while the respondents are justified in enhancing the rates from 2008 taking note of the revision provided for in the 2004 policy, being 2% on open spaces and 5% on covered spaces, there is no justification for a retrospective enhancement.



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18. That apart, the enhancement provided for in the policy is academic, till such time it translates into a SoR by TAMP based upon which a demand may be raised. This has admittedly not been done.

19. In counter affidavit dated 03.10.2017 filed in WP 25449 of 2013, the Traffic Manager (in-charge) CPT states, on behalf of the respondents, at paragraphs 5 and 5(a) as follows:-

5) This respondent submits that during the year 2004, the Ministry of Shipping vide letter No.PT-17011/55/87-PT dated 24/02/2004 had issued new Land Policy. The Land Policy under Clause (f) (h) in Caption 5.3(I) Market Value of Land and Schedule of Rates (SoR) states that "SoR shall be escalated by 2% per annum till such time that SoR is revised with the approval of the competent authority/TAMP. It is submitted that as per the New Land Policy issued by the Ministry of Shipping the land inside the Customs bound area can be licensed only for 11 months resulting in substantial loss of revenue to Port by way of security deposit, premium and escalation 5% p.a. This respondent submits that therefore, a letter was sent to the Ministry of Shipping (Port Wing) under ref.No.C4/1500/2004/T dt.26.7.2005 seeking clarification whether the Trust can continue to follow the Chpt's scale of Rates prevailed during the year 2005 as the New Land Policy is unfavourable to long term investment in Port.

5(a) This respondent submits that while the said issue was pending consideration with the Central Government, the FA & CAO vide No.Lands & Buildings / 1941/2000/A4 dt.30.07.2005 and note no.AO(Rent)/NLP/05/AR dt.5.08.2005 had informed the departments to follow the existing



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SoR till a decision is taken and NLP is incorporated in Scale of Rates. It is submitted that based on FA & CAO's recommendations Chairman's approval has been obtained vide note No.C4/1500/2400/T dt.16.9.2005 to follow the existing SoR superseding the NLP till suitable clarification was received from the Ministry."

20. It is thus clear that there was no proposal to inform the concerned departments of CPT or the lessees to incorporate the enhanced rates under the land policy. Based on the recommendations of the FA & CAO, the approval of the Chairman, CPT had been obtained on 16.09.2005 to follow the existing scheduled rates till a clarification was received from the Ministry.

21. The categoric stand of CPT is to the effect that the provision for enhancement under the 2004 policy was neither acted upon nor communicated to the petitioners and hence shall not bind the parties. The lessees would thus be required to remit rentals only as per the lease agreements executed prior to 2004 based on the then prevailing SoR.

22. In *Hindustan Lever Ltd and another v Board of Trustees, Visakhapatnam and another*¹, the Andhra Pradesh High Court had occasion to consider a challenge to a retrospective increase in rates of licence fee for storage sheds at Visakhapatnam Port. The Court

¹ AIR 2003 AP 2017



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relied on various judgments such as (i) *State of Himachal Pradesh v Raja Mahendra Pal*², *Govinddas v I.T.Officer*³, *Cannanore Spa and Wva Mills v Customs Collector, Cochin*⁴, *Arvind Kumar Dhanua v Board of Trustees*⁵, *U.P.State Co-operative Land Development Bank Limited v Chandra Bhan Dubey*⁶, *Union of India v Kishorilal Gupta and Brothers*⁷, and *Provash Chandra Dalui v Biswanath Banerjee*⁸ cited by the Visakhapatnam Port Trust on the construction of the applicable policy, and to decide whether retrospective effect may be given to the same.

23. In the case of *Lala Ram (D) by L.R. & Ors v Union of India and anr*⁹, the Hon'ble Supreme Court considered the validity of a retrospective levy of licence fee holding categorically at paragraph 10, that while the levy was itself valid, there could be no retrospective operation of the same.

