

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1985 OF 2019

M/S SEA LORD CONTAINERS LTD

Appellant(s)

VERSUS

CHARUDATT PANDURANG KOLI & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO(S). 2386 OF 2019O R D E R

Admit.

These are appeals against the order of the National Green Tribunal¹ dated 5 February 2019. The appellants are M/s. Sea Lord Containers Ltd.² and Bharat Petroleum Corporation Ltd.³. The impugned order of the Tribunal is in the course of the hearing of Execution Application No. 5 of 2018. The original judgment of the Tribunal is dated 18 December 2015.

Dr Abhishek Manu Singhvi and Mr K V Vishwanathan, learned senior counsel appearing on behalf of Sea Lord and BPCL respectively submit that the reason for the institution of these appeals is the following observation contained in the order dated 5 February 2019:

“In the present case, liability of respondent Nos. 1, 9 and 10 has been fully established...”

1 “Tribunal”

2 “Sea Lord”

3 “BPCL”

Moreover, it has been submitted that the observation in paragraph 24 to the effect that an assessment of compensation is permitted to be made by the applicant and that a specific claim be put forward is based on the aforesaid finding.

The submission is that the above observation in paragraph 19 is contrary to the main judgment of the Tribunal dated 18 December 2015. Since the impugned order has been passed in the course of the execution proceedings, it has been urged that it was not open to the Tribunal to go behind the original judgment which has the character of a decree of the Tribunal.

Opposing the above submission, it has been urged on behalf of first to fourth respondents, who are the original applicants before the Tribunal, that the observation in paragraph 19 extracted above is consistent with the findings in the original judgment.

The Tribunal, in the course of the original proceedings, was dealing with health hazards posed to the residents of Ambapada and Mahul due to the emission of Volatile Organic Compounds (VOC) as a result of the operations in the area by several industries.

During the course of its decision dated 18 December 2015, the Tribunal specifically adverted to the sources of pollution and observed as follows:-

“..... In view of these peculiar circumstances and the data available on record, it is evident that the Respondent Nos. 1, besides Respondent No. 9 and 10 are the important industrial sources. Obviously, therefore, as far as the industrial sources are concerned, Respondent No. 1, 9 and 10 are

major contributory industrial sources in ambient air pollution of the area."

After making the above observations, the Tribunal recorded its conclusions in paragraph 43 which reads as follows:-

"43. Some conclusions of the foregoing discussions can be summarised by recoding our findings in the present matter as under:-

a. There is a persisting problem of air pollution in Mahul, Ambapada and Chembur areas.

b. There is strong evidence that this air pollution is linked and can be scientifically correlated to the adverse health effects on the surrounding population as observed through KEM (Govt. Hospital) studies.

c. There is an urgent need to control this air pollution by devising the suitable action plan as per section 17 of the Air (prevention and Control of Pollution), 1981, may be on the lines of CEPI action plan prepared by MPCB for some other areas.

d. The contribution of individual source of air pollution in the air quality in the area is not available on record (source apportionment). However, considering the complexity involved in measurements, prediction and modelling of VOCs, it is prudent to evolve such an action plan for all the identified sources of VOCs. However, considering the principle of proximity and findings of ICT/KEM, it would be necessary to deal with emission from Respondent-1 on priority, in the first phase of such action plan."

To complete the narration, it would also be necessary to advert to the following observations in paragraph 48 of the decision which read as follows:-

"48. It is true that the present case is unique in nature due to multiple factors.

Firstly, the entire area of Mahaul and Chembur is a predominantly industrial area, accommodating several hazard prone industries, including Terminal of Respondent-1, refineries, RCF fertiliser plant etc. There is significant population surrounding these industrial locations thus exposing this population to pollution generated by these industries, besides safety concerns and associated health effects. Such a scenario is a culmination of a failure of the planning authorities, over a time, to plan and maintain a minimum buffer area; between the industrial areas and residential areas, resulting into conflicts and proven health concerns to the residents, as presented in this Application. Still however, at this stage, it would be difficult for any court to close any industry or direct it to shift elsewhere unless and until there is sufficient evidence to show their contribution, leave apart significant contribution."

The decision of the Tribunal has attained finality. The Tribunal issued directions inter alia for the preparation of a comprehensive plan of action by Maharashtra Pollution Control Board⁴ for carrying out Health Impact Assessment studies and for SEIAA and MPCB to assess environmental compliance with air pollution control measures. The directions read thus:

"a. MPCB shall prepare a comprehensive action plan for control of air pollution in Mahul, Ambapada and Chembur areas, with a focus on control of VOCs within 2 months, and submit it to CPCB for its concurrence/approval which shall be confirmed in next 2 months. Such action plan shall be implemented by CPCB and MPCB within next 12 months through the MPCB.

b. MPCB shall immediately issue necessary directions for implementation of the recommendations of its expert committee as per report of August 2014, and ensure that these directions are complied with in 12 months.

c. The health impact assessment studies as proposed by KEM shall be conducted for the

4 "MPCB"

minimum period of 3 years. KEM shall give necessary proposal including the associated air quality monitoring which can be conducted through reputed institute like NEERI, Mumbai to MPCB within 2 months and such studies shall be co-ordinated by MPCB. The cost of such studies shall be equally borne by Respondent-1, 9, 10, 11 and 14.

d.MPCB shall carry out the VOC assessment studies in line with CEPI studies as per CPCB protocol for the areas of Mahul, Ambapada and Chembur on yearly basis for next 3 years to assess the trends of such problem.

e.Respondent-6, Commissioner, MCGM shall provide necessary medical facilities and treatment for the residents of Mahul, Ambapada and Chembur, in view of the adverse health effects observed. Respondent-1,9,10,11 and 14 shall provide all necessary assistance and financial support for such measure to Respondent-6.

