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W.M.P.Nos.28033 & 29834 of 2022 in W.P.No.27313 of 2022

W.M.P.Nos.28033 & 29834 of 2022
in
W.P.No.27313 of 2022

Reserved on 03.02.2023	Pronounced on 24.02.2023
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G.CHANDRASEKHARAN, J.

Petitioners in both petitions filed these petitions for impleading them as respondents in W.P.No. 27313 of 2022.

2.The contents of the affidavits in both petitions are almost identical. All Sea Ports Trailer Owners Consortium has been registered under the Tamilnadu Societies Registration Act, 1975 and it is functioning at No.48/10, Pandiyappan Gramani Street, Royapuram, Chennai-600013. The consortium consists of contracted trailer owners and non contracted trailer owners. The object of the consortium is to promote and safeguard the interest of All Sea Ports Trailer Owners. The Tamilnadu All Sea Ports Contractors Welfare Committee was formed by 19 trailer owners/contractors to represent their grievance before the appropriate authority. The members of the welfare committee are also



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associated with 11 associations. They have participated in all the meetings convened by RDO and other officials.

3.The Container Freight Stations (CFS) are responsible for handling the goods in the Chennai Port Trust. There is no direct relationship between the trailer owners' association and Chennai Port Trust. The CFS acts as an intermediary between the Chennai Port Trust and the trailer owners' association. The trailer owners / contractors have to approach only the CFS for any grievance, whatsoever. From 2014 onwards, the various trailer owners' associations have been pleading with the CFS for an increase in transport rate. For the past 8 years, the transport rate has not been increased, inspite of steep hikes in fuel prices and operational costs. Various trailer owners associations along with the All Sea Ports Trailer Owners Consortium were constrained to hold flash strikes, which hampered the movement of goods in Chennai Port Trust and it led to law and order problems. This issue was brought to the notice of the Government authorities and hence, the RDO convened a meeting with all the stakeholders on 05.07.2022 and 07.07.2022 at



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Chennai Port Trust along with higher Police officials. All the issues were discussed in the meeting and an amicable settlement was arrived at between the parties in the presence of the Revenue as well as Police authorities. An order dated 14.07.2022 was passed by the RDO mentioning all the terms of settlement accepted by all the parties. After accepting the terms, the writ petitioner refused to abide by the terms of the settlement and then filed the writ petition challenging the order dated 14.07.2022 passed by the RDO. The writ petitioner had shown only one association as a party to the writ proceedings, namely, Chennai and Kattupalli Port Contractors Committee. There are several associations including the petitioner's association consisting of 350 members and 1800 and 2000 trailers respectively. Petitioners are deliberately left out in the writ petition and if the petitioners are not impleaded in the writ petition, it would cause irreparable loss to them. Therefore this petition.

4.The writ petitioner/ first respondent filed a counter stating that the petitioner in W.M.P.No.28033 of 2022 has not produced any proof to show that it was registered under the Tamilnadu Societies Registration



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Act, 1975. The first respondent attempted to visit the office in the address given in the affidavit and found that there is no such address in Royapuram area. The petitioners did not produce any supporting documents to substantiate their claim of representing the trailer owners. The address of the petitioners in both petitions is given as the same address i.e., No.48/10, Pandiyappan Gramani Street, Royapuram, Chennai-600013. In W.M.P.No.29834 of 2022, the title of the affidavit shows “Affidavit of Mohanram”, but this affidavit is sworn by K.Sureshababu. From this, it is clear that both petitioners are letter pad associations and they prepared the same affidavits giving the same address for the petitioners with slight modifications in the affidavits and filed both petitions for impleadment. Affidavits suppress true facts and paint an entirely wrong picture of the contractual relationship that exists between the Chennai Port Trust and the CFS. The first respondent is engaged in the business of handling the goods in the Chennai Port Trust and it is neither obligated nor have any contractual relation that mandates it to act as an intermediary between the Chennai Port Trust and trailers owners association. CFS only uses the facility of the trailer to transport



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the goods to and fro, from the Chennai Port to their stations. If there is any demand on the transport rate, the trailer owners must approach the CFS with whom they entered into agreement and not through any association, who are not party in the agreement. Petitioners themselves admitted its participation in the strike as a mechanism to negotiate a higher tariff, which is precisely the type of conduct held to be illegal by the Competition Commission of India. It is denied that the petitioners were parties to the proceedings before the RDO. The first respondent was compelled to the settlement because of the week-long strike. RDO has no jurisdiction to countermand or enable an action contrary to the injunction issued by the CCI. The petitioners are neither a proper party nor a necessary party to the present writ petition. The petitioners membership list has not been disclosed nor they filed any resolution with authenticated signatures of the alleged members. It is an attempt to game the system by purportedly creating a new association that is not directly a party to the CCI proceedings. The present petitions are not a bonafide one and filing of these petitions are an abuse of process, amounts to forum shopping to delay the proceedings and gain undue advantage.



