

# **EFFECT OF FORCE MAJEURE CLAUSE AND THE CONTRACTUAL OBLIGATIONS IN LIGHT OF COVID -19: AN INDIAN PERSPECTIVE**

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## **ABSTRACT**

The pandemic has not simply resulted within the humanitarian disaster but additionally had a devastating effect on the commerce lives and the global economies all around the world which had consequently ended in lockdowns and restricted movement of people. It additionally had a huge impact in India. This is a Non-doctrinal research paper of case commentaries which focuses mainly on the effect of force majeure in the performance of contracts in context of India. This paper also opens up the contract cases of the High Court and Supreme Court and analyzes the various remedies available to the parties. Finally, the extent of limitation period of a contract is also critically analyzed.

**Keywords:** Humanitarian disaster, Global economies, Non-doctrinal, Force majeure, Performance of contract, Remedies, Limitation

## **INTRODUCTION**

As the outbreak of the Covid-19 throws a huge shadow over various sectors, contracts have ended up in the non-performance of contracts. Contracts have to be reconsidered and responsibilities ought to be reassessed. Force majeure is an occurrence that cannot be anticipated, stopping a party from finishing something that they had undertaken to do. It includes each acts of nature, including floods, and acts of man, such as riots, and wars. If an occasion or situation comes within the circle of a force majeure event and fulfils the situations for applicability of the clause then the result could be that parties might be relieved from performing their respective obligations to be undertaken via them below the settlement at some step in the period that such force majeure occasions might keep.

The regulation accepts that a force majeure clause is binding even though force majeure isn't always statutorily described and the events are unfastened to agree the said contractual

phrases. But, section 32 of the Indian contract Act, 1872, which affords for contingency contracts, can be taken into consideration a statutory place to begin for this.

If a contract that does not contain any force majeure clause the parties can see section 56 of the Contract Act which deals with agreements between the parties to do an impossible act can be applied to such contract so as to discharge the parties from their contractual obligations. The force majeure clause also includes the Government orders and acts and notice should be given by either of the parties to the contract within 30 days from the date of occurrence and the goods are deferred for six weeks. If it continues for a prolonged time the parties may even terminate the contract. Suspension of obligations by the parties upon the force majeure event is one of the consequences. This is basically the force majeure clause and in this pandemic it shall be deferred for a period of lockdown until it is in effect. Likewise there are many contractual obligations and its related cases of High Court and Supreme Court which is analyzed in this paper.

## METHODOLOGY

This is a non – doctrinal research on breach of contract dealing with the cases of High court and Supreme Court. Going through various cases, we apprehend that the above - mentioned case was unique and it will be a best case to research on the breach of contract and award compensation. The present case that is taken for the study is *Tuticorin Stevedores Vs The Government of India* on 14<sup>th</sup> September ,2020 before the Madurai bench of Madras High Court, Coram The Honourable Mr,Justice G.R.Swaminathan WP(MD) n.6818 of 2020 and WMP(MD) no.6217 of 2020<sup>1</sup>, where the petitioner is an association of stevedores that has been registered under the Tamilnadu societies Registration Act,1975 and the respondent is the Government of India that imposed lockdown order dated 24.03.2020. The forth respondent had filed a counter affidavit against the petitioner and the learned counsel gives its Judgment on account of the prayers of both the parties.

## ARGUMENTS

**Case:** Tuticorin Stevedores'... Vs The Government of India on 14th September, 2020 before the Madurai bench of Madras High Court, Coram The Honourable Mr. Justice G.R. Swaminathan WP (MD) n.6818 of 2020 and WMP (MD) no.6217 of 2020

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<sup>1</sup> <https://indiankanoon.org/doc/20717870/>

## **1. Petitioner**

- 1.1** The petitioner is an affiliation of Stevedores who has been registered below the Tamil Nadu Societies Registration Act, 1975 whose individuals are engaged at Tuticorin port in clearing of shipment.
- 1.2** The government of India imposed lock down order dated 24.03.2020, following the outbreak of Covid-19 pandemic. Despite the fact that precise exemption come to be given in apprehend of operations of Railways, Sea port for cargo moves and inter-kingdom movement of cargo, the government identifying the ground reality, directed that every essential port shall exempt or remit demurrage, floor lease over and above the free period, penal anchorage lease prices and any other basic performance related results that can be levied on port associated sports together with minimal ordinary overall performance assure, everywhere applicable.

## **2. Respondent**

- 2.1** The fourth respondent Port considers had filed its counter affidavit opposing the prayers that has been made by the writ petitioners. The found status suggested for the Ministry submitted that he's adopting for the stand of the fourth respondent.
- 2.2** The stand of the port accepts as true with is that it is not viable to increase the relaxation measures past the stipulated period through the Ministry and the Directorate trendy of delivery, Mumbai. Consistent with the Port government, they would have supplied all preparations and facilities.
- 2.3** Yet some other competition superior with the aid of the port trust is that the stevedores aren't the shipment owners and that the comfort measures this is supplied by means of the respondents are meant to be passed directly to the quit customers.
- 2.4** Since normalcy have returned to port operations and there may be no foundation for keeping this writ petition.

## **3. Findings**

- 3.1** Whether on account of the pandemic outbreak of Covid-19, the parties can invoke the principle of force majeure?

**3.2** Whether the petitioners could have cleared the cargo during the said 22.03.2020 to 03.05.2020 period?

**3.3** Whether the plaintiff is entitled to get the compensation out of the lockdown imposed by the government of India?

**3.4** Whether the counter affidavit filed by the fourth respondent is valid before the honorable court?

#### **4. Analysis of Precedent Cases**

The High court highlights positive troubles

##### **4.1 Plaintiff: m/s. Tungabadra Minerals Private**

**Defendant: The Chennai port Trust**

Court: High Court of judicature at Madras

Judge: The Honourable Mr. Justice C.V Karthikeyan

Case no: C.S. No. 1050 of 2010

Dated: 12<sup>th</sup> of January 2017 <sup>2</sup>

Issue: The ban on issuance of the mineral dispatch lets in will invoke Force Majeure

The plaintiff is an agency under the provisions of the Indian Companies Act, 1956 which is concerned with business activities that includes ore mining. The state of Karnataka holds a total share of 26% within the plaintiff's company. The plaintiff holds the license to mine ore within the state of Karnataka and most particularly the Bellary district. The plaintiff was turned into allocated transit area by the 1<sup>st</sup> defendant from 1<sup>st</sup> February 2010 to 31<sup>st</sup> December 2010 by allotment order no: 5/2010 dated 31<sup>st</sup> January 2010 which also continued in addition allotment order no 15/2010 issued on 5<sup>th</sup> February 2010. Since the settlement had become void the defendant are not entitled to retain the security deposit. It was stated that the performance become impossible because of government orders and the mining became unlawful. Therefore, the suit had been filed for relief. It was said that the plaintiff was not entitled to relief and the suit was dismissed on the cost of defendants 1 and 2.

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<sup>2</sup> <https://indiankanoon.org/doc/23208461/>

#### **4.2 Plaintiff: m/s. Unicorn Maritimes (India)**

**Defendant: Valency International Trading Pte**

Court: The High Court of Judicature at Madras

Judge: Mr. Justice C.V Karthikeyan

Case no: Application NO.1674 of 2020 IN CS.D.NO.50213 of 2020 <sup>3</sup>

Issue: Court exercising discretion to supply an anti-suit injunction

The plaintiff is a personal restrained employer having its register office at Chennai. The primary defendant has its registered office at Singapore. The 2<sup>nd</sup> having their register office at Mumbai and workplace at Singapore. The plaintiff had instituted a clean searching for damages and for assertion that a letter dated 31<sup>st</sup> august 2018 issued through the plaintiff to the second defendant in favor of the first defendant is not operative, awful in regulation, null and void for everlasting injunction in HC/S 297/2020 in opposition with the Plaintiff for costs. For those reasons that are mentioned in the case the plaintiff below clause 12 of the Letters Patent can't be granted. No orders as to charges.

#### **4.3 Plaintiff: m/s Polytech Trade Foundation**

**Defendant: Union of India & Ors**

Court: The High Court of Delhi at New Delhi

Case no: C.M. No. 10546/2020 in W.P. (C) 3029/2020

Dated: 22<sup>ND</sup> OF MAY, 2020 <sup>4</sup>

Issue: In want of a few remedy measures to assist and rebuild the logistic chain.

The petitioner is stated to be an association who is registered with the Registrar of societies under the Societies Registration act, 1860 which accommodates persons/dealers/traders who are inside the business of uploading plastic/polymer and supply it to the producers group engaged in packing of meals, drugs, clinical equipments and so on. Petitioner claims that due to the urgency of pandemic the requirements have to be met such as the sanitizers, mask, and personal protective equipments, helmets, googles, etc which use their intermediate as PVC resin. On the other side respondent no. 3 who were the association of container freight stations, whose individuals are worried inside the average coping with the containers. The Ministry of shipping, authorities of India through Order No PD-13/ 33/2020-PPP/c-339106

<sup>3</sup> <https://indiankanoon.org/doc/178344624/>

<sup>4</sup> <https://indiankanoon.org/doc/75064702/>

dated 20.03.2020 and letter dated 24th March, 2020 has already intimated the predominant Ports that the COVID-19 pandemic may be taken into consideration as a 'natural calamity' that might entitle invocation of 'pressure majeure' provisions in as a lot as duties below numerous are involved. In view of the above distinct discussions, no grounds for providing of injunction/restrain order in favour of the petitioner and towards the respondents are made out at this level. The petition filed by way of petitioner below section 151 CPC for injunction is, therefore, disregarded.

#### **4.4 Plaintiff: Golden Importers**

**Defendant: Union of India**

Court: The High Court of Kerala at Ernakulam

Judge: The Honourable The Chief Justice Mr. S. Manikumar & Mr. Justice Shaji P.Chaly

Case no: WA.No.870 OF 2020

Dated: 22<sup>nd</sup> of July 2020<sup>5</sup>

Issue: Issue a writ of mandamus or some other appropriate writ, or direction, commanding the respondents to permit the petitioner herein to clean the imports.

Instantaneous writ appeals are filed in opposition with order dated 30.06.2020 passed by a single judge of this court in W.P. (C) No.11958 of 2020 and linked cases. By the said order the writ petition was submitted but there was a decline in the relief measures for the petitioners. But, the learned single judge ordered that the certain orders such as container detention charges or other charges by the petitioner. Meanwhile, due to the outbreak of COVID-19 pandemic, China underwent a large and complete lockdown which completely prohibited motion by any person in the country., Ministry of Finance vide exhibit-P2 workplace Memorandum No.F.18/four/2020-PPD dated 19.02.2020 has clarified that said disruption of supply chains because of the spread of Coronavirus in China or every other country might be blanketed in the force Majeure clause. Earlier than the writ court, the 3rd respondent in W.A. No.870 of 2020, viz., MSC Agency (India) Pvt. Ltd., Cochin, represented via its handling Director, has filed a counter affidavit refuting all the allegations raised through the appellant. within the counter affidavit, 3 rd respondent has contended, inter alia, that granting the reliefs sought for in W.P.(C) No.11958/2020 might bring about arbitrariness/inequalities and unreasonableness, as it would defend the importer we're of the

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<sup>5</sup> <https://indiankanoon.org/doc/99793986/>



considered view that there may be no mistakes within the meantime order dated 30.06.2020, warranting interference inside the immediate appeals. Consequently, the writ appeals are dismissed.<sup>6</sup> No costs.

The Supreme Court of India highlights the following issues,

**4.5 Plaintiff: Chairman Board of Trustees**

**Defendant: m/s Arebee Star Maritime**

Court: The Supreme Court of India Civil Appellate Jurisdiction

Case no: Civil no. 2525 of 2018 ON 5<sup>th</sup> August 2020 <sup>7</sup>

Issue: Liability to pay 'ground rent' for the containers unloaded within the Cochin Port.

The sequence of events which led to the stalemate refers to those incidents which passed off in 1998 while there import synthetic woolen rags inside the Cochin port .The stated boxes were destuffed for examination and to return the empty boxes to the steamer sellers. The destuffed cargo occupied a wide area and was not promptly cleared by means of the consignees in a view that the cargo virtually did not constitute old woolen rags as mentioned, however they usually had been trendy garments which could not have been cleared. This court held that no matter Rasiklal now not being a proprietor of the goods, he changed into susceptible to pay demurrage for the aforesaid length. Accordingly, they put off the appeals that had been filed in this case against the impugned high court judgment. The impugned judgment is set aside on one query of law, particularly, that the expression "may additionally" in sections 61 and 62 of the MPT Act can't be read as "shall", difficulty to the caveat that because the "state" underneath Article 12 of the constitution, a Port trust ought to act fairly, and attempt to promote the products inside an inexpensive length from the date on which it has assumed custody of them. The High court held that the 'ground Rent' can be demanded under the orders issued by TAMP and for a maximum period of 75 days only. Hence, the contention of the port trust was rejected.<sup>8</sup>

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<sup>6</sup> Janice M Ryan ,”Understanding force majeure clauses” 02/2011

,<https://www.venable.com/insights/publications/2011/02/understanding-force-majeure-clauses>

<sup>7</sup> <https://indiankanoon.org/doc/65701425/>

<sup>8</sup> Richard A. Loubé,” The Doctrine of Impossibility/Frustration of Purpose”, March 25<sup>th</sup>, 2020, <https://steinsperling.com/the-doctrine-of-impossibility-frustration-of-purpose/>

## **DOCTRINES**

### **Doctrine of Frustration**

Where an unexpected event occurs that renders performance under a contract impossible, whether it may be permanently or temporarily, a party may be excused from their performance unless the risk was assumed by the party.

A party must show the underlying points,

- The unexpected occurrence of an intervening event
- The risk of that event was not allocated by agreement or any custom
- That the occurrence made the performance impossible to take place

## **CONCLUSION**

The petitioners shall publish a detailed representation to the first respondent starting off their case for continued applicability of the relaxation measures announced on 21.04.2020 until the lock down is lifted within the country of Tamil Nadu and the first respondent shall take a call in the matter within a period of six weeks from the date of receipt of a copy of the representation. Till such decision is made the fourth respondent should not take any coercive measures. The fourth respondent can permit clearance of the goods by taking a bond or by putting the applicants on any other appropriate condition. On these terms, the writ petition is disposed of and no cost is allowed.

## **AREAS FOR FUTURE RESEARCH**

In the present research case, based on the analysis of precedent cases and suggestions given, it is open to the members of the petitioner association to apply for provisional release of the goods. So, the future researcher can go through the above said facts and can tie his/her research on the grounds of provisional release of the goods and can compensate the appropriate remedy to the petitioners association.

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