f.SEIAA and MPCB shall assess the environmental compliance of activities of Respondent-1 as far performance of air pollution control measures, by monitoring of VOCs and also, change in capacity of chemical handling which is changed from 75000 KL/month to 75000 KL, within a period of 3 (three) months. In case of non-compliance of this direction, the Respondent-1 shall operate the plant maximum at the present chemical handling rate (maximum of last six months on monthly basis), till such assessment by SEIAA and MPCB is done, on the basis of precautionary principle. MPCB to serve the copy of this order to Member Secretary SEIAA for further necessary action.

g.The observed air quality in Chembur area and associated health impacts necessitates considerations of VOC in ambient air quality and also, source emissions standards for chemical storage terminals. MPCB shall evolve such standards under the powers available under section 17 of Air Act, in consultations with CPCB, within next 4 months.

h.Respondent-3 is hereby directed to form a committee of experts to suggest the location criteria for industries and activities involved in hazardous chemicals handling and more specifically the environmentally safe distance from residential areas, which shall be formulated

in next 4 months, as per provisions of the Air Act and Environmental (Protection) Act, 1986.

i. Respondent Nos. 1, 9 and 10 shall pay amount of Rs. 5,00,000/- (Rs. five lakhs) to each Applicant as litigation costs."

The above extracts from the decision of the Tribunal make it abundantly clear that in its original judgment dated 18 December 2015, there is a specific finding in regard to the prevalence of air pollution in Mahul, Ambapada and Chembur and that the source of the pollution inter alia lay in the VOCs emitted by industrial operations. The Tribunal observed that respondent Nos. 1, 9 and 10 before it (two of them being the appellants in these proceedings) are important industrial sources and are major contributory industrial sources in the ambient air pollution of the area.

However, the Tribunal observed that on apportionment, the matter involves an element of complexity and it was in this backdrop that it issued directions for the formulation of an action plan. It was in view of this aspect of the matter that it also observed that at this stage, it was difficult for the court to close down the industry or to direct shifting, unless there is sufficient evidence to show the extent of its contribution to air pollution.

What the Tribunal has now embarked upon is an exercise of ensuring measures for mitigation. This is in enforcement of the original decision dated 18 December 2015. This course of action is unexceptionable.

We do not find that the exercise which is now being

conducted by the Tribunal overreaches the fundamental precept that execution proceedings cannot go behind the decree of the Court. The Tribunal has directed that an action plan should be submitted to the Central Pollution Control Board in the first instance. The other directions are consequential.

Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the Sea Lord has adverted to several documents which have been placed on the record of the Tribunal including an affidavit dated 16 August 2016 of the General Manager (Legal)⁵, an affidavit of the Maharashtra Pollution Control Board⁶ and a letter dated 18 February 2019 of Sea Lord to the CPCB⁷.

On the basis of the above documents as well as on the basis of the grounds taken in the Civil Appeal, it has been submitted that the levels of Styrene, Toluene and Xylene in relation to the operation of Sea Lord meet the prescribed standards. Moreover, it is urged that Sea Lord's operations do not emit Benzene.

We may note at this stage that the parameters set out in the grounds to the civil appeal have been contested by the learned counsel appearing on behalf of the original applicants before the Tribunal. He adverted to the applicable standards under the provisions of the Factories Act 1948. At this stage, it is not necessary or appropriate for the Court to enter upon this aspect of the controversy which is purely factual. All

5 Annexure A-25

6 Annexure A-26

7 Annexure A-31

parties are before the Tribunal where the Action Plan is being formulated, monitored and enforced. The exercise by the Tribunal is in the interest of public health which is of paramount public importance.

The observation in paragraph 19 of the impugned judgment of the Tribunal is not contrary to the earlier judgment of the Tribunal dated 18 December 2015. The entirety of the judgment will have to be read, as we have clarified, in the above discussion.

Dr. Singhvi has also drawn the attention of the Court to the fact that Sea Lord has filed before the Court on 9 January 2019, 31 January 2019 and 18 February 2019 relevant details of compliance which will be placed before the Tribunal for consideration.

We accordingly, dispose of the appeals leaving it open to the parties to establish before the Tribunal the steps which they have taken to comply with the judgment of the Tribunal.

The Civil Appeals are disposed of.

Pending application(s), if any, shall stand disposed of.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
MARCH 5, 2019

ITEM NO.29 + 61

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1985/2019

M/S SEA LORD CONTAINERS LTD

Appellant(s)

VERSUS

CHARUDATT PANDURANG KOLI & ORS.

Respondent(s)

(IA No.33917/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.33916/2019-EX-PARTE STAY)

WITH

Civil Appeal No(s). 2386/2019 (XVII)

(IA No. 36726/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 36725/2019 - EX-PARTE STAY)

Date : 05-03-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

Counsel for the parties:-

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Rajendra Barot, Adv.
Ms. Liz Mathew, Adv.
Mr. Vivek Shetty, Adv.
Mr. Aniket Nimbalkar, Adv.
Ms. Madhvi Khanna, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Navneet R., Adv.
Ms. Ashita Chawla, Adv.
Mr. Parangat Pandey, Adv.

Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Manish K. Bishnoi, Adv.
Mr. Rajat Navet, Adv.
Mr. Archit Gupta, Adv.

Sameer Abhyankar, AOR

Mr. Nikhil Nayyar, Adv.
Mr. Sangramsingh R. Bhonsle, Adv.

Mr. Siddharth A. Mehta, Adv.
Ms. Aditee V. Dongrawat, Adv.
Ms. Samridhi S. Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Admit.

The Civil Appeals are disposed of in terms of the signed
order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)