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W.P.No.11010 of 2012 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.11010, 11011, of 2012 , 12456, 12457, 22196 & 22197 of 2011
and
M.P.Nos. 1,1 of 2012 & 2 of 2011

W.P.No.11010 of 2012

Chennai International Terminal Private Limited
a company incorporated under the Companies Act,
1956 and having its office at
Regus Citi Centre Level 6, Chennai Citi Centre,
10/11, Radhakrishnan Salai,
Chennai – 600 004
Rep. By its authorized signatory
Mr.Sivakumar.K

.. Petitioner

VS

1.Tariff Authority for Major Ports,
4th Floor, Bhandar Bhavan,
Muzawar Pakhadi Road,
Mazgaon, Mumbai – 400 010.

2.Union of India
Rep. By its Secretary,
Ministry of Shipping,
Transport Bhavan, No.1, Parliament Street,
New Delhi – 110 001.

3.Chennai Port Trust,
Rep. By its Chairman,
No.1, Rajaji Salai, Chennai.

4.The Chief General Manager,
Contract Management Division,
Chennai Port Trust.
(R4 impleaded vide order dated
09.07.2024 in WP 11010/2012)

.. Respondents



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Prayer in W.P.No.11010 of 2012: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records and proceedings relating to the impugned order of the 1st respondent, dt.06.01.2012, notified on 14.02.2012, in TAMP/51/2011-CITPL quash the same and to direct the 1st respondent to modify its order dated 06.01.2012, notified on 14.02.2012, in TAMP/51/2011-CITPL on par with the Tariff Guidelines 2019 by reconsidering the application of the petitioner dated 14.10.2011.

(prayer amended as per order dated 05.06.2024 in WMP No. 30768 of 2019 in W.P.No.11010 of 2012 by GKIJ)

Writ Petition	For Petitioner	For Respondents
11010 & 11011 of 2012	Ms.C.A.Sharmila for Mr.U.Gowrishankar	Mr.Rajesh Vivekanandan Deputy Solicitor General for R1, R2 Mr.R.Karthikeyan for R3
12456 & 12457 of 2011	Mr.Vinod Kumar	Mr.Rajesh Vivekanandan Deputy Solicitor General for R1, R2 Mr.R.Karthikeyan for R3
22196 & 22197 of 2011	Mr.Vinod Kumar	Mr.Rajesh Vivekanandan Deputy Solicitor General for R2 Mr.R.Karthikeyan for R1 & R3

COMMON ORDER

Read this order in continuation of and in conjunction with orders dated 09.07.2024 and 11.07.2024 that read as follows:-

"09.07.2024

The dispute that now subsists in these writ petitions relates to the fixation of the tariff for the period 2011 – 2019 (since the tariff for 2019 onwards has



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been fixed under the tariff orders that has been issued in 2019).

2. Ms.Sharanya Vaidhiyanathan and Mr.Vinod Kumar, learned counsel appearing for the petitioners would, in common, request that the dispute may be referred to the Conciliation and Settlement Committee, a permanent Standing Committee constituted under the aegis of the Cabinet Committee of Economic Affairs for settlement of disputes inter se operations and major ports.

3. Hence, the Chief General Manager, Contract Management Division, Chennai Port Trust is impleaded as R4 and Mr.Rajesh Vivekanandan, learned Deputy Solicitor General, accepts notice on his behalf as well.

4. Let him obtain concurrence of the Committee for reference of this dispute for resolution.

5. List on 11.07.2024.

11.07.2024

Read this order in conjunction with and in continuation of order dated 09.07.2024.

2. The first respondent has filed memo dated 11.07.2024 to following effect.

The petitioner made a request before this Hon'ble court that the matter may be referred to the Conciliation & Settlement Committee (CSC) which has been constituted by the Indian Ports Association (IPA) [an umbrella organisation of Major Ports of India] for deliberating the disputed issues between the Concessionaires/ Contractors/ Consultants / Service providers and the Major Ports, in order to explore the possibility for amicable resolution of the issues.

The petitioner referred the clause 3.1.1 of Tariff Guidelines, 2019 which is reproduced below:-

"The Scale of Rates of some of the BOT operators have not been reviewed due to litigations pending in the High Courts on the Tariff Orders passed by TAMP. The surplus/deficit over and above the admissible costs and permissible return, if any, arising during the period of litigation will be subject to the orders of the respective Courts.



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Alternatively, MoS, concerned Major Port Trusts, concerned BOT operators and TAMP may decide on the treatment of past period surplus arising during the period of litigation."

At the behest of the Ministry, the Indian Ports Association (IPA) has already examined the draft Policy Frame work forwarded by TAMP to Ministry of Ports, Shipping and Waterways (MOPSW) with regard to the assessing the quantum of past period surplus and the issues of the past period surplus in consultation with Major Port Trusts, TAMP and BOT operators and has furnished its Minutes of the Meeting held under the Chairmanship of IPA Chairman on 4 March 2020 to the MOS.

As per the said Minutes of the IPA, there was consensus among the ports and TAMP about the past period surplus to be calculated based on Net Block of Fixed Assets and Working Capital as per the Audited Accounts of the respective BOT operators. There was also consensus as per the said Minutes among the Ports, BOT operators and TAMP about sharing the past Period Surplus so calculated in the ratio of 60: 40 i.e. allowing the BOT operator to retain 60% of the quantified surplus and adjust the remaining 40% of quantified surplus in the tariff cycles. This 60:40 ratio was suggested borrowing the opinion of the Attorney General obtained by the then MOPSW in June 2015 on interpretation of some of the clauses of Tariff Guidelines of 2005.

The MOPSW is seized of the matter.

