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W.P.No.18234 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.18234 of 2021 and
WMP.Nos.19469 & 19470 of 2021

M/s Vamsee Shipping Carrier Private Limited,
Rep. By its Managing Director,
No.27, F Block, II Floor,
Anna Nagar,
Chennai 600 102

...Petitioner

Vs.

- 1.Chennai Port Trust,
Rep. By its Chairman,
Rajaji Salai,
Chennai 600 001
- 2.Deputy Conservator,
Port Trust,
Rajaji Salai,
Chennai 600 001
- 3.The Superintending Engineer(Project),
Port Trust,
Rajaji Salai,
Chennai 600 001

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent and to quash the same arbitrary and in violation of the principles of natural justice and accordingly direct the respondents to permit the petitioner to operate the vessel MV Vamsee-II



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without insisting upon the payment of Rs.10,35,205/- towards the alleged damage.

For Petitioner : Ms.Dakshayani Reddy,
Senior Counsel
for M/s.Suneetha

For Respondents : Mr.Haja Mohideen Gisthi

ORDER

This writ petition has been filed challenging the proceedings of the second respondent dated 15.07.2021 thereby directed the petitioner to keep sufficient funds in its EDI account to enable the second respondent to debit the pending payment of Rs.10,32,205/- so as to avoid undue delay in issuing port clearance for the ensuing voyage of the vessel M.V.VAMSEE II.

2. The petitioner is engaged in the business of operating barges for the purpose of carrying fuel to the ships which are docked off Chennai Port. During the course of business, the first respondent allowed the usage of Oil Berth Jetty for the purpose of operating the barge. While being so, the petitioner's vessel had left the oil berth jetty loading point on its way to the ship on 31.10.2019. Therefore, the petitioner was issued



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communication dated 31.10.2019 itself stating that the petitioner is held responsible under Section 116 of Major Port Trusts' Act, 1963 r/w Section 64 of Major Port Trusts' Act, 1963 and Distraint of Arrest and Sale of Vessels Regulations, 1988 for the damages caused to the Trust's properties, if any. It was received by the petitioner under protest. Thereafter on 07.07.2021, the first respondent issued communication stating that the petitioner's vessel caused damage to the new bunker barge jetty platform on 31.10.2019 and the nodal officer certified the assessed damage to the tune of Rs.10,32,205/- and requested to recover the amount from the petitioner to pay to the contractor M/s.Geo Tech – Threekay (JV). In continuation of the said letter, on 15.07.2021, the second respondent issued proceedings thereby directed the petitioner to keep sufficient amount to debit the pending payment of Rs.10,32,205/-

3. The learned Senior Counsel appearing for the petitioner submitted that the communication dated 31.10.2019 was received under protest by the petitioner. The petitioner at no point of time accepted the damages assessed by the respondents. The petitioner never admitted its



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liability either with respect to quantum or to the incident. Even assuming that the incident took place due to negligence on the part of the petitioner, behind the petitioner, the damages was assessed by the respondents and as such, the petitioner was not given opportunity while assessing damages. In fact, the petitioner's vessel was duly insured with the insurer for the vessel as well as third party. Therefore, in order to claim from the petitioner's insurer, the damages would be assessed in a proper manner. There was no independent assessment of damages in the presence of the representative of the petitioner or insurance company.

4. Heard, the learned counsel appearing on either side.

5. On perusal of the counter filed by the respondents and the submissions made by the learned counsel appearing for the respondents revealed that admittedly the petitioner's vessel caused damage to the new bunker barge jetty platform on 31.10.2019. As per Section 116 of the Major Port Trusts Act, 1963, for any damages caused to the property of the Board, the cost has to be recovered from the vessel which caused



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damage. Further, Section 64 of the said Act allows for recovery of rates and charges by distraint of vessel which is misinterpreted as threatening by the petitioner. The Contractor M/s.Geo-tech Threekay J.V., who was constructing new bunker barge jetty, by its letter dated 31.10.2019, duly informed the third respondent that the vessel VAMSEE-II belongs to the petitioner had lost control while sailing out of the berth and hit dangerously against their unit piling platform, due to which a major portion of which was underwater and not visible. This impact caused severe damage to the piling platform, driven liners, other plant materials and equipment. The second respondent had assessed the actual damages caused to the contractor which could only be done by retrieving the liner from the sea. Due to Covid-19 pandemic national lockdown, the retrieval got delayed by the contractor and only on the retrieval, the cost of damages could have arrived. The contractor also informed that the accident has disrupted their entire programme for the targeted completion of work as they must rectify the damages and set up the platform again for the commencement of their work.



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5.1 The assessment of the cost of damage caused was able to arrive only on completion of actual rectification of damage by completing permanent work in the month of May 2021. In fact, the contractor claimed the damage to the tune of Rs.17,00,500/-. Thereafter, the respondents inspected and assessed the damages as Rs.10,32,205/-. Thereafter, the demand was sent on 07.07.2021 to the petitioner and subsequent to the said letter, on 15.07.2021, direction was given to the petitioner to keep sufficient funds in EDI account in order to enable the respondents to debit the said charges. In fact, though the petitioner's vessel has caused damage to the new bunker barge jetty while sailing on 31.10.2019, the petitioner's vessel has been operating without interruption till date. Since the petitioner's vessel is the sole operator for bunker supply within Chennai, Ennore (KPL) and nearby ports, therefore, they were permitted to operate without enforcing the payment of pending dues of damage cost payable to the port.

6. In support of her contention, the learned Senior Counsel appearing for the petitioner relied upon the judgment of this Court in the



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case of ***Chennai Metropolitan Water Supply and Sewerage Board,***

Chennai Rep. By its Managing Director Vs. M/s.Chennai Water

Desalination Ltd., Thiru Vi Ka Industrial Estate Rep. By its Manager

rendered in Original Side Appeal (CAD) No.169 of 2022, wherein the

Hon'ble Division Bench of this Court referred the case decided by the

Hon'ble Supreme Court of India in the case of ***State of Karnataka Vs.***

Shree Rameshwara Ricemills, in which the Hon'ble Supreme Court of

India held that a claim for damages should always be decided by an

independent person or body and not by the other party to the contract.

The Division Bench also referred another judgment of the Hon'ble

Supreme Court of India in the case of ***J.G.Engineering Private Limited***

Vs. Union of India and another reported in ***2011 (5) SCC 758***, in which

it is held that in fact question whether the other party committed a breach

is to be decided by the party alleging the breach. Contract cannot provide

one party will be the arbiter to decide whether he committed a breach or

the other party committed the breach. That question can be decided only

by an adjudicatory forum that is, a court or an arbitral tribunal.



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7. In the case on hand, admittedly except the petitioner's vessel, no one was allowed to operate for bunker supply in the respondent port. The petitioner's vessel while shifting from oil barge jetty to coast guard jetty, the ships line made fast to the tug rope parted and it resulted in the vessel getting out of the control and hitting the pile of the new bunker berth being constructed. The portion of the pile which the petitioner's vessel made contact was above the water but other end of the pile which goes upto 20 meter below the water level into the seabed was also damaged in the contact causing severe damage to the piling platform, driving liner and other plant materials and equipments. Therefore, the above judgment cited by the learned Senior Counsel appearing for the petitioner is held in different set of facts, that too under the contract between two parties. As such, the same is not applicable to the case on hand.

8. In view of the above, this Court finds no infirmity or illegality in the impugned proceedings. As such, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed.



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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

11.06.2024

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001
- 2.Deputy Conservator,
Port Trust,
Rajaji Salai,
Chennai 600 001
- 3.The Superintending Engineer(Project),
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