IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2025 PRONOUNCED ON : 16.04.2025

CORAM

THE HONOURABLE Mr. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7346 of 2024
AND
W.M.P.Nos.8235 & 8236 of 2024

M/s.Choudary Technical Ship Services Pvt. Ltd.
Rep. by its Director C.Sanjay
72, Moore Street, 2nd Floor
Room No.3, Chennai 600 001 ... Petitioner

Vs

1.The Chairman
Chennai Port Trust
Chennai 600 001

2.Traffic Manager
Chennai Port Trust
Chennai 600 001 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the impugned proceedings in letter No.C5/962/2011/T dated 07.11.2023 and the consequential letter No.C5/962/2011/T dated 13.12.2023 on the file of the 2nd respondent to quash the said impugned orders being in derogation of the statutory provisions and decisions of the Hon'ble Supreme Court of India and consequentially direct the respondents to resume the power connection and all other facilities to run business.

For Petitioner	:	Mr.Om Prakash Senior Counsel Assisted by Mr.M.Suresh
For Respondents	:	Mr.P.Ulaganathan

O R D E R

A. The Petition:

This writ petition challenges the impugned orders dated 07.11.2023 and 13.12.2023 and seeks a consequential direction for the second respondent to restore the power connection and all other facilities for the petitioner company to operate its business.

1.1. By the first impugned order dated 07.11.2023, the Traffic Manager of Chennai Port Authority, the second respondent herein, required the petitioner to pay the total outstanding dues, including the licence fee and penalty claim, amounting to Rs. 37,53,718/-. It was mentioned that failing compliance would result in further actions, such as the forfeiture of the security deposit, stoppage of services, and eviction under the Public Premises Act, 1971. By the second impugned order dated 13.12.2023, it was decided to disconnect power and water, and to halt the issuance of the harbour entry permit to the petitioner company.

B. The Factual Details :

2. The petitioner company is engaged in ship repair and fabrication, with facilities established within the port area. It has been conducting its activities since 1992 at Chennai Port. For this purpose, the port authority allocates vacant land, allowing the petitioner company and similarly situated concerns/individuals to construct and operate within the available space.

2.1. The petitioner company was allotted sites, and these allocations were periodically renewed and extended until 2019. In 2014, land policy guidelines were established for the allotment of lands within custom-bound areas. According to these guidelines, e-tender-cum-auction procedures must be followed. Consequently, notices were issued to the existing allottees on 05.08.2019, requesting them to vacate the area by 30.09.2019 and remove their temporary structures.

2.2. The petitioner company challenged this through W.P.No.27657 of 2019. The writ petition was disposed of by a common Order dated 07.04.2021. This Order quashed the eviction notice dated 05.08.2019 and directed the petitioner company to submit a fresh representation, while the authorities were instructed to pass a speaking order after granting a personal hearing. Additionally, the order stipulated that the petitioner company must not have any outstanding monthly charges, including penalty charges, as of the date of their fresh representation. Accordingly, the petitioner company cleared the outstanding dues for the monthly charges, and after providing an opportunity for a personal hearing, a speaking order was issued on 18.12.2021. The petitioner's request to reduce the license fee and the GST rate was rejected by this order.

2.3. It is the case of the respondent authorities that even after passing the order pending allotment of the site by e-tender, the petitioner company was allowed to occupy the premises. The petitioner company also applied for allotment on a nomination basis under the modified allotment procedures. According to the respondent authority, the petitioner company had dues amounting to Rs.2,47,880/-. Taking advantage of the rule regarding the payment of incremental penal interest up to 180 days, the petitioner company continued to deposit only the license fee belatedly, without the corresponding penal interest. The petitioner company also made representations for a waiver of rent and was granted a discount on rent, citing the slump in business during the COVID-19 pandemic. However, a communication dated 19.01.2023 rejected this request from the respondent authority. Once again, the estate rentals were revised according to the scale of rates effective from 20.01.2023. In the revision, the rules regarding delayed payment of the license fee were also changed. According to the revised rules, any delay in payment of the license fee would attract interest at the rate of 15% per annum for the first 15 days, and if not paid within that extended time, the occupation of the premises will be treated as unauthorised, requiring payment of three times the license fee by the end of the month. If the licensee defaults on payment, then the security deposit will be forfeited, and the Port shall immediately cease all services, including cargo services, as well as disconnecting power and water and take necessary action.

