IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2024

Pronounced on : 28.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.A.No.1212 of 2022
and C.M.P.No.7734 of 2022

1.Chennai Port Trust
Represented by its Chairman,
Port Trust, Rajaji Salai,
Chennai – 600 001.

2.The Traffic Manager,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai – 600 001. ... Appellants

Vs.

1.M/s.Hari & Co.
Represented by its Partner A.Hariharan,
Represented by its Power of Attorney Holder,
R.Arul Murugan,
General Manager,
New No.48, III Floor,
Rajaji Salai, Chennai – 600 001.

2.M/s.STCL Ltd.,
Represented by its Managing Director,
No.176/314, 4th Floor Shahs Tower,
Thambu Chetty Street,
Chennai – 600 001. ... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 10.11.2017 in W.P.No.3265 of 2012 on the file of this Court.

For Appellants	:	Mr.ARL.Sundaresan Additional Solicitor General assisted by Mr.Sithara Sarangan
For R1	:	Mr.Mani Sundargopal
R2	:	Vacated/unclaimed

JUDGMENT

S.S. SUNDAR, J.

This Writ Appeal is directed against the order of the learned Single Judge, dated 10.11.2017, in W.P.No.3265 of 2012, allowing the writ petition filed by the 1st respondent herein to quash the impugned order dated 24.01.2012 demanding a sum of Rs.77,81,479/- as penal demurrage charges.

2.The 1st respondent is a partnership firm engaged in the business of stevedoring and related business. The 2nd respondent, who is the 3rd respondent in the writ petition, being the Government of India Undertaking, was engaged in trading of agricultural and non-agricultural commodities in domestic and international markets. The 2nd respondent received an order from oversees buyer in Singapore for export of 8000 Metric Tons of Maize. The 2nd respondent, appointed the 1st respondent as Clearing and Forwarding Agent to clear the cargo from the rakes as well as to undertake stevedoring. The 1st respondent has undertaken to ensure that the cargo is cleared from the rakes and loaded in the ship in proper condition. The 1st respondent also undertook to coordinate with Port authorities, Customs, Vessel Agents, Inspection Agents, to ensure timely compliance of statutory obligations, so that the entire operations are carried out smoothly.

3.Pursuant to the appointment of 1st respondent as Clearing and Forwarding Agent, only 5660 Metric Tons of Maize was sent by the 2nd respondent through the Southern Railways and the same was stored in the transit shed of Chennai Port Trust in small quantities from 16.10.2007 to

03.11.2007 for the purpose of uploading the cargo into the ship. It is also admitted that any cargo can be stored in the transit shed of the Port Trust for the purpose of export only for a period of 30 days without any storage or demurrage charges. After 30 days, the cargo stored in transit shed will attract storage/demurrage charges. It is admitted that there is a delay beyond 30 days since the 2nd respondent was unable to get a Vessel for shipment of cargo to the destination. The appellants/Chennai Port Trust have reminded the respondents to remove the cargo immediately to avoid penal demurrage charges at the rate of 79.20 per Ton per day. The 2nd respondent personally requested the Port to waive the demurrage charges and penal demurrage charges taking into consideration the 2nd respondent being a Government of India Undertaking. In December, 2007, the cargo was removed by the 1st respondent. The appellants, while considering the request for waiver of penal demurrage charges, directed the 2nd respondent to pay normal demurrage charges. Accordingly, the Port Trust imposed the demurrage charges under normal circumstances and collected a sum of Rs.5,00,000/- towards normal demurrage charges for storage of maize beyond 30 days. Ultimately, the Board of Chennai Port Trust had waived the penal demurrage charges amounting to Rs.77,81,479/-.

4.However, 3 ½ years later, by order impugned in the writ petition, vide proceedings dated 24.01.2012, the Traffic Manager informed the 1st respondent that the Ministry of Shipping had opined that such waiver by the Board cannot be justified and directed to initiate action for the recovery of waived penal demurrage charges. Therefore, by this order, a demand is raised for a sum of Rs.77,81,479/- payable within 15 days to the Port.

5.The impugned order was challenged on many grounds. Learned Single Judge held that a decision to waive penal demurrage charges cannot be reviewed after 3 ½ years without any strong or compelling reasons and thereby, quashed the impugned order. As against the order in the writ petition, the above Writ Appeal is preferred by the appellants/Chennai Port Trust, who are the respondents 1 and 2 in the writ petition.

6.Learned Additional Solicitor General appearing for the appellants submitted that the waiver is a concession that was wrongly given earlier. Since the Government of India has got wide powers under the Major Port Trusts Act, 1963, to issue directions to the Port Trust in all matters, the impugned order came to be passed as per the direction of Government.

7.It is a peculiar case where the liability is now saddled on the 1st respondent, who is a Clearing and Forwarding Agent who had undertaken specific jobs for the 2nd respondent as an agent. The 2nd respondent has now become defunct, and therefore, the Port wants the amount to be paid by the 1st respondent, the 2nd respondent's Agent. It is not in issue that the 2nd respondent is a fully owned Government of India Undertaking.