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Therefore, these petitions are liable to be dismissed.

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5.The learned counsel for the petitioners, for the reasons stated in the affidavits and detailed above, prayed that the petitioners are to be necessarily impleaded as respondents in the writ petition.

6.In response, the learned Senior Counsel appearing for the first respondent, for the reasons stated in the counter affidavits and detailed above, submitted that the petitioners are not at all proper and necessary parties and that these petitions are filed only to drag the proceedings and to gain undue advantage. He mainly relied on the identical affidavits filed with the same address, swearing of affidavits and that no supporting materials were filed like membership list, registration certificate etc., Petitioners are only a letter pad association. The next ground taken by the learned Senior Counsel for the first respondent is that the first respondent initiated proceedings before the Competition Commission of India in case No.4 of 2018 against 10 trailer owners association. The reason is that the opposite parties and its members have engaged in collusive anti-



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competitive conduct as a means to pressurize the informant and their members to accept the unilateral and anti-competitive terms by resorting to strike and force the informants to enter into some sort of unfair agreement, which is against the Competition Commission Act. He further submitted that the Competition Commission of India had observed in its order as follows:

77. Guided by the aforesaid broad parameters, the Commission finds that, in the present matter, the thin line has been transgressed by OP-1 to OP-10. Fixing prices and restricting provision of services under the aegis of trade associations cannot be held as a legitimate activity under the Act. Moreover, these justifications cannot be used as a reason to decide and enforce a blanket increase in prices, collectively by the OPS. Decisions related to price fixing and output restriction amongst those engaged in similar trade are recognized as some of the most pernicious anti-competitive conduct. Apparently, owing to their pernicious nature, the Act raises a



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presumption of such conduct resulting into an AAEC.

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79. Further, as regards the third justification offered by OP-1, Le. the decisions taken at the impugned meetings were mutual decisions which had an active involvement of the members of the Informant and the Chennai Port Trust, the Commission is hesitant to accept this as a justification for a conduct falling under Section 3(3)(a) and (b) of the Act. The rebuttal of the presumption of AAEC that exists in such cases or is likely to exist, thereby distorting competition, needs to be dispelled by providing concrete evidence to the satisfaction of the Commission on the redeeming nature of the alleged conduct. It has to be shown that the impugned conduct, rather than harming competition has resulted in accruing benefits to consumers or achieving improvements in the production or distribution of goods or provision of services or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. Tested on



these parameters, the justification offered by OP-1 does not in any manner rebut the presumption of AAEC but has been an attempt possibly to provide succor to its members and nothing more. The participation of Informant or Chennai Port Trust cannot alter the characterisation of an otherwise collusive conduct/practice. Neither can it dilute the responsibility of the associations involved in such collusive decision making. In a competitive market, the prices of goods or services should ideally be determined by a free interaction between demand and supply forces. Any collective collusive action can manipulate the market outcomes under which the independent decisions between each buyer and seller could have been reached. Seen in this light, the collective action by TOAS has manipulated the market forces and narrowed the scope of competition.

80. In this regard, the Commission also notes the submissions made by the Informant that the OPS were using strikes and lock-outs as a means to make the



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members of the Informant agree to their illegal demands.

Further, since the Chennai Port was following a practice of issuing passes for the entry of trailers and drivers only when such passes were endorsed by one of the trailer associations (OPS), members of the Informant had no option but to agree to the demands of the OPs. Further, the DG had observed that, though the Chairman of the Chennai Port Trust chaired the meeting dated 09.08.2014, his presence seems nothing more than an attempt to safeguard seamless movement of work without any disruption at the Chennai Port.

81. The Commission thus does not find any of the justifications offered by OP-1 to be sufficient to rebut the presumption and discharge the burden of proof that was on it considering the nature of its submissions and evidence in support thereof, In the event thereof, the Commission concludes that the conduct of OP-1 to OP-10 has led to a contravention of the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the



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Act.

It further ordered as follows:

82. In view of the foregoing, the Commission holds that the decisions taken by OP-1 to OP-10, for the reasons adumbrated in this order, are in contravention of the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act. Accordingly, the Commission directs OP-1 to OP-10 to cease and desist in respect of the anti-competitive conduct committed by it and which has been found to be in contravention of the provisions of the Act,

83. However, on a holistic assessment, and taking into consideration the submissions of OP-1 as recorded earlier in this order, the Commission is of the considered view that a cease-and-desist order under Section 27 of the Act would sub-serve the ends of justice in the matter.

7. It is the submission of the learned Senior counsel for the first respondent that as per the order of the Competition Commission of India, the decision taken by the opposite parties 1 to 10 are in contravention to the provisions of the Sections 3(3) (a) and Section 3(3) (b) r/w Section



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3(1) of the Act and accordingly, the Commission directed the opposite parties 1 to 10 to cease and desist in respect of the anti-competitive conduct committed by them.