2.4. It is the case on behalf of the respondent authority that they possess powers under Section 28 of the Major Port Authorities Act, 2021. It is noted that there was a default; even as of 07.11.2023, the allottee was advised to remit a total outstanding amount of Rs.37,53,318/- on or before 20.11.2023. According to the guidelines in the scale of rates, the respondent authority may forfeit the security deposit, halt all services including disconnection of power and water, cease the issuance of HEP to the staff and officials of the firm, and take eviction action under the Public Premises Act, 1971. Consequently, an intimation was sent through the second impugned order dated 13.12.2023. Even after this, the petitioner company submitted a detailed representation on 05.01.2024, requesting the recall of the demand and asking for the payments to be considered and the statement of accounts reconciled. It is at this juncture that the petitioner company has filed the present writ petition, aggrieved by the impugned orders.

2.5. The petitioner company contends that the fee currently sought for collection is exorbitant and does not account for the payments already made. The respondent authority's actions- specifically disconnecting the water supply, cutting off power, and preventing entry- constitute an arbitrary exercise of power. Consequently, all materials of the petitioner company are trapped inside, hindering both ingress and egress. Therefore, the respondent authority's actions violate the rights of the petitioner company under Article 19(1)(g) of the Constitution of India.

2.6. The petitioner company, being a pioneer in the field and providing services to various ships, has a legitimate expectation to continue its activities. However, due to the sudden unilateral increase in the license fee, coupled with arbitrary penalties, the petitioner company cannot be crushed or crippled.

2.7. The writ petition is opposed by filing a detailed counter affidavit. It is stated that originally, the guidelines were issued in 2014, and the petitioner's allotment was regulated accordingly. Subsequently, following the enactment of the Major Port Authorities Act, 2021, the allotment is governed by various provisions of the Act, under which the Port Authority can establish guidelines regarding the planning and development, including the allotment of rates. According to Section 27 of the Major Port Authorities Act, 2021, the scale of rates for assets and services must be fixed, and under Section 28 of the Act, concerning the fixed rates, the Port has a right of lien on any goods. The scale of rates established by the authority grants them the power to forfeit the security deposit and carry out other actions mentioned above. All actions taken by the respondent authority are strictly in accordance with the conditions of the scale of rates. Therefore, the writ petition lacks merit and should be dismissed.

C. The Arguments:

3. *Mr.Om Prakash*, learned Senior Counsel appearing on behalf of the petitioner company, submits that when the respondent authority seeks to evict the petitioner company, even in the case of default, by invoking the Public Premises (Eviction of Unauthorised Occupants) Act, 1971- especially as mentioned in the impugned order- the actions taken to completely cut off ingress and egress to the petitioner's building, to prevent access to its files and data, and the stoppage of power and water, all constitute eviction without following due process of law.

3.1. Regarding the balance due, when the petitioner company was duly allotted on a nomination basis, an unrealistic amount was fixed as the license fee. This is especially true considering the slump in business during the COVID-19 pandemic. The respondent authority should have at least considered waiving the penalty, particularly since a substantial sum of Rs. 37,53,718/- is demanded solely by calculating three times the license fee as penal charges. This is illegal. The petitioner's representation concerning the discrepancy in the amount deserves consideration. Meanwhile, until the eviction process is conducted in accordance with the law, the petitioner company should be allowed to continue its business.

