

SUPREME COURT OF INDIA

Chairman Cum Managing Director, Ennore Port Trust (Presently known as Kamarajar Port Limited)

Vs.

V.Manoharan

C.A.No.2114-2115 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.)

15.02.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C) No.14441-14442 of 2017

1. Leave granted.

2. These appeals arise from the final judgment and order dated 05.01.2017 passed by the High Court of Judicature at Madras in W.A. No.1020 of 2016, W.A. No. 1351/2016 and W.A. No.1378 of 2016 whereby the Division Bench of the High Court while reversing/set aside the judgment of the Single Judge partly allowed the writ appeals and gave certain directions to the Port Trusts (appellants herein) for their compliance in favour of the writ petitioners (respondents herein).

3) In order to appreciate the issues involved in these appeals, it is necessary to set out the relevant facts hereinbelow.

4) There are two Port Trusts in Chennai. One is known as “Chennai Port Trust” and the other is known as “Ennore Port Trust”, now called “Kamarajar Port Trust” .

5) Chennai Port is one of the oldest ports in the country. Amongst several operational activities of loading, unloading, spillages and clearing of various kinds of the goods, which are undertaken regularly in the Port, one such activity that is operational on regular basis is handling of “Coal and Iron Ore” .

6) In order to carry out the loading, unloading, spillages and clearing the coal and iron ore from the Iron Ore Handling Plant set up in the Port Trust, the stakeholders need workers (class IV). Sizeable numbers of worker are, therefore, involved in doing this work on regular basis.

7) In 1987, these workers made a demand to regularize their services in the set up of the Port Trust. Since their demands were not acceded to, they (160 or so) filed a writ petition

(W.P. No.9011 of 1987) in the High Court at Madras seeking therein a relief of regularization of their services in the set up of Chennai Port Trust.

8) The Chennai Port Trust contested the writ petition and contended that it is not possible to regularize the services of these workers (writ petitioners) for various reasons in their set up. It was contended that these workers are not the employees of the Port Trust and nor there exists any relationship of employer and employee between them. It was also contended that it is the contractor, who engages these workers, and hence they are the employees of the Contractor but not Port Trust.

9) During pendency of the writ petition, these workers (writ petitioners) formed one association called - "Madras Port Spillage Handling Workers Association" (hereinafter referred to as "the Association") and got the Association registered as Society under the Society Registration Act.

10) The matter was then referred to arbitration which resulted in passing of an award dated

22.10.1994. The award was published in the Government of India Gazette on 24.12.1994. The award, inter alia, directed the parties to enter into a Memorandum of Understanding (MOU) for settlement of the disputes. Accordingly, the Association and the Chennai Port Trust entered into a MOU on 02.05.1995. (Annexure-P-1)

11) Clause 1 of MOU provides that subject to Association following the terms and conditions of MOU, the Port Trust has agreed to give work of loading/unloading/spillage/cleaning to the members of the Association. Clause 2 of the MOU provides that membership of Association will not exceed the number of 160 and the membership of Association will be given only to those persons, who are declared physically fit with the approval of the Chairman. Clause 2 further provides that preference would be given to dependants of those who had been employed and died or became physically unfit, their dependents would be made member of the Association subject to dependant concerned declared fit by the Medical Board and whose membership is approved by the Chairman. Clause 3 deals with allocation of work to male/female members. Clause 4 further provides that member will be discontinued from the work on attaining the age of 58 and in the absence of any proof of age, the certification issued by the Medical Board of his/her age would be final. Clause 5 provides that, if any member is found unfit, he would be discontinued from work once certified by the Medical Board. Clause 6 provides that all workers currently working would be deployed for clearing spillage of Iron Ore. Clauses 7, 8, 11, 12, 13, 20, 21, 22, 28, 29 and 30 provide the manner and mode of payment including paying other monetary benefits to the members of the Association whereas Clauses 9, 10, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26 and 27 provide for extending various kinds of facilities and welfare benefits to the members of the Association and lastly, Clause 31 provides for resolution of disputes arising between the parties in relation to MOU through the means of arbitration.

12) This MOU was amended on 31.12.1998 (Annexure P-2). One of the amendments was that the Association was recognized as "Contractor" whereas the Chennai Port Trust was declared as "Principal Employer" under the Contract Labour (Regulation and Abolition) Act, 1970.

13) In the light of the aforementioned background facts arising in the case, one writ petition (Public Interest Litigation) came to be filed in the Madras High Court (W.P. No.11747/2002) by some public-spirited persons against the State, Chennai port Trust and Pollution Board complaining therein that due to heavy and reckless handling of coal and iron ore and heavy movement of dusty cargo every day in Chennai Port Trust (handling plant) premises, the activity is emitting, huge quantity of dust and several chemical particles in the air are polluting the entire environment which, according to the writ petitioners, was harmful to the life of human being and especially to those, who are residing in the nearby area of the Port. It was complained that such activity being hazardous and equally injurious to the health of human beings, should be stopped forthwith or, in any case, be regulated in the larger public interest including considering shifting of activity to some other Port, if considered feasible and practicable so that hazards of the environmental pollution which is prevailing in the locality is considerably reduced. It is essentially to espouse this cause, the PIL (writ petition) was filed for claiming appropriate remedial relief(s) for the benefit of the larger public good. The State and the Chennai Port Trust contested the writ petition on several grounds.

