

(1998) 06 KL CK 0007
In the High Court Of Kerala
Case No : O.P. 10153 of 1990

Eagle Shipping Agencies Pvt. Ltd.

APPELLANT

Vs

Cochin Port Trust

RESPONDENT

Date of Decision : 26-06-1998

Acts Referred:

Major Port Trusts Act, 1963 — Section 35, 37, 38, 42

Citation : (1998) 2 KLJ 140

Hon'ble Judges : B.N. Patnaik, J

Bench : Single Bench

Advocate : Joseph Vellappally and Sirijagan, for the Appellant; C.M. Devan and Antony Dominic, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Patnaik, J.—The petitioner challenges the resolution No. 197 dated 24-8-1990 of the Cochin Port Trust which was communicated by Ext.P4 letter dated 11-10-1990. By the said resolution the Board decided to allow all the private companies to use their own chassis for operation within the wharves only on production of non-availability certificate from the Port. The petitioner is a Steamer Agent for the American President Lines Ltd., in the Cochin Port Trust. Its predecessor company was Binny Company Ltd. By Exts. R1(a) and R1(b), M/s. Binny Company Limited were permitted to operate their chassis in the Cochin Wharf area. Accordingly, a large number of chassis were imported and were put into operation for transportation, But, by Ext.P4 a restriction was imposed for use of their chassis to the effect that before its use by any person a non-availability certificate from the Cochin Port Trust should be obtained. It is contended that the petitioner has imported a large number of chassis with a view to operate them in the Cochin Wharf area as the Port Trust authorities did not have adequate number of chassis. Sections 37 and 38 of the Major Port Trusts Act, 1963 confer only specific power on the first respondent (The Board of Trustees of the Cochin Port Trust) after compliance with the statutory requirements, to compel Vessels

to use docks, wharves etc., belonging to the Port and to prohibit landing of passengers or goods otherwise than at such docks, wharves etc. In the absence of any provision as regards shifting and transportation of goods within the Port Premises or the use of chassis or other vehicles belonging to the Port the first respondent does not have the power to compel the use of their chassis in preference to chassis belonging to others. The transporting of containers are only incidental and not part of the primary functions of the Port While the Port can certainly render such a service, they have no authority under the Constitution and the Major Port Trusts Act, 1963 to monopolise such services or to prohibit Port users from utilising their own equipment in the matter of transportation of containers. The restriction on the use of chassis as per Ext.P4 communication is also unreasonable.

2. In the counter-affidavit filed by respondents 1 and 2 (The Board of Trustees of the Cochin Port Trust and the Traffic Manager, Cochin Port Trust) it is stated inter alia that by Exts.R1(a) dated 10-12-1982 and R1(b) dated 30-9-1987, it was made clear that permission was granted to M/s. Binny Company Ltd. to use their chassis on condition that they should operate them only if and when the tractors provided by the Port are inadequate to cope with the work after obtaining non-availability certificate from the Port: The resolution dated 24-8-1990 practically reiterated the aforesaid condition. The resolution was passed unanimously by the Board represented by the Shipping Agents and others who are connected with the transactions in the Port. Sections 35 and 42 of the Major Port Trusts Act, 1963 authorise the Port to undertake service of transportation etc., to the exclusion of others. Sections 37 and 38 of the said Act do not exclude that right. No absolute restriction is imposed in the use of chassis by the petitioner. It being only a reasonable restriction, there is no violation of any constitutional right.

3. Sections 37 and 38 deal with the power of the Board to compel the seagoing vessels to use docks, wharves etc, belonging to the Port Trust. First proviso to sub-section (2) of Sec.37 of course states that the Board shall have regard, as far as possible, to the convenience of such vessel and of the shippers, in respect of the use of any particular dock, berth, wharf, quay, stage, jetty or pier. As such it is contended by the learned counsel for the petitioner that no power has been conferred exclusively on the Port Trust to put restriction on the use of wharves etc.

4. But this contention does not appear to be sound. Sections 35 and 42 of the Major Port Trusts Act, 1963 lay down that a Board shall have power to undertake, among other services service of landing, shipping or transshipping passengers and goods between vessels in the Port and the wharves, piers, quays or docks belonging to or in the possession of the Board and receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises. Thus, where the Board has provided wharves within its premises it has the exclusive right to put restrictions on its use by any outside agency. There is no question of creating a monopoly in this regard. The Monopoly is not created

where there is legislative backing Section 42 of the Major Port Trusts Act, 1963 enables the Board to do the job exclusively by itself and hence question of creating monopoly by it cannot and does not arise. This view is supported by the decision of the Calcutta High Court in *Master Stevedores' Association v. Board of Trustees, Calcutta Port* (1996 AIHC 1 (Cal.) 134).

5. The contention of the learned counsel for the petitioner that the restriction is unreasonable is also not well founded. There is no rule or regulation that such a restriction can be put on third-party hirer of chassis alone and not the owner of the chassis. Moreover such restrictions, in one way or the other, had been imposed right from the year 1982. All that Ext.P4 states is that no chassis belonging to any private party can be used in the wharf owned by the Port Trust when such chassis belonging to the Port Trust is available for use. There is no absolute prohibition for use of chassis by other private parties. If no chassis is made available by the Port authorities, the private owner shall be permitted to use their chassis.

6. A Wharf is located within the port premises. Use of port premises in any particular manner can be regulated by the port authorities to give effect to the provisions of sections 35 and 42 of the Major Port Trusts Act, 1963. It cannot, therefore, be said that the imposition of restriction under the said resolution of the Board is either illegal or unconstitutional. For the reasons stated above, I find that there is no merit in this writ petition. It is, therefore, dismissed. No costs.