8.It is further submitted that the opposite parties 1 to 10 have used the weapon 'strike' as a means to bring pressure on the first respondent to agree for their unfair demand contrary to the provisions of the Competition Act, 2002. The first respondent has right to choose a trailer operator who quotes a competent price. Because of the activities of the various association and their enforcement of the rates quoted by them, the first respondent lost the opportunity of quoting competitive rates. The Line Referee and the RDO, North Chennai, passed an order dated 14.07.2022, with regard to the payment of the enhanced trailer charges. This order could have been passed under compulsion for the reason that the trailer owners association resorted to strike and prevented the cargo movements. The order passed by the second respondent in Na.ka.No.A2/2709/2022, dated 14.07.2022, is contrary to the Competition Act. The second respondent, namely, the Line Referee and



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the RDO has no authority under law to pass such an order and compel the first respondent to pay an increased rate to trailer owners.

9.Considered the rival submissions and perused the records.

10.The order impugned is the order passed by the second respondent in Na.ka.No.A2/2709/2022, dated 14.07.2022. This order reads that NACFS association executives and Chennai Kattupalli on behalf of 39 CFS owners under the concerned NACFS Association participated to negotiate and settle the charges between CFS and trailer truck owners carrying out the export and import operations from Chennai Port. A two-phase talk was held between the two parties in the presence of the Port Contractors Committee and Association Executives. On the official front, the Line Referee and RDO North Chennai, Deputy Commissioner of Police, Assistant Commissioner of Police (Port Cargo), Tondiarpet District Tahsildar participated. After the talks, the following agreement was reached.

1. CFS Companies and NACFS Association have



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agreed to give 25% hike from existing charges to trailer owners from 15/07/2022.

2. CHA Companies and CCBA Association have agreed to hike minimum Rs. 1000 and maximum 10 percent from existing charge from 15/07/2022.

3. CHA and CFS should not coerce or pressurize the trailer owner and tenant by asking them to reduce the above increased charges till April 2023 next year. Don't engage in charges reduction methods such as claiming to provide more employment or creating job vacancies.

4. Don't compel the CHA and CFS Companies contractors to issue invoices. Similarly, Companies should not be forced to issue credit notes as they seem fit.

5. The Charges should be determined by the CHA and CFS organizations are same for all contractors. If the tenants approach the Companies and ask them to reduce the charges and increase their employment opportunities, then the companies should not accept it.



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6. *Chennai Container Depot Operators Association has given an assurance that they will not charge any service fee (speed money) for handling containers in MT Depots. Ensure that drivers have proper access to basic facilities at depots.*

7. *Tariffs accepted and approved by the CFS Association Executives between CFS and Trailer truck owner carrying out export and import operation from the Chennai Port should be duly followed.*

8. *The charge should be paid within 15 days from the date of issue of the bill.*

Both parties are hereby ordered to follow without any change all the above agreement agreed upon by the both parties at the end of the talk.

11. Challenging this agreement, W.P.No.27313 of 2022 was filed by the first respondent stating that the Line Referee and the RDO North Chennai has no authority to pass this order for the reason that it is against the provisions of the Competition Act. It is seen from the order that



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Chennai Kattupalli on behalf of 39 CFS owners under the concerned NACFS Association participated in the talks. Chennai Kattupalli Port Contractors Committee is the sixth respondent in W.P.No.27313 of 2022. Though it is claimed by the petitioner in W.M.P.No.28033 of 2022 that the petitioner is registered under the Tamil Nadu Societies Registration Act, 1975, no copy of the registration certificate is produced. It is claimed by the petitioner in W.M.P.No.29834 of 2022 that it was founded by 19 trailer owners/contractors to represent their grievance before the appropriate authority. The details of 19 trailer owners/contractors are not given. The address of the petitioner in W.M.P.No.28033 of 2022 is given as No.48/10, Pandiyappan Gramani Street, Royapuram, Chennai-600013 and the address of the petitioner in W.M.P.No.29834 of 2022 is given as No.48/10, Pandiyappan Gramani Street, Royapuram, Chennai-600013. The contents of the affidavits are almost similar as pointed out by the learned Senior Counsel for the first respondent. The copy of the affidavit filed in W.M.P.No.29834 of 2022 shows as “Affidavit of Mohanram” but signed by K.Sureshbabu. Petitioners have not produced any material in support of their claim that they are registered committee or consortium



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and no details of the members are also given. There is also no material produced to show that the petitioners who had sworn in the affidavits was authorized by other members of the committee/consortium to file these petitions. That apart, there are discrepancies as mentioned earlier. In the absence of any material to show that petitioners are the real and genuine committee/consortium who are working for the welfare of its members, prayer for impleadment as respondents in W.P.No.27313 of 2022 cannot be considered favourably.

12.In this view of the matter, these petitions are dismissed.

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Pre-Delivery Order in
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