

(2021) 02 GUJ CK 0065
In the Gujarat High Court

Case No : Civil Application (For Direction) No. 2 Of 2021 In R/Admiralty Suit No. 37 Of 2020

Swedish Club

APPELLANT

Vs

APM Terminals Pipavav

RESPONDENT

Date of Decision : 17-02-2021

Acts Referred:

Citation : (2021) 02 GUJ CK 0065

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Dhaval M Barot, Manan K Paneri, M Dave, Jaimin R Dave, Aaksha K Sajnan, Paurami B. Sheth

Judgement

Biren Vaishnav, J

1. Mr. Bimal Rajasekhar, learned advocate submitted that the present application is filed seeking directions for berthing of the Defendant Vessel for

supply of food and fuel and further submitted that since the Vesselsâ?? Certificates have expired the Pipavav Port is not permitting the vessel to be

berthed though the port has been proÂactive in trying to find solutions to the problem of supply of food and fuel. He submits that food and water had

earlier been supplied through tugs arranged by the port â?" however, the tugs available and identified by the port for supply of fuel do not have the

requisite licence to carry fuel. Mr. Rajasekhar states that emails from the crew suggest that the fuel on board is about to be exhausted and that the

crew is using fuel only at night to make it last longer. He submits that it is imperative that urgent orders be passed so that a total black out situation is

avoided on the vessel. It is in these circumstances that he is seeking an order that the port urgently permit the vessel to berth to receive bunkers. He

further submits that the Applicant has already arranged/ is willing to arrange for such supplies and fuel, in view of the emergency situation. Mr.

Rajasekhar learned Advocate further submitted that this Court has passed orders in identical situation for providing oil, provisions etc. and also pointed out the orders.

2. Mr. Rajasekhar further submitted that both the application and notice of today's hearing have been served to the port by email to the email ids through which the port has issued and received communications in relation to the berthing of this vessel. In the morning, when the matter was called out, it was adjourned to 230 p.m. to enable the port to appear. He submits that he has informed the port of this as well, through email.

3. Ms. Paurami Sheth, Learned Advocate for original Plaintiff submitted that since the vessel certificates have expired, the port is unwilling to take risk of permitting the vessel to berth in absence of anyone indemnifying the port of for any accident that may occur, that the port authorities on earlier occasions agreed to supply provisions etc. via tugs which was much cheaper than berthing charges which have been estimated around 18 lakhs so the Bunkers etc. can be supplied via tugs, that whether the expenses towards repatriation, provisions, bunkers etc. which have already been incurred be treated as Sheriff's expenses and paid out on priority from sale proceeds cannot be decided at this stage and the Crews have to file separate substantial suit before the Hon'ble Court which has to be adjudicated and that Disembarking crew while the vessel is under arrest would not require permission from this court and no order be passed on the present Application.

4. Mr. Manan Paneri, Advocate for Defendant No. 2 submitted that they have no objection if the order is passed.

5. Heard learned counsel for the respective parties.

6. Ms. Paurami Sheth, Learned Advocate is not able to differentiate this matter from prior instances where this Court has passed directions to provide supplies or to point out that in case the tug is not arranged then why the Vessel be not permitted to be berthed.

7. Keeping in mind the condition of the crew and considering the earlier orders passed by this Court in similar circumstances, the following order is passed.

A The Applicant is permitted to supply provisions, necessities and fuel to the Defendant vessel and all expenses incurred/ to be incurred will be paid

out on priority basis out of the sale proceeds of the Defendant vessel or in case where arrest order is vacated by the Court, the agents/ respondent

owner/ registered owner of the Defendant vessel shall not be permitted to sail off the Defendant vessel without discharging such debt.

B In the first instance, Pipavav Port to put all efforts to arranging a tug which can supply fuel to the vessel. In case the Applicant is not able to

arrange a tug licensed to supply fuel by end of day today, Pipavav Port to permit the Defendant Vessel to be berthed for limited purpose of supplying

fuel so as to avoid total black out situation and do all other acts necessary to enable the vessel to berth. The costs incurred by the port for the above

can be recovered from the sale proceeds.

C Registry to communicate the order through email to port and customs at Pipavav at the email addresses already provided in arrest order dated 9

September, 2020 and all concerned authorities are directed to act on the same.

8. Since the Learned Advocate for the original Plaintiff has objections in respect of payment of crew wages and repatriation charges which have

accrued during the period of arrest being considered as expenses of the arrest, the present application and CA No. 1 of 2021 are adjourned to 3

March 2021 for the remaining reliefs. Reply, if any, to be filed by 28 February 2021.