

(2014) 06 CAL CK 0035

Calcutta High Court

Case No: W.P. No. 1936 of 1995

India Trident Maritime
P. Ltd.

APPELLANT

Vs

Board of Trustees for
The Port of Calcutta

RESPONDENT

Date of Decision: June 25, 2014

Acts Referred:

- Major Port Trusts Act, 1963 - Section 2(o), 62

Citation: AIR 2014 Cal 177 : (2015) 5 CHN 253 : (2014) 307 ELT 242

Hon'ble Judges: Arindam Sinha, J

Bench: Single Bench

Advocate: Tilak Kr. Bose, Sr. Advocate and Nilanjana Adhya, Advocate for the Appellant; S.K. Roychowdhury and Kumkum Das (Dutta), Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Arindam Sinha, J.

The petitioners being steamer agent and shipowner had by this writ petition prayed for issuance of mandamus upon the Kolkata Port Trust and Customs to forthwith release 78 containers belonging to them upon allocating suitable space for storage of the cargo contained therein and for refund of ground rent debited to their marine account. By order dated 12th February, 1996 of this Court the said two Authorities were directed to allow the petitioners to de-stuff the cargo in the 78 containers within one week therefrom and, thereafter, to allow them to remove the containers for their use. The Kolkata Port Trust was also directed to refund the ground rent debited to their marine account, it being held that the said Authority could have no claim for demurrage against them. The Kolkata Port Trust preferred an appeal which was disposed of by order dated 4th December, 1996 directing, inter alia, the order under appeal was set aside and the matter remanded for hearing on affidavits. Further and other directions were made in the said order requiring the petitioners to deposit a sum of Rs. 14 lakhs with their learned Advocate on record to

be invested in a short term fixed deposit, subject to which the Port Authority was to de-stuff the containers whereafter the petitioners would be entitled to remove them without any objection from the Customs or Port Authorities. On 17th February, 1997 the containers upon having been de-stuffed were removed by the petitioners. The petitioners say they had already paid demurrage charges of Rs. 22,92,912/- and admitted in the list of dates handed up on their behalf, the further charge of Rs. 6,84,849.80/- to be payable to the Port Authority on account of cost of de-stuffing 78 containers in terms of the order of the Hon"ble Division Bench.

2. As aforesaid the petitioners had claimed their containers and refund of ground rent. The containers having been returned to the petitioners, the question for consideration therefore became whether the petitioners were liable to pay the demurrage charges claimed by the Port Authority.

3. The facts and circumstances by reason of which the question arose had been recorded in the said earlier order dated 12th February, 1996 which was reported in 1996 (2) CHN 118 (India Trident Meritime v. Board of Trustees). Poppy seeds packed in containers were landed at Kolkata Port in transit for despatch to Nepal. Customs caused detention of the cargo which were kept in the Port premises as contained in the containers of the petitioners. Such detention was challenged successfully in this Court. However, Customs on appeal obtained a finding in their favour that they could not be held responsible for payment of demurrage. On the other hand, the consignees lost interest in freeing the goods. Hence, the Port Authority exercised lien over the goods packed in the containers to seek to recover its claim for demurrage charges from the petitioners who were interested in the release of the containers only.

4. The said order dated 12th February, 1996 was set aside in appeal preferred by the Port Authority since its grievance was, inter alia, the writ Court had disposed of the writ petition without giving the said Authority opportunity of filing affidavit in the matter. In the circumstances, the Hon"ble Appeal Court was not inclined to determine the issue as it was of the view the parties concerned should have been permitted opportunity of filing affidavits. Affidavits have since been filed but the position on facts remains as it was when the said earlier order dated 12th February, 1996 was made.

5. This Court had required the Port Authority to substantiate its claim. Mr. Suhrid Roychowdhury, learned Advocate appearing on behalf of the Kolkata Port Trust submitted that the finding in the earlier order dated 12th February, 1996 regarding the petitioners as being the owners of the containers could not be said to be owners in relation to the goods, was not good law. He relied upon an unreported judgment dated 10th April, 2003 of a Division Bench of this Court by which the said Court was unable to agree with the said finding. The Division Bench in that judgment held the word "goods" appearing in the definition of the word "owner" cannot be read to exclude a container from its meaning. The word "goods" used in Section 2(o) of the Major Port Trust Act, 1963 does not refer to and mean only the cargo loaded in the containers. A container

loaded or empty is also covered by the word "goods" used in the said section. So, Mr. Roychowdhury submitted, the Port Authority was entitled to recover demurrage charges from the petitioners for the entire time the containers stood landed in the Port premises. Hence, the writ petition should be disposed of with direction upon the Port Authority to appropriate the deposit and accrued interest with further direction upon the petitioners to pay the shortfall on account of demurrage and de-stuffing charges.