24. The specific issue framed was whether the collection of licence fee retrospectivity was valid in light of there being no express provision for the same and whether the procedure that had been followed by the respondents was in line with the procedure set out under Section 49. The conclusions at paragraphs 36 to 43 are

2 AIR 1999 SC 1786

3 AIR 1977 SC 552

4 AIR 1970 SC 1950

5 AIR 1977 Cal 377

6 AIR 1999 SC 753

7 AIR 1959 SC 1362

8 AIR 1989 SC 1834

9 C.A.Nos.243-247 of 2003 dated 24.01.2013



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as follows:-

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"36. A perusal of the impugned order does not indicate the source of power under which the claim of enhanced rent is made retrospectively. Whenever a demand is raised, it should be supported by some power, under which the authority is authorised to do so. The impugned order is devoid of reasons and the validity of the order has to be tested with reference to the reasons assigned and contained therein. Particularly, the Port Trust being a Statutory Body under the Act, its action must be decided and examined with reference to Article 14 of the Constitution. Article 14 of the Constitution forbids arbitrariness and contemplates equality before law and the public functionary should act fairly and honestly and not arbitrarily and unilaterally.

37. The provisions of Section 48 and 49, are comprehensive one, which deals with the scales of rates for services performed by Board or other person and scale of rates and statement of conditions for use of property belonging to Board. Under the garb of tentative one, the port trust cannot raise a demand retrospectively after a long lapse of period.

38. I have perused the agreement. Clause 3 of the agreement, which is relevant at the crux of the point, discloses that the fee shall be payable at the rate in force from time to time and shall be paid in quarterly installments for annual license in advance.

39. Section 49 of the Act is a comprehensive chapter, which deals with scale of rates and statement of conditions for use of property belonging to Board.

40. Neither the agreement nor the provisions of the Act authorizes the Collector to make a demand for payment of rent retrospectively. Apart from that, Section 49 of the Act contemplates that the authority shall from time to time by notification in the official gazette,



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also frame a scale of rates and statement of conditions. But no such instances have been brought to the notice of this Court that in the instant case, such a procedure has been followed. In *Verigamto Naveen v. Govt. of A.P.*, (2001) 8 CC 344 : AIR 2001 SC 3609 the Apex Court has held thus:

"where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, it falls within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of the statutory provisions, as in the present case, it cannot be said that the matter tails purely in a contractual field. Therefore, it would not be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for."

41. In *Dwarkadas Marfatia & Sons v Board of Trustees, Bombay Port*, AIR 1989 C 1642, the Apex Court has held thus:

"Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the Executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Art.14."

42. In the instant case, the authorities have committed breach of statutory obligation caste upon under the provisions of Section 49 of the Act, and, consequently it lacks fair play and amounts to arbitrariness, which requires



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interference by the Court under Article 226 of the Constitution of India. In this regard, the above decisions lend support to the case of the petitioner.

43. As such, the retrospective demand made under the impugned order is beyond the powers of the rule making authority in as much as having a procedure prescribed as to fixation of rate or the rates from time to time under the provisions of the Act and as well as the agreement, the respondent has no right or authority to make a retrospective demand. The legal proposition relied on by the learned counsel for the petitioner (Citation 3 above) lends support fully to the contention that the authorities cannot act beyond the powers vested under the provisions and the impugned action in violation of principles of natural justice."

In fine, the Court held that there was no power for a retrospective levy and set aside the orders.

25. The Gujarat High Court in *Kandla Port Trust v IMC Limited Earlier Known as United Storage Tanks Terminal Limited*¹⁰ also considered the similar question, concluding likewise.

26. The respondents cite the decision of the Karnataka High Court in *K.G.C. Enterprises Rep. By its Authorised Signatory K.S.Vinayak and The New Mangalore Port Trust Rep. By its Chairman Panambur, Mangalore 10 and others*¹¹. This case is distinguishable for the reason that challenge is to an order passed

1 0 2022 SCC Online Guj 678
1 1 2013 SCC Online Kar 5200



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by TAMP fixing the schedule of rates whereas in the present case, the very thrust of the petitioner's arguments is that there is no Schedule of Rates (SoR) fixed by TAMP till date.

27. In view of the detailed discussion as above, all the writ petitions are allowed. No costs. Rental payments collected from the petitioners relatable to the period 01.04.2004 – 30.11.2008 will be refunded within a period of eight weeks from the date of receipt of the order. Consequently, connected miscellaneous petitions are closed.

09.02.2023

Index:Yes
Neutral Citation:Yes
ssm

To

- 1.The Secretary to Government Ministry of Shipping (Ports Wing),
Transport Bhawan,
New Delhi – 110 001.
- 2.The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.
- 3.The Traffic Manager
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.



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DR. ANITA SUMANTH,J.

ssm

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