3.2 *Per contra*, *Mr Ulaganathan*, learned counsel appearing on behalf of the respondents, submits that the entire system of allotment of spaces changed due to the new act, *namely*, the Major Port Authorities Act, 2021, coming into force, and the Port authorities have acted strictly in accordance with it and formulated the scale of rates conditions. The demand is made strictly in accordance with those conditions. The other powers are also granted by these conditions. When the petitioner company filed the earlier writ petition, a speaking order was already passed addressing the petitioner's prayer regarding the discount on the licence fee as well as the penal charges. Regarding the present writ petition, it has been duly notified by the Chennai Port Authority, and the amount is calculated according to the notification.

D. The Discussion & Findings:

4. I have considered the competing submissions and examined the case records. The petitioner company's main contention is that the calculation made is erroneous. However, Section 27 of the Major Port Authorities Act, 2021, clearly empowers the authority to establish the scale of rates along with the specified conditions, which is extracted here for reference :

"27. Scale of rates for assets and services available at Major Port.

(1)The Board of each Major Port Authority or the committee or committees constituted in this behalf by the Board in accordance with section 14, may,

(a)frame scale of rates at which, and a statement of conditions under which, any services shall be performed or made available;

(b)frame scale of rates at which, and a statement of conditions under which, the access to and usage of the port assets may be allowed by the Board;

(c)frame consolidated scale of rates for any combination of services specified in clause (a) or for any combination of such service or services with any user or permission to use or access to any port assets as specified in clause (b);

(d)pass an order for refund of any amount overcharged by the Board in relation to the services provided to any person;

(e)pass an order for recovery of any rate or charge which is short-levied or erroneously refunded by the Board to any person under this Act; and

(f)frame different scales, fees, rates and conditions for different classes of goods and vessels under this section:

Provided that the fixation and implementation of such scales, fees, rates and conditions shall be in consonance with the norms as may be prescribed and shall.—

(i)not be with retrospective effect;

(ii)not be in derogation with the rules made by or directives of the Central Government in this behalf;

(iii)not be inconsistent with the provisions of the Competition Act, 2002 (12 of 2003); and

(iv)not be inconsistent with the provisions of any other law for the time being in force:

Provided that in case of Public Private Partnership projects after the commencement of this Act, concessionaire shall fix the tariff based on market conditions and on such other conditions as may be notified:

Provided further that the revenue share and other conditions would be as per the provisions of the specific concession agreement between the Board and the Public Private Partnership concessionaire appointed under the Public Private Partnership project.

(2)Notwithstanding anything contained in clause (b) of sub-section (1), the Board may, by auction or by inviting tenders, lease any port asset belonging to or in its possession or occupation at a rate higher than that provided under clause (b) of sub-section (1)."

4.1. In exercising the said powers, by notification No.SRO C-36/2022 published in the Tamil Nadu Government Gazette No.145 on 21.12.2022, the scale for the license fee/lease rent for the allotment of the lands and buildings has been notified. The petitioner company has not specifically indicated that any rate has been miscalculated. In fact, Condition No.11 outlined in the above notification states as follows:

"11. Interest on delayed payments and action thereon for Non-Payment:

(i) Allotment on monthly basis - Inside / Outside Custom Bound area:

(a) Delay in payment of Licence Fee and other dues shall attract interest at 15% p.a. for the first 15 dys beyond the due date. The minimum amount of interest will be Rs.100/- plus GST

(b) If payment is not received within 15 days after the due date, the occupation will be treated as unauthorised and 3 times of normal licence fee shall be payable for that month as Licence Fee, on or before the end of services like cargo services including disconnection of power and water etc., and take any other action.

(c) Further, Action will be taken as per the provisions of Section 28 of the Major Port Authorities Act, 2021 on the goods/materials lying in the licensed /leased premises and as per the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and any other applicable laws in force from time to lime for the recovery of dues and Eviction proceedings.

(d) Further, licence fee at 3 times of normal licence fee will be levied till vacation / eviction of the area."