14) By order dated 11.05.2011, the High Court allowed the writ petition and gave five directions to the Chennai Port Trust and Ennore Port Trust for ensuring their compliance. These directions are reproduced hereinbelow:

“(a) All the writ petitions are allowed. However, the prayer in W.P. No.41163 of 2002, with regard to the compensation aspect stands dismissed.

(b) The Government of India, represented by its Secretary, Ministry of Shipping, New Delhi is directed to see distribution of cargoes between Ennore Port and Chennai Port, allotting clean cargoes viz. container, car etc. to Chennai Port and the dusty cargoes like coal, iron ore and all other dusty cargoes to Ennore Port.

(c) Since the coal terminal, iron ore terminal and the single line rail connectivity at Ennore Port are assured to be operational to their full capacity by September, 2011, the Government of India, represented by its Secretary, Ministry of Shipping, New Delhi and the Government of Tamil Nadu, represented by its Chief Secretary are directed to see that all the dusty cargoes like coal, iron ore and all other dusty cargoes should move only to Ennore Port on and from 1.10.2011 and not to Chennai Port. The Chennai Port is also directed to render all its cooperation to the Government of India and the Government of Tamil Nadu in this direction.

(d) With regard to the employees and pensioners of the Chennai Port, the Government of India, the Government of Tamil Nadu, Chennai Port Trust and the Ennore Port Trust are directed to see that not even a single employee is retrenched or otherwise made to lose his livelihood because of the distribution of cargoes between Ennore Port and Chennai Port, as ordered above. For this purpose, since the dusty cargoes are going to be berthed and processed at Ennore Port on and from 1.10.2011, the Ennore Port may treat the employees of the Chennai Port connected to such activities as its employees, including the pensioners. In case of any difficulty, the Government of India, represented by its Secretary, Ministry of Shipping, New Delhi and the Chief Secretary to the Government of Tamil Nadu, shall divide the employees and pensioners, between the Chennai Port and the Ennore Port, proportionate to the income of both the Ports.

(e) With regard to the traders, like the impleaded respondents 6 to 8 also, both the Chennai Port and the Ennore Port are directed to protect their rights and interest, in accordance with law.”

15) Since the offending activity was largely shifted from Chennai Port Trust to Ennore Port Trust in terms of directions of the High Court, the Chennai Port Trust on 15.10.2012 resolved to terminate the MOU. On 06.12.2012, the Association was accordingly informed about the termination.

16) In the meantime, 90 persons again woke up and claiming to be the workers working on the Chennai Port Trust filed a writ petition (W.P. 33614 of 2012) and sought regularization of their services in the set up of the Chennai Port Trust. Their main case was that since all the writ petitioners (90) were working for the last more than 2 decades with the Chennai Port Trust as Class IV employees, their services should be regularized in the set up of Chennai Port Trust. In support of this relief, the writ petitioners produced certain evidence.

17) The Chennai Port Trust contested the writ petition, inter alia, again contending that there was no relationship of employee and employer between the writ petitioners and the Chennai Port Trust and, therefore, the writ petitioners are not entitled to claim any relief much less the relief of regularization in the services of Chennai Port Trust.

18) The Single Judge, by order 22.07.2016, dismissed the writ petition holding that there did not exist any relationship of employer and employee between the parties and hence no relief can be granted to the writ petitioners much less the one claimed in the writ petition. The writ petitioners felt aggrieved and filed writ appeal before the Division Bench of the High Court.

19) By impugned order, the Division Bench partly allowed the writ appeal and gave certain directions to the Port Trusts (appellants herein) for their compliance in favour of the writ petitioners (respondents herein) which has given rise to filing of these appeals by way of special leave by the Port Trusts before this Court.

20) Heard Mr. P.S. Narsimha, Mr. P. Wilson, learned senior counsel for the appellants and Mr. V. Prakash, Mr. Raju Ramachandran, learned senior counsel for the respondents.

21) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part with directions mentioned hereinbelow.

22) In our considered opinion, having regard to the nature of the controversy raised by the writ petitioners (respondents herein) and relief sought in the writ petitions out of which these appeals arise and keeping in view the clauses of the MOU, especially Clause 31, which provides for referring the case to the Arbitral Tribunal in the event of any dispute arising between the parties in relation to MOU, the writ petition filed by the respondents herein under Article 226 of the Constitution should not have been entertained for being tried on merits by the Single Judge and instead the parties should have been left to take recourse to the remedy provided in Clause 31 for referring the case to Arbitral Tribunal for its decision in accordance with law.