6. Mr. Tilak Bose, learned Senior Advocate appearing on behalf of the petitioners relied on several decisions but on three of which he laid emphasis. Those are reported in [Trustees of the Port of Madras through its Chairman Vs. M/s. K.P.V. Sheikh of Mohd. Rowther and Co. Pvt. Ltd. and another, , Om Shankar Biyani Vs. Board of Trustees, Port of Calcutta and Others](#), and [Natvar Parikh Industries Limited and Another Vs. Board of Trustees for the Port of Calcutta and Others](#), He submitted that in Port of Madras the question whether demurrage charges, harbour dues etc. payable to the Port Trust of Madras were to be recovered from the consignee or from the steamer agent was answered by the High Court based on the conclusion that the consignee was liable to pay the charges. Such conclusion met with the approval of the Hon"ble Supreme Court. Relying on Om Shankar Biyani he went on to submit that once the objection of the Customs stood removed, the Port Authority should have sold the goods at that stage. The Port Authority being a statutory body did not mean there was no obligation on it to sell or it could allow the goods to lie around since by that time the Port Authority knew the consignee was not interested in the goods.

7. Mr. Bose relied on Natvar Parikh Industries Ltd. to submit it had been held that the responsibility or liability of the Port Authority in case of clearance of containerized cargo is slightly different from that of ordinary cargo. Where it is the question of clearance of the container it cannot be done unless the same are de-stuffed by removing the goods contained therein. He submitted that the Division Bench had relied upon Om Shankar Biyani for the explanation regarding the Port Authority's obligation to sell the goods in containers not removed within the maximum period of two months under the provisions of Section 62 of the said Act.

8. This Court finds that the prayer for refund of ground rent debited to the marine account of the petitioners though made, the petitioner's case urged is that further demurrage charges in addition to those already debited should not be fastened on them. The finding made by this Court by the said earlier order dated 12th February, 1996 was on the basis of facts which could not be disputed by the Port Authority by filing affidavit. In the application of law to those facts regarding whether or not a container owner can be made liable to pay demurrage charges, the disagreement by a Division Bench of this Court by the said unreported judgment dated 10th April, 2003 cannot be found to have the effect of setting aside the finding in the said order dated 12th February, 1996 in view of the judgments in Port of Madras and Om Shankar Biyani rendered by the Hon"ble Supreme Court and the latter followed by another Division Bench of this Court in Natvar Parikh Industries Ltd. The position that emerges on the facts in this case is the Port Authority

should have sold the goods within two months from 12th February, 1996 being the date of the said earlier order wherein the submissions made on behalf of the Customs were recorded, that their detention of the goods had been set aside by this Court upon being challenged. The Port Authority having had collected demurrage charges from the petitioners by debiting their marine account till then, had two months therefrom to sell the goods or in any event cause the 78 containers to be released thereafter. At least it was not brought to the notice of this Court that any sum on account of demurrage charges was outstanding as had not been debited to the petitioners' marine account for the period prior to filing of the writ petition. The period beyond in which the goods were kept in the containers requiring them to be detained was at the instance of the Port Authority when it had no lien and demurrage charges for that period cannot be fastened on the petitioners.

9. The petitioners having admitted their liability to pay de-stuffing charges to the tune of Rs. 6,84,849.80/- on account of cost of de-stuffing 78 containers in terms of the said order dated 4th December, 1996, there will be a direction upon the learned Advocate on record of the petitioners to pay the said sum to the Port Authority along with demurrage charges payable in respect of 78 containers for a period of two months commencing on and after 12th February, 1996, at the relevant prescribed rate out of the proceeds of the short term fixed deposit kept renewed from time to time which the said learned Advocate on record will encash. The said learned Advocate will also work out the ratio of the aggregate amount to be paid as directed above in relation to the principal sum of Rs. 14 lakhs deposited and pay to the Kolkata Port Trust the proportionate amount out of the total interest accrued on the said principal sum kept deposited by applying the said ratio.

10. The writ petition is disposed of with the above directions. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertakings.