

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 1087 of 2017 : M/s Rising Sun Construction vs. Federation of Pakistan & Others

CP D 4992 of 2017 : M/s Rising Sun Construction vs. Federation of Pakistan & Others

C P D 4993 of 2017 : M/s Rising Sun Construction vs. Federation of Pakistan & Others

For the Petitioners : Ms. Dilkhurram Shaheen, Advocate

For the Respondents : Mr. Kafeel Ahmed Abbasi, Deputy Attorney General

: Mr. Ameeruddin, Advocate for Respondent (K.I.C.T)

Dates of Hearing : 03.04.2019

Date of Announcement : 03.04.2019

ORDER

Agha Faisal, J. Through this common order we seek to address the petitioners' motion for interim relief in C.P.Nos.D-1087/2017, 4992/2017 and 4993/2017. Learned counsel for the petitioners drew attention to the order passed herein on 31.5.2017, wherein the interim arrangement was already dilated upon in the manner as appearing herein below:

"We have considered the matter. By way of an interim arrangement and without prejudice to the case of any of the parties the order dated 22.12.2015 in SCRA No.110/2014 shall apply mutatis mutandis to the subject cranes and in addition, no third party interest shall be created in respect thereof. Since the subject vehicles cannot possibly be brought to the High Court, the Nazir is directed, with the assistance and in consultation with the departmental representative as well as the Petitioner, to work out the modalities whereby the

cranes can be handed over to the Petitioner in a manner that conforms in substance to the order referred to above. For this purpose let the Petitioner and the department's officer attend to the office of Nazir today so that modalities can be worked out but in any case the order must be given effect within 03 days.

Learned Counsel for Petitioner states that it may be that Delay Detention Certificate is required. If such request is made in respect of any of the subject vehicle, the department shall process the same forthwith in accordance with law.”

2. Learned counsel for the petitioners raised the objection on subsequent successive hearings that despite the interim arrangement the consignments / vehicles of the petitioners remained unreleased by the container terminal, being K.I.C.T. It was demonstrated from the record that the counsel for K.I.C.T. was given repeated opportunities to substantiate the basis for withholding of the consignments despite the orders already passed on 31.5.2017. It was further shown from the diary that on 10.7.2018 learned counsel for K.I.C.T. sought time to substantiate the justification / computation of its claim and subsequently on 17.7.2018 the learned counsel submitted that needful could not be done as the concerned person who undertook the relevant task at K.I.C.T. was on leave. It is noted that despite the passage of time the learned counsel for K.I.C.T. has failed to provide the requisite rationale / basis sought and instead submitted that there was a possibility of an amicable settlement and in such regard the said respondent was awaiting a decision of its management, stated to be in Korea. The orders dated 11.01.2019 and 29.01.2019 recorded that the adjournments were sought by the learned counsel for K.I.C.T. on this premise. It appears that till date the said instructions appear not to have been received by K.I.C.T. as none have been communicated to this Court. Since the order dated 31.05.2017 was predicated upon mutatis mutandis application of another order, in other proceedings, it is considered expedient to reproduce the relevant constituent of the Order dated 22.12.2015 delivered in SCRA No.110/2014:

“..... by way of interim arrangement and, as already, noted, without prejudice to the case of any of the parties, we direct that the subject vehicle must within one week from today be handed over by the department to the Nazir of this Court along with all documents pertaining thereto. The Nazir of the Court shall, subject to proper verification and confirmation, release

the vehicle to the respondent along with a copy of the registration documents relating to the vehicle, which copy shall be appropriately stamped by the Nazir that the original set is lying in the custody of the Nazir, pending orders from this Court in this reference application. This copy is being provided to the respondent only for the limited purpose to enable the respondent to address any queries that may be put to the respondent with regard to the subject vehicle. The respondent shall not in any manner deal with or dispose of the subject vehicle, nor shall any third party interests or right be created in or in respect of the subject vehicle (whether by way of any purported sale, transfer, mortgage or otherwise) but must keep the same in his possession and use it only for permissible purpose in the ordinary course. The respondent shall be bound to immediately produce the vehicle for the inspection of the Nazir at any time that the Nazir so deems appropriate. The Nazir shall, if he so considers it appropriate, also issue necessary directions to the concerned registration authority to make a noting in respect of the subject vehicle in its record that any transfer or dealing with the subject vehicle is prohibited unless this Court otherwise so directs.

The concerned departmental authorities are warned that if there is any delay in complying with this order and the interim arrangement that has been hereby made, strict action shall be taken against the concerned officers....”

3. It is apparent from the order dated 31.5.2017 that the interim arrangement was already determined therein and in the absence of any objection in such regard from the Customs authorities there appears to be no justification for K.I.C.T. to withhold the subject vehicles / consignment as security for its claim, which in any event has been disputed by the petitioners and not adjudicated or recognized by any Court. Notwithstanding the foregoing, it is apparent from the successive orders, inclusive of those dated 10.07.2018 and 17.7.2018, that K.I.C.T. has failed to provide any justification and / or legal sanction for its claim to this Court despite specific directions having been issued in such regard.

4. During the course of the arguments learned counsel for K.I.C.T. had submitted that there are petitions pending wherein K.I.C.T. has challenged section 14-A of the Customs Act 1969, hence, the applicability of a delay detention certificate. It is however conspicuous that neither the said petition/s have been decided nor has any order been placed before us suspending the operation of Section 14-A of the Customs Act 1969.

5. The learned counsel for K.I.C.T. has today submitted a statement dated 7.8.2018 wherein it is shown that outstanding amount payable thereto to as Rs. 4,214,497/-. Upon subsequent inspection it was noted that the said statement merely encompasses C.P.Nos.D-4992/2017 and 4993/2017 and not C.P.No.D-1087/2017. A review of the case file demonstrated that another statement was on record showing the outstanding claim with respect to C.P.No.D-1087/2017 as being Rs. 20,221,670/-. Without prejudice to the rights of the parties and with a view to mitigate the urgency articulated by the learned counsel for the petitioners, in mutatis mutandis application of the orders of an earlier Division Bench of this Court in *C.P.No.D-2385/2017 (Nadeem Khan v. Federation Pakistan & others)* dated 1.11.2017, it is observed that since there is no issue with regard to clearance of the subject vehicles / consignment insofar as the Customs Department is concerned and the matter has been held up solely on account of the claim that has been put forward by the Container Terminal, therefore, the petitioner may provide security to the satisfaction of the Nazir of this Court in the sum of Rs. 24,436,167/-. Once such security is in place the Nazir shall issue appropriate certificate and upon presentation of such certificate the Container Terminal (K.I.C.T.), shall forthwith release the seven (7) vehicles / consignment subject matter of C.P.Nos.D-1087/2017, 4992/2017 and 4993/2017. The security being given shall be to the benefit of the Container Terminal, if at all ultimately such is decided by the Court. This order shall be read in conjunction with the order passed earlier dated 31.5.2017.

JUDGE

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