23) In our considered opinion, a question whether a particular person is in the employment of any establishment and whether he is entitled to claim regularization of his services in such establishment (as in this case Port Trust) and, if so, from which date is essentially a question of fact.

- 24) If such question is disputed by the establishment, then it is required to be decided by a fact-finding body on the basis of evidence adduced by such person unless the parties do not dispute the facts.
- 25) If one person is able to prove his case of regularization qua establishment from a particular date that does not necessarily mean that other person's case is also automatically proved alike other person.
- 26) In other words, every person has to prove his case qua establishment independently by adducing evidence. It is only then such person is entitled to claim such relief.
- 27) In our considered opinion, several questions arise in the case at hand and need to be answered before considering grant of appropriate relief, if any. These questions when we see the background facts of the case set out above are inter-linked with each other and relate to the main activity which was being carried in the Chennai Port Trust and now shifted to Ennore Port Trust largely. The disputes now being raised again relate to the employment and regularization of the class IV employees in the set up of Chennai Port Trust. Indeed, to settle this controversy for all time to come, the stakeholders had in past executed MOU providing therein the entire machinery to safeguard the rights and obligation of parties concerned, which are detailed above. But due to several intervening factors, it did not seem to have worked smoothly.
- 28) In our considered opinion, the following questions do arise in this case.
- 29) First, whether the writ petitioners (respondents herein) were/are in employment of Chennai Port Trust or in the employment of any contractor and, if so, its basis. Second, whether there ever existed any relationship of employee and employer between the writ petitioners and Chennai Port Trust or between the writ petitioners and any contractor and, if so, its basis.
- 30) Third, whether the writ petitioners were/are members of the Association and, if yes, then its effect and if not, then its effect.
- 31) Fourth, assuming that the writ petitioners are not held to be the members of the Association as they now claim in the writ petition (see ground (e) in the writ petition at page 125-126), whether the writ petitioners (90 in number) are still entitled to claim any relief and, if so, against which Port Trust and of which nature.
- 32) Fifth, assuming that the writ petitioners are held members of the Association or let us say eligible members by virtue of their qualifications prescribed in the MOU, whether they are entitled to claim any relief against any Port Trust and, if so, of which nature.
- 33) Sixth, If the writ petitioners (whether all or some) are able to prove that they are/were in the employment of Chennai Port Trust and that relationship of employee and employer between them does exist notwithstanding execution of MOU, then whether such persons are entitled to claim regularization in the service of Port Trust and, if so, since when and with what benefits or their cases are still governed by MOU as its members and lastly, what eventual reliefs, if any, can be granted to the writ petitioners.
- 34) In our view, the aforesaid questions could not be decided in the writ petition but could be adjudicated more effectively by a fact-finding body empowered to record evidence.
- 35) Since in this case parties have agreed to refer the matter to the Arbitral Tribunal in the event of any dispute arising between them, we are of the view that it would be in the

interest of justice that the parties are relegated to take recourse to the arbitration proceeding remedy for adjudicating the disputes.

36) We are of the view that to decide the questions arising in the case at hand, recourse to MOU for the purpose of referring the case to arbitration can be taken. As observed supra, even otherwise, the disputes raised herein are not the disputes, which are capable of being tried effectively in writ jurisdiction and indeed are capable of being tried only by a Tribunal.

37) Once the disputes are referred to the Arbitral Tribunal, the writ petitioners and the Port Trusts would be at liberty to raise all the issues on facts/law in support of their respective contentions including adducing evidence (oral and documentary).

38) In view of the foregoing discussion, we are unable to sustain the impugned order, which in the facts of this case should not have been passed.

39) As a consequence, we allow the appeals, set aside the impugned judgments of the Division Bench and the Single Judge, dismiss the writ petition out of which these appeals arise and grant liberty to the writ petitioners and the Port Trusts to approach the Court for appointment of Arbitral Tribunal in terms of Clause 31 of MOU for deciding the questions framed by this Court supra.

40) Parties are also at liberty to appoint the Arbitral Tribunal with mutual consent, if they so wish, without taking recourse to appointment of Arbitral Tribunal through Court.

41) The Arbitral Tribunal once appointed will embark upon the reference on the questions framed by this Court and would be free to frame any more questions after consultation of the parties/stakeholders, if such questions also arise and need to be decided to give quietus to the long pending disputes.

42) The Arbitral Tribunal will afford full opportunity to all the parties (stakeholders) concerned to file their response/statements and lead evidence in support of their respective stands and then pass a reasoned award in accordance with law on the basis of the evidence adduced by the parties (oral/documentary) uninfluenced by any observations made by Single Judge and the Division Bench.

43) Since the case is old and concerning about a large number of workers, efforts be made to complete the proceedings within six months from the date of appointment of Arbitral Tribunal.

J

(R.K. AGRAWAL)

J.

(ABHAY MANOHAR SAPRE)

New Delhi,

February 15, 2018