

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.26273 of 2024
and W.M.P.No.28700 of 2024

K.Kumar

... Petitioner

Vs.

1.The Secretary to Government of India,
Ministry of Ports, Shipping & Water Ways,
No.1, Parliament Street,
New Delhi – 110 001.

2.The Chairperson,
Chennai Port Authority,
No.1, Rajaji Salai, Chennai – 600 001.

3.Shri Prakash Mani Tripathi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to appoint any competent person, preferably a retired District Judge or any other person holding a higher rank from any other department than the rank of Chairman Port Trust, as the disciplinary authority so as to complete the disciplinary proceedings vide Memorandum No.V4/264/2017/Vig dated 25.7.2019 of the petitioner within the time limit of 6 month duration mentioned in the order dated 11.07.2024 passed in

W.A.No.2023 of 2024 besides directing him to instruct the Presenting officer to examine the (i) then Chairman Mr. P. Raveendran (ii) the then Deputy Chairman Mr.Cyril C. George (iii) then Financial Advisor and Chief Accounts officer Mr.Vemanna (iv) the then Chief Mechanical Engineer Mr.P.Shanmuganathan of Chennai Port Trust as Management witnesses in the first instance in the disciplinary proceedings vide Memorandum No.V4/264/2017/Vig dated 25.7.2019 of the petitioner before examining other witnesses.

For Petitioner : Mr.K.Ravi Ananthapadmanaban
Senior Counsel for
Mr.B.Thirumalai

For Respondents : Mr.A.Kumaraguru
Senior Panel Counsel for R1

Mr.P.Ulaganathan
Standing Counsel for R2 and R3

ORDER

This writ petition has been filed for issue of writ of mandamus directing the respondents to appoint a high ranked disciplinary authority instead of the Chairman who is the disciplinary authority for the Chennai Port Trust and for a further direction to call for certain witnesses as management witnesses in the disciplinary proceedings.

2. When the matter came up for hearing on 06.09.2024, this Court passed the following order:

Mr. AR. L. Sundaresan, learned Additional Solicitor General takes notice on behalf of the 1st respondent.

2. The main issue that has been raised by the learned Senior Counsel appearing on behalf of the petitioner is that the disciplinary authority in this case is the Chairman Mr. P. Raveendran, who had deposed as PW1 in the criminal case pending against the petitioner. Therefore, the petitioner wants the disciplinary authority to be changed in order to maintain neutrality.

3. The learned Additional Solicitor General appearing on behalf of respondents 1 and 2 seeks for some time to take written instructions in this case.

4. Post this writ petition at the end of the motion list on 11.09.2024.

3. When the matter was taken up for hearing on 11.09.2024, this Court

passed the following order:

Heard Mr.K.Ravi Ananthapadmanaban, learned Senior Counsel for the petitioner and Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India appearing for the respondents 2 and 3.

2.After hearing the learned counsel on either side, this Court felt that the grounds that have been raised by the petitioner is a bit premature and the inquiry is at a very nascent stage.

3.The learned Senior Counsel for the petitioner submitted that he will take necessary instructions from his instructing counsel and take a decision.

4.Post this case under the caption 'For Withdrawal' on 12.09.2024.

4.When the matter was taken up for hearing today, the learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner had a grievance right through with regard to the disciplinary authority and therefore, when this was raised before the Division Bench in W.A.No.2023 of 2024, this

Court had directed Chennai Port Trust to deal with the grievance expressed by the petitioner regarding the change of the disciplinary authority. The learned counsel submitted that a decision is yet to be taken by the Chennai Port Trust in this regard.

5. Heard Mr.K.Ravi Ananthapadmanaban, learned Senior Counsel appearing on behalf of the petitioner, Mr.A.Kumaraguru, learned Senior Panel Counsel appearing on behalf of the 1st respondent and Mr.P.Ulaganathan, learned Standing Counsel appearing on behalf of the 2nd and 3rd respondents.

6. The main ground that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that the earlier Chairman in this case was the person who had deposed as PW1 in the criminal case pending against the petitioner. Therefore, since there was likelihood of bias, the petitioner had sought for changing the disciplinary authority. Later, it was brought to the notice of this Court that the then Chairman no longer continues and the Chairman has been changed and the present Chairman is one Shri.Sunil Paliwal. When this was pointed out to the learned Senior Counsel, the learned Senior Counsel submitted that the present Chairman is an authority who is equal to the earlier Chairman and that apart, two

contempt petitions were filed against the present Chairman and therefore, there is likelihood of bias.

7.The other ground that was raised by the learned Senior Counsel for the petitioner was that certain witnesses will have to be necessarily examined in this case in order to establish the defence of the petitioner. Therefore, those witnesses must also be called as management witnesses.

8.When the matter was taken up for hearing on 11.09.2024, this Court had expressed its mind that the ground raised by the petitioner is pre-matured and the enquiry is at a very nascent stage. Just because the disciplinary authority happens to be in the same rank of the erstwhile Chairman who was examined as PW1, that does not mean that the disciplinary authority will act against the interest of the petitioner. The issue of bias is not a matter of assumption and it has to be established based on facts. Therefore, for the present, this Court does not find any ground to change the disciplinary authority without their being any materials to justify that he will act in a prejudicial manner against the petitioner. That is why this Court had expressed its mind on 11.09.2024 that it is pre-matured for the

petitioner to raise this ground at this stage.

9. In the same manner, the request of the petitioner to call certain persons as witnesses on the management side is also pre-mature. We do not know as to who all are going to be examined on the side of the management. Therefore, the petitioner has to necessarily wait and see who all are going to be examined on the side of the management. If ultimately, the petitioner feels that he will be able to establish his defence only by calling other witnesses apart from the management witnesses, the petitioner has to take a call regarding the same at the relevant point of time. Hence, this is not a stage to decide to call certain persons as management witnesses. Ultimately, it is for the management to decide as to whom they want to examine as witnesses.

10. In view of the above, both the issues that were raised on the side of the petitioner is kept open for the present and this Court is not inclined to act upon the above two issues raised by the petitioner. The petitioner has to necessarily wait and see as to how disciplinary proceedings are progressing and thereafter, take a call at the relevant point of time.

N. ANAND VENKATESH, J.

SSR

11.This writ petition is disposed of in the above terms. No Costs.

Consequently, connected miscellaneous petition is closed.

12.09.2024

Internet : Yes

Index : Yes

Speaking Order / Non Speaking Order

SSR

Note:Issue Order Copy on 17.09.2024.

To

1.The Secretary to Government of India,
Ministry of Ports, Shipping & Water Ways,
No.1, Parliament Street,
New Delhi – 110 001.

2.The Chairperson,
Chennai Port Authority,
No.1, Rajaji Salai, Chennai – 600 001.

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