

# **The Trustees Of The Port Of Madras By Its ... vs K. P. V. Sheik Mohamed Rowther & Co. And ... on 11 December, 1962**

PETITIONER:

THE TRUSTEES OF THE PORT OF MADRAS BY ITS CHAIRMAN

Vs.

RESPONDENT:

K. P. V. SHEIK MOHAMED ROWTHER & CO. AND OTHERS

DATE OF JUDGMENT:

11/12/1962

BENCH:

ACT:

Port Trust-Charges to be levied on steamer agents-Labour supplied by Port Trust not fully or properly utilised-Rate of charges-Liability of consignee-Madras Port Trust Scale of Rates, 'E' scale-Madras Port Trust Act, 1905 (Mad. 2 of 1905) ss. 39, 40, 42.

HEADNOTE:

In exercise of the powers under s. 42 of the Madras Port Trust Act, 1905, the Trustees of the Port of Madras, the appellants, made amendments to the Madras Port Trust Scale of Rates in 1958. By the amendment, Scale 'E' was added under Ch. V and it was to come into force from March 1, 1958. The scale laid down charges to be paid by Masters, Owners or Agents of vessels in respect of Port Trust labour requisitioned and supplied but not fully or properly utilised. These charges were to be on account of the labour of the Port Trust rendered idle on account of some lapse on the part of the ship owners or on account of extra payment to labour for the simultaneous working of more than one hook at the vessel's hatch. The labour requisition Form to be submitted by the steamer-agents was also modified and the new form contained an undertaking on the part of the steamer-agents for the payment of the charges laid down in Port Trust's scale of rates from time to time in respect of labour rendered idle or not properly utilised and also for working more than one hook simultaneously at the hatch. The respondents, the steamer-agents, filed petitions before the High Court of Madras under Art. 226 of the Constitution of India, praying for a direction to the Port Trust not to enforce these rates and not to require the filling in of the new form, on the grounds, inter alia, (1) that the ship-owners and the steamer-agents could not be made liable for

charges for short labour employed in the receiving or removal of cargo and such charges must be borne by the consignee, (2) the Port Trust had power to impose and recover rates only for services rendered and that they had no right to impose charges by way of compensation for default or to collect

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charges from Masters, Owners or Agents of vessels in respect of operations not properly falling under the head of discharge of cargo from the vessel, (3) the compulsion imposed on steamer agents in the matter of the scale 'E' rates and in respect of the signing of the requisition for shore labour was outside the authority conferred by law and was illegal, and (4) such imposition whether as charges for services or as compensation for default of steamer agents was an unreasonable restriction on the fundamental right of the petitioners to carry on business as steamer-agents and was inoperative in law.

Held : (1) The object behind the scale 'E' rates was to expedite the discharge of the cargo at the quay and thus to enable a quantity of cargo to be discharged 'quickly'. The services rendered by the Port Trust were therefore services to the ship and, consequently, charges for them could be validly realised from the steamer-agents.

(2) The Madras Port Trust Act, 1905, did not contain any provision which would constitute the Port Trust an agent of the consignee for the purpose of the taking delivery of the goods and the expression "receiving" in cl. (b) of sub-s.

(1) of

s. 39 of the Act did not mean receiving the goods on behalf of

the consignee.

(3) Under ss. 39 and 40 the Port Trust took charge of the goods on behalf of the ship-owner and not on behalf of the consignee, and whatever services it performed at the time of the landing of the goods or on their removal thereafter, were services rendered to the ship.

(4) The impugned charges were rightly levied by scale 'F' on the Master, Owner or Agent of the vessels and that the Port Trust could validly insist on the steamer-agent requisitioning the shore-labour to express, an undertaking in the form for requisitioning labour that he would pay the charges laid down in the Port Trust's scale of rates from time to time in respect of labour rendered idle or not properly utilised and also for working more than one hook simultaneously at a vessel's hatch.

Case law reviewed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION ; Civil Appeals Nos. 187 to 191 of 1962.

Appeals from the judgment and order dated March 3 1961 of the Madras High Court in Writ Appeal Nos. 53, 54, 55, 56, and 57 of 1960, M. C. Setalvad, Attorney-General for India, A. V. Viswanatha Sastri, R. Ganapathy Iyer, V. V. Raghasvan and G. Gopalakrishnan, for the appellants. S. T. Desai and P. Ram Reddy, for the respondents. 1962. December 11. The judgment of the Court was delivered by RAGHUBAR DAYAL, J.-The appellants, the Trustees of the Port of Madras, hereinafter called the Board, appeal against the order of the High Court of Madras allowing the writ petitions filed under Art. 226 of the Constitution by each of the respondents and issuing a writ of mandamus directing the appellants to forbear from enforcing the scale 'E' rates of the Madras Port Trust Scale of Rates and from requiring the signing of the Shore Labour Requisition Form from the steamer agent.