It is opined that the prayers of the petitioners as contained in their Writ Petitions are challenging certain provisions of the Act/ policy decisions/ guidelines issued by Ministry of Ports, Shipping and Waterways (MOPSW). Hence, the matters prayed in the Writ Petitions may be beyond the purview of CSC for resolution of the matter.

Nevertheless, the Petitioners may refer the matter to Conciliation & Settlement Committee after withdrawing the above writ petitions.

3. Mr.Rajesh Vivekanandan, learned Deputy Solicitor General refers to the Minutes of the Meeting held on 04.03.2020 on Broad Policy



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Framework to decide on the treatment of past period surplus/deficit arising during the period of litigation, as stipulated in Clause 3.1.1 of the Tariff Guidelines, 2019 with Major Ports. The deliberations resulted in the following decisions:

A note circulated by IPA was considered in the meeting for discussion (Copy attached).

In the meeting TAMP representatives made a brief presentation on the subject.

After detailed deliberation the following was decided.

(i) There was consensus among Ports, BOT operators and TAMP about sharing the past period surplus in the ratio of 60:40 between the operators and users respectively.

(ii). The issue raised by PSA SICAL (operating at VOCPT) about conversion of their royalty model of payment to Revenue share model of payment to VOCPT was beyond the scope of the Committee.

(iii). The provisional figures of surplus worked out by TAMP was based on the "Return on Net Block of Fixed Assets" as per audited accounts of BOT operators. The suggestion of BOT operators to work out the surplus based on Return on Gross Block of Fixed Assets from 01 April 2010 onwards is beyond the existing guidelines given by the Ministry.

4. Since the petitioners were not part of the deliberations leading to the above resolutions, learned counsel for the petitioners seeks a few days' time to obtain instructions from their clients as to whether they are willing to be bound by the resolution passed in meeting dated 04.03.2020.

5. List on 23.07.2024 top of regular list."

2. The petitioner has now filed a memo dated 22.07.2024 reading as follows:-

"1.The Petitioner had filed a memo dated 9.7.2024 confirming that it is willing to have the matter referred to the Conciliation and Settlement Committee ("CSC") for resolution of the issue through conciliation.

2.The 1st Respondent has filed a memo dated 11.7.2024 in which reference has been made to a



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minute of meeting dated 4.3.2020, to contend that there has been a consensus among the Ports, BOT Operators about sharing the past period surplus in the ratio of 60:40. It is further stated by the 1st Respondent that the Ministry of Ports, Shipping and Waterways is seized of the matter.

3.The Petitioner submits that the Petitioner was not a party of any such meeting and therefore cannot comment on the said minutes of meeting and the said minutes of meeting does not bind the Petitioner.

4. In its memo the 1st Respondent has further stated that the matter can be referred to the CSC if the Petitioner withdraws the writ petitions. The Petitioner submits that the CSC is already seized of at least two other similar issues pertaining to the other BOT Operators, who had filed similar writ petitions before the Bombay High Court. In those matters, the withdrawal of the writ petitions was not made a pre-condition for the matters to be referred to the CSC. In those matters, the writ petitions have been kept pending awaiting the outcome of the reference to the CSC.

5. The Petitioner submits that the CSC has been constituted to attempt amicable resolution of the disputes. In the event of there being no amicable resolution, the parties should be entitled the pursue the original proceedings. Hence, the 1st Respondent's requirement that the Petitioner should withdraw the writ petitions before the matter is referred to the CSC is not justified.

6. The Petitioner states that clause 3.1.1 of the Tariff Guidelines, 2019, specifically allows the parties to decide on the treatment of past period surplus. In this regard, the Petitioner had approached the 1st Respondent and the parties have exchanged several communications and have had meetings, including on 2.7.2024 and 19.7.2024. Since the CSC is already seized of similar issue in respect of other BOT Operators, whose writ petitions are pending before the Bombay High Court, the 1st Respondent ought to have no reservation in the issue relating to the past period being referred to the CSC, without insisting on the writ petitions being withdrawn. In the event of there being a settlement based on the reference to the CSC, the writ petitions can be disposed of, recording the same. However, if the parties are not able to arrive at a settlement, the issue involved in



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the writ petition will have to be decided by this Hon'ble Court.

7. The Petitioner prays that this Hon'ble Court may be pleased to take this memo on record and pass appropriate orders and thus render justice."

3. The present writ petitions are of the year 2012 and 2011. Taking note of the fact that both the parties are inclined to resolve the matter by way of conciliation, the parties are referred to the Conciliation and Settlement Committee (Committee) for resolution of the issue.

4. The grievance of the petitioner that the matter would drag on inordinately is addressed by fixing an outer time frame of three (3) months from date of receipt of a copy of this order, within which the Committee will pass a speaking order.

5. Needless to say, the petitioner is always at liberty to take appropriate steps to challenge any adverse order passed by the Committee in accordance with law. Similar orders have been passed by the High Court of Delhi in the case of *Indian Private Ports and Terminals and anr v UOI and ors* [dated 03.02.2023 W.P.(C) 8946/2011] that involved identical / similar challenges as in these writ petitions.

6. Writ petitions stand disposed in terms of this order. No costs. Connected miscellaneous petitions are closed.

23.07.2024

Index:Yes/No
Neutral Citation:Yes
ssm



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To

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1. Tariff Authority for Major Ports,
4th Floor, Bhandar Bhavan,
Muzawar Pakhadi Road,
Mazgaon, Mumbai – 400 010.
2. The Secretary,
Union of India
Ministry of Shipping,
Transport Bhavan, No.1, Parliament Street,
New Delhi – 110 001.
3. The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai, Chennai.
4. The Chief General Manager,
Contract Management Division,
Chennai Port Trust.



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DR. ANITA SUMANTH,J.

ssm

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