8.The Major Port Trusts Act, 1963, is now repealed by the Major Port Authorities Act, 2021. However, the whole transaction in this case was under the Major Port Trusts Act, 1963. Therefore, notwithstanding the repeal of Major Port Trusts Act, 1963, all the transactions which had become final are saved by virtue of Section 6 of General Clauses Act.

9.The Major Port Trusts Act, 1963, was introduced to govern the major Ports. Under the Act, the Board consisting of Board of Trustees shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, and the Board is empowered to acquire, hold and dispose of property by the name by which it is constituted. The Chairman of the Board has to be appointed by the Central Government and it is the Government that appoints Deputy Chairman and number of other Trustees not exceeding 17, representing labour employed in the Port, State Government, some of the Government Departments specified and others who are, in the opinion of Central Government, to be represented on the Board. Section 21 of the Act speaks about delegation of powers, which reads as follows :

> ***"21.Delegation of powers.****—A Board may, with the approval of the Central Government, specify—*
>
> *(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and*
>
> *(b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:*

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman."

The Chairman shall exercise supervision and control over the acts of all employees of the Board in the matters of executive administration and in the matters concerning the accounts and records of the Board. The Board has wide powers and discretion in the matter of administration through the authority who has power to levy port-dues from Vessels for exporting and importing cargo.

10.Chapter IX of the Major Port Trusts Act, 1963, deals with supervision and control of Central Government. Section 106 of the Act deals with administration report. The Port Board is expected to submit its statements of income and expenditure in the prescribed form periodically. The power of Central Government to order survey or examination of works of Board, is provided under Section 108 of the Act. The Government has got absolute power to supersede Board as provided under Section 110 of the Act. Under Section 101, the authority and Board, in the discharge of its functions under the Major Port Trusts Act, 1963, is bound by the directions on questions of policy as the Central Government may give in writing from time to time.

11.However, this Court, from the provisions of Major Port Trusts Act, 1963, is unable to lay its hands on specific provisions which enables the Government to alter the terms of the contract which the Board has entered into. The matter of assessment and demand of demurrage charges purely comes under the domain of contract. It is true that the Central Government can make a policy, and decision on policy matters are binding on the Board and the authority. In the present case, the 2nd respondent, being the Government of India Undertaking, has requested for waiver of penal demurrage charges for specific reasons. There may be several reasons to reject such request. Similarly, there may be few reasons to waive penal demurrage charges. The Port has collected normal demurrage charges in terms of the contract. When the Board has exercised its discretion by waiving penal demurrage charges, it is a discretionary power of Board taking into account several circumstances. That power cannot be surrendered to the Government unless the Act specifically enables the Government to overrule the decision.

12.Learned Additional Solicitor General relied upon several communications between the Government and the Port authorities. The learned Additional Solicitor General pointed out that there are specific guidelines regarding assessment of demurrage charges. It is pointed out that waiver of demurrage charges can be considered only when the Port Trust is not able to deliver the goods on time.

13.In the present case, the demand for penal demurrage charges is based on the communication received from the Government. From the internal communications between the Government and the Chairman of Chennai Port Trust, this Court is convinced that the Board has not acted on its own, but on the directions of the Government, who by their communication dated 20.10.2011, have stated as follows :

> *"It is stated that the waiver of penal charges cannot be justified on the ground that Board of Trustee has powers to waive of such charges and Resolution to this effect has been passed in*

the Board meeting. Merits & justification for the waiver has to be gone into at length keeping of course in view the extant provisions/guidelines lest it becomes a bad precedent for future cases."

14.It is un-understandable as to how the Government of India would instruct to withdraw the order of waiver of penal demurrage charges against a Government of India Undertaking. An argument was advanced that the 1st respondent, as Clearing and Forwarding Agent, is responsible for the amount and not the 2nd respondent as far the Port Trust is concerned. From the communications between the appellants and the 2nd respondent, it is evident that the whole delay was on account of the inability of the 2nd respondent to fix a Vessel for transporting the cargo. Therefore, in the absence of any reason, the attempt of the appellants to make the 1st respondent liable, cannot be appreciated. The 1st respondent has done its job and it is appreciated by the 2nd respondent. Even it is not the case of the 2nd respondent at any point of time that the delay was on account of any deficiency in the service by the 1st respondent. The Government may have enormous powers under the Major Port Trusts Act, 1963, to give or issue directions to the Port in the matter of administration and in the matter of policy decisions. However, in relation to a contract, some amount of discretion should vest in the Board. The Central Government may frame policies as an authority who is entitled to supervise and control the administration of Port. However, this Court is unable to find source from Major Port Trusts Act, 1963, for the Government to overrule a decision of Port after 3 ½ years to the prejudice of a party who has availed the services of Port. In the absence of a statutory or contractual provision, this Court is unable to sustain the order demanding a huge sum as against the 1st respondent for the delay caused due to the reasons solely attributable to the 2nd respondent. A waiver which is based on reasons cannot be withdrawn merely because such waiver is a bad precedent according to the Government three years later.

15.For all the reasons, this Court is unable to interfere with the order of the learned Single Judge. Therefore, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) **(A.D.M.C., J.)**

28.01.2025

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