The respondents, who are either partnership firms or limited companies, carry on the business of steamer agents at Madras. The Board, with the sanction of the Central Government, made amendments to the Madras Port Trust Scale of Rates in 1958. By the amendment, scale 'E' was added under Chapter V. It was to come into force from March 1, 1958. The scale laid down charges to be paid by masters, owners or agents of vessels in respect of Port Trust labour requisitioned and supplied but not fully or properly utilised. The charges, for the sake of brevity, may be said to be on account of the labour of the Port Trust, Madras, rendered idle on account of some lapse on the part of the ship-owners or on account of extra payment to labour for the simultaneous working of more than one work at the vessel's hatch. The labour requisition Form to be submitted by the steamer-agents was also modified and the new form contained an undertaking on the part of the steamer-agents for the payment of the charges laid down in the Board's scale of rates from time to time in respect of labour rendered idle or not properly utilised and also for working more than one hook simultaneously at the hatch. These amendments in the scale of rates were made by the Board in the exercise of its power under s. 42 of the Madras Port Trust Act, 1905 (Mad. Act 11 of 1905), hereinafter called the Act. This section empowers the Board to frame a scale of rates at which and a statement of the conditions under which any of the services specified in the various clauses of the section shall be performed by the Board or by a person to whom any service has been relinquished under s. 41-A of the Act. Thereafter, the respondents, viz., the steamer-agents, filed petitions under Art. 226 of the Constitution, in the High Court of Madras, and prayed for the issue of a writ of mandamus directing the Board not to enforce these rates and not to require the filling in of the new form. They contended that (i) the ship-owners and the steamer-agents cannot be made liable for charges for shore labour employed in the receiving or removal of cargo and such charges must be borne by the consignee (ii) s. 39 of the Act provided for the performance of services by the Board and the other sections provided for the imposition and recovery of rates for the services performed for the vessel and services performed for the goods. Services in the former category are to be paid for on behalf of the carrier i. e., by the master, ship-owner or the steamer-agent, and the services in the latter category constitute a liability on the consignee; (iii) the Board has power to impose and recover rates only for services rendered and that they have no right to impose charges by way of compensation for default or to collect charges from masters, owners or agents of vessels in respect of operations not properly falling under the head of discharge of cargo from the vessel; (iv) prior to 1914, the steamer-agents acted as landing-agents for removing cargo from ship to pier and collected for these services from the consignees a separate charge known as 'landing charge' in addition to the freight. When the quays were constructed and cargo came to be landed there, the Board took over

the landing of goods and collected quay dues instead of 'landing charges' which were wholly paid by the consignees. These quay dues later on merged in the harbour dues collected by the Board from the consignees; (v) usually, the steamer agent informs the Traffic Manager the probable date of arrival of the vessel under his agency, tonnage hatch-wise of cargo to be landed at Madras and the number of hatches proposed to be worked. Under the revised procedure adopted by the Board on August 1, 1957, before a ship has reached its berth, the steamer agent is required to make an application and a deposit in his current account to cover charges for the working of the vessel in respect of overtime, supply of cranes, water and appliances and from March 1, 1958, to meet the scale 'E' contingencies also ;

(vi) the operation which goes on at the quay is described thus : After the Port Trust pilot brings the vessel to the berth allotted to her :

"The stevedore labour supplied by the Madras Dock Labour Board, a statutory body, board the vessel, prepare the slings in the holds or hatches, work the ship's winches and the cargo is hoisted on the quayside. When the sling rests on the shore or in the barge in the case of discharge at moorings, the shore labour unslings the cargo and the Trust's Tally Clerk notes the items in a tally sheet. As each sheet is closed a duplicate copy of the import tally sheet is given to the steamer agent's representative on the spot. This duplicate copy is the receipt prescribed under section 39 (3) of the Madras Port Trust Act..... The shore labour remove the cargo from the point of landing to the shed or open for stacking and subsequent delivery of the goods from the Trust to the consignee. The consignee obtains delivery order from the Steamer agent and then files Harbour Import Application with the Trust for payment of Harbour dues and Bill of Entry with the Customs for the duty payable by him. On payment of the duty and the harbour dues by the consignee the cargo is delivered to him by the Trust."

