

(2012) 08 KAR CK 0179
In the Karnataka High Court
Case No : Writ Appeal No. 613 of 2008

New Mangalore Port Trust

APPELLANT

Vs

M/s. GAC Shipping (I) Pvt. Ltd.

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Major Port Trusts Act, 1963 — Section 56

Citation : AIR 2012 Kar 167

Hon'ble Judges : V. Suri Appa Rao, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : H.N. Shashidhara, for M/s. Kesvy and Company, for the Appellant; K. Kasturi, for M/s. Kasturi Associates and Sri. G.K.V. Murthy, for R-1, M/s. J.M. Baxi and Co. for R-2, Sri. Kalyan Basavaraj, ASG for R-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Manjunath, J.—These appeals are filed by the appellant - New Mangalore Port Trust challenging the legality and correctness of the order, dated 27th February 2008 passed in W.P.Nos. 46244/2004, 27521/2004 and 27522/2004 by the learned Single Judge. Respondents 1 and 2 who were writ petitioners challenged the order passed by the appellant to recover certain amounts from the respondents who are engaged in the business of carrying cargo from various ports in the Country under the head - Service Charges viz., Port dues, Pilotage and Berth Hire Charges on the ground that the claim made by the appellant was barred by limitation in view of Section 56 of the Major Port Trusts Act, 1963 (for short hereinafter referred to as "the Act").

2. The learned Single Judge after hearing the parties came to the conclusion that certain demands made by the appellant was barred by time and as such, all those amounts barred by time, cannot be recovered by the appellant. Accordingly, the writ petitions were allowed in part and also liberty was reserved to the respondents to give appropriate representation to the Central Government seeking remission of the amount in terms of the direction issued by the learned

Single Judge. Being aggrieved by the finding of the learned Single Judge holding that certain demands are barred by limitation u/s 56 of the Act, the present appeals are filed.

3. These cases have a background. On an earlier occasion, the appellant herein had raised revised bills without issuing any show cause notice as required u/s 56 of the Act. Those demands were challenged by the respondents by filing writ petitions in W.P. Nos. 49676/2003, 11486 to 11549/2004. The learned Single Judge of this Court on 17th of March, 2004 allowed the writ petitions holding that the order of demand made by the appellant was contrary to the provisions of Section 56 of the Act. Accordingly, the demand was quashed and liberty was granted to the appellant to take action in accordance with law. A similar order was also passed in connected writ petitions. Based on these two orders, the appellant issued a notice u/s 56 of the Act and objections were filed by the respondents stating that the notices issued by the appellant u/s 56 of the Act were barred by limitation.

4. In spite of raising such an objection, the appellant passed an order calling upon the respondents herein to pay the revised demand. The same was questioned by the respondents by filing writ petitions.

5. The learned Single Judge after hearing the parties came to be conclusion that the notice issued u/s 56 of the Act and the order passed thereon by the appellant, were barred by time because notice was issued after the expiry of two years from the date the respondents liability to pay the same in respect of certain demands. Accordingly, the writ petitions were allowed. Challenging the same, the present appeals are filed.

6. Mr. Shashidhara, learned Counsel appearing for the appellant submits that the order passed by the learned Single Judge holding that certain demands made by the appellant by issuing notice u/s 56 of the Act was beyond two years is without any basis and the learned Single Judge did not consider that on an earlier occasion, the demand was made within 2 years and on account of the interim order of stay granted in the earlier writ petitions as referred to above, the appellant could not proceed with to recover the amount in view of the provisions of Section 56 of the Act and in such circumstances, the learned Single Judge should have held that on account of the interim order of stay operating against the appellant, the appellant could not issue fresh show cause notice u/s 56 of the Act and if the total number of days of interim order in force are excluded while computing the period of limitation, the claim cannot be regarded as barred by time. In support his arguments, he has relied upon a judgment of the Apex Court in the case of Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, With reference to paragraph-11 of the judgment, he contends that on account of the interim order of stay granted by this Court in the earlier writ petition, notice would have been issued u/s 56 of the Act and therefore, this Court has to exclude the period where the interim order was in operation in order to compute the period of limitation.

7. Per contra, the learned Counsel appearing for the respondents contends that the subject matter of the writ petitions were entirely different. According to them, without issuing a show cause notice as required u/s 56 of the Act, an order was passed by the appellant demanding the respondents to pay the revised bills without following the provisions of Section 56 of the Act and therefore, the interim order was granted by this Court in the earlier writ petitions holding that no such demand would have been made without there being a show cause notice issued u/s 56 of the Act. He further contended that there was no difficulty for the appellant to issue a show cause notice u/s 56 of the Act even when the interim order was in force. He also contended that atleast the appellant's Counsel could have requested the learned Single Judge in the earlier writ petitions to treat the order passed by the appellant as a demand notice as required u/s 56 of the Act and treat the same as a show cause notice permitting the respondents to file reply and then to pass an order in accordance with law. Having not done so, the appellants cannot be permitted to contend that on account of operation of the interim order of stay in the earlier writ petitions, the time would get automatically extended and the period of stay in force has to be excluded while computing the period of two years. He also relied upon the judgment of the Apex Court in the case of Metal Forgings -vs- Union of India - AIR 2003 Supreme Court 291. Relying upon the Head Note - C of the said judgment, he contended that the appeals are liable to be dismissed.

8. Having heard the learned Counsel for the parties, the only point to be considered in this appeal is whether the appellant was prevented from issuing a show cause notice u/s 56 of the Act within 2 years on account of the interim order of stay granted in the earlier writ petitions and whether the time would get automatically extended to issue a show cause notice u/s 56 of the Act when the interim order was in operation.

9. The facts in these appeals are not in dispute to the following extent.

10. In the earlier round of litigation, the appellant had passed an order demanding to pay the revised bill without issuing show cause notice as required u/s 56 of the Act. What was challenged by the respondents in the earlier round of litigation was action of the appellant in passing a final order without following the procedure as contemplated u/s 56 of the Act and the interim order was granted only for the demand and there was no prohibition for the appellant to issue a show cause notice u/s 56 of the Act even when the matter was pending before the learned Single Judge and as rightly pointed out by the learned Counsel appearing for the respondents, Mr. Murthy and Mr. Kasturi, the appellant should have requested the learned Single Judge while disposing of the earlier writ petitions to treat the demand made by the appellants as a show cause notice as required u/s 56 of the Act granting permission for the respondents to file objections and thereafter, to pass an order on merits by the appellant and as such, a course was also open to the appellant. When the appellant has failed to make use of the same, we are of the view, that the appellant cannot contend

that the interim order passed in the earlier writ petitions was operating as a bar for the appellant to issue a show cause notice u/s 56 of the Act. As stated supra, what was stayed by the Court in the earlier round of litigation was only the payment demanded by the appellant and the learned Single Judge had not prevented the appellant from issuing show cause notice as contemplated u/s 56 of the Act.

11. Considering the facts and circumstances of these appeals, the judgment relied upon by the learned Counsel for the appellant in *Kanoria Chemicals and Industries Ltd -vs- U.P. State Electricity Board - (1997) 5 SC 771* has no application to the facts and circumstances of these cases. On contrary, the judgment of the Apex Court in the case of *Metal Forgings and Another Vs. Union of India (UOI) and Others*, would directly apply to the facts and circumstances of these cases and as a matter of fact, the learned Single Judge relying upon this judgment of the Apex Court has allowed the writ petitions of the respondents. In the circumstances, we do not see any merit in these appeals. Accordingly, the appeals are dismissed.