4.2. Upon reviewing the document, it states that if the payment is not received within 15 days, along with a 15% interest, then three times the normal licence fee shall be payable as the licence fee. These conditions are framed as subordinate legislation, exercising power under Section 27 of the Major Port Authorities Act, 2021, and they are not under challenge. Therefore, since the calculation error is not specifically demonstrated, this Court is unable to concur with the argument presented by the learned senior counsel for the petitioner company.

4.3. However, the alternative submission is that the payments made by the petitioner company over a period of time have not been given due credit. Regarding the reconciliation of the accounts, I believe that the petitioner company should be allowed once again- that *is,* the petitioner's representative can sit with the appropriate accountant to identify any discrepancies so that the accounts can be reconciled. If there is any mistake on the part of the respondent authority, it can be corrected.

4.4. The next contention concerns the actions being taken. Even if we assume that the petitioner company is in default, the eviction must proceed according to the law, *specifically* by invoking the provisions of the Public Premises(Eviction of Unauthorised Occupants) Act, 1971. In fact, the scale of rates conditions set forth by the respondents expressly states this. Moreover, the impugned order indicates that the petitioner will be evicted according to legal procedures. Once the Estate Officer issues a show cause notice, the petitioner company will have the right to present its arguments, which will be considered and a decision can be made under the said Act regarding the eviction of the petitioner.

4.5. In the meantime, a landlord is typically not entitled to take actions such as disconnecting power and water. However, in this particular case, Section 27, as *previously mentioned,* expressly vests the Board with the authority to frame conditions, and Condition No.11, extracted *supra* is not under challenge. It specifically enables the forfeiture of the security deposit, the cessation of all services, including disconnection of power and water, and permits any other action. It mandates that until the area licensed is vacated, three times the normal license fee will be charged.

4.6. Forfeiture of the security deposit is specifically provided for, and as such, it can be executed. Disconnection of power and water is also explicitly allowed, and hence, it can be performed. However, locking the entire premises and preventing access to the petitioner's own files and office equipment is not authorised under the conditions.

4.7. In view thereof, the petitioner is entitled to succeed to a limited extent. Until the eviction of the petitioner company in a manner known to the law, the ingress and egress of the petitioner company or its employees to the premises cannot be cut off or stopped. The impugned order dated 13.12.2023, to the extent that it halts the issue of the Harbor Entry Permit, cannot be made categorising as taking 'any other action', since it effectively amounts to the eviction of the petitioner company. Furthermore, when condition No.11 states that until eviction, the license fee of three times the rate is leviable, then such an action than would also not withstand the test of proportionality.

E. The Result:

5. Thus, the writ petitioner is entitled to succeed to the above extent, and **the writ petition is disposed of** under the following terms :

i. The impugned order dated 07.11.2023 is upheld, as it advises the petitioner to pay a sum of Rs.37,53,718/-. However, if the petitioner makes a specific request and designates any of its employees, officers, or representatives, the second respondent or any other competent officials shall review the accounts, consider any discrepancies, and reconcile the accounts. If any mistakes are found regarding the adjustment of amounts paid, the same shall be acknowledged by way of a supplementary order.

ii. The impugned order dated 13.11.2023 is set aside to the extent that it denies the Harbour Entry Permit to the petitioner company, its staff, and officials, while it is upheld concerning the disconnection of power and water and the cessation of services rendered by the respondent authority. The petitioner company is entitled to occupy its premises until evicted in a manner recognised by law. For this purpose, ingress and egress cannot be restricted, and access to its own files, properties, etc., cannot be hindered by the respondents.

iii. The respondents will also be entitled to proceed further if the petitioner company does not clear the arrears under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in accordance with the law.

No costs. Connected W.M.Ps. are closed.

16.04.2025

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Index : Yes/No
Neutral Citation : Yes/No

To

1.The Chairman
Chennai Port Trust
Chennai 600 001

2.Traffic Manager
Chennai Port Trust
Chennai 600 001
Nandanam, Chennai 600 035

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.7346 of 2024

16.04.2025