(vii) The Board adopted the piece-rate scheme for the Dock workers in pursuance of the report of the Jeejeebhoy Committee and the new scale 'E' rates are a part of such a scheme. (viii), Prior to March 1, 1958 the cost of shore-labour was met entirely by the Port Trust. No distinction was made between the charges for shore labour in ordinary cases and charges for shore-labour in respect of idle, time or additional work. (ix) Under the scheme which was brought into force on March 1, 1958, charges for shore labour in the contingencies covered by the scale 'E' have been excluded from Harbour dues. These charges are now treated as charges for which the steamer-agent is made responsible. (x) The compulsion imposed on steamer agents in the matter of payment of the scale 'E' rates and in respect of the signing of the requisition for shore labour is outside the authority conferred by law on the trustees of the Port of Madras and is illegal. Such an imposition whether as charges for services or as compensation for default of steamer agents is illegal and an unreasonable restriction on the fundamental right of the petitioners to carry on business as steamer agents and is inoperative in law. (xi) the Port Trust authorities receiving goods on the quay or in the barge at moorings, do so on behalf of the consignee. The Board, by the common counter-affidavit filed on its behalf by the Deputy Traffic Manager of the Madras Port Trust, admitted the direct arrangements between the ship-owner, master, or agent with the stevedores but did not accept the allegations about the nature of the various rates and duties levied and the legal position as stated in the

petitions. According to the Board, (i) the Harbour dues on the import cargo under scale A, Chapter II of the Scale of Rates, are payable on tonnage and include, beside overhead, a nominal rent for storage for a specified period etc., and the item of charges for portage involved in moving the goods from the landing point to the storage or stacking point. (ii) It is not correct that the ship-owner has nothing to do with the import cargo after it has been landed by the stevedores at the landing point on the quay, as the ship-owner in each case by the bill of lading has to deliver the goods to the consignee named in the bill of lading or his nominee and he remains liable under his contract until he has delivered the goods to the person who is entitled to take delivery of the goods. (iii) Under s. 39 of the Act the Port Trust gives facilities and undertakes certain services. One of such services is the moving of the goods from the landing point to the storage or stacking point and thereafter delivering the goods to the persons entitled under the bill of lading. The Board does not undertake the unloading of the goods from the ship to the quay. The ship-owner makes his own arrangements through the stevedores, though the Board is authorised to undertake such services on behalf of the ship-owner. It is a service to the ship-owner by the Board to give the ship-owner a receipt for the goods to keep them in custody and deliver to the consignee. The services undertaken in respect of the import cargo till they have been moved to the storage or stacking point are services to the ship-owner for which the ship-owner or master or steamer agent is primarily liable and the charges may properly and legally be levied from them. (iv) The Board collects the harbour dues from the consignee at the time of giving delivery, but in fact makes that collection as agent of the ship-owner, master, steamer agent who are primarily the persons liable for the dues. (v) The Board is entitled to collect the harbour dues from the ship-owner, master or steamer agent. (vi) The issuance of a receipt to the master at the landing point is a mere matter of convenience for betokening the fact that the goods have been handed over to the Port Trust for removal, storage and delivery and does not in any way detract from the fact that the subsequent services are facilities and services rendered to the ship-owner in respect of the goods which are the subject of contract of carriage by the ship-owner. (vii) The past practice had been for the agents to inform the Board about the shore labour which would be necessary for moving the goods in respect of each steamer. Prior to 1956, this was done orally and then the Form was introduced which contains the same particulars except the undertaking to pay the scale 'E' charges as the impugned Form now contains. Since the enforcement of the new piece-rate scheme, the payment to labour was not based on tonnage but a daily wage was fixed along with a provision for payment for idle time and hook allowance for working two or three hooks simultaneously at a vessel's hatch.

(viii) The proper utilisation of the time of the labour depends upon the steamer agents first giving a proper anticipation and shift at which they were to be put on the job being the time when the cargo will be ready for removal and, secondly, there giving a continuous supply of cargo for removal so that there is no gap in the work. (ix) The levy of multiple hook allowance against the steamer agents is a facility to the ship to discharge fast and sail quicker. When two or more hooks work in a ship's hatch, the gangs handling cargo will not be in a position to handle more cargo and therefore the approval of Board was obtained for payment of an allowance to compensate such loss in their earnings. As working of additional hooks in a vessel's hatch benefits the ship, the recovery of hook allowance from the steamer agents under scale 'E' is legitimate. (x) The additional charge made under scale 'E' is a charge in respect of facilities afforded to and services undertaken on behalf of the ship-owner, master, agent by the Board in relation to the cargo which is under contract of carriage

by them, in the same way as harbour dues.

To understand the exact nature of the impugned charges, it is necessary to quote the scale 'E' charges to which objection is taken :

SCALE E-Charges Against Masters, Owners, or Agents of Vessels in respect of Port Trust Labour requisitioned and supplied but not fully or properly utilised Item Classification for purposes no. of this Scale

1. Port Trust Mazdoors rendered idle on account of the breakdown of ship's winches, wriggling of ship's derricks, shifting of cranes at the request of the steamer agents or stevedores, cargo not being ready for shipment, completion of loading and/or unloading before the end of the shift, late arrival of vessel at the berth or for any other reason which is attributable to the vessel and is beyond the control of the workmen.

Note : Idle time will be calculated as follows Charges Payable 64 nP. per mazdoor per hour in the case of 8 hr. shifts and at 80 nP. per hour in the case of 6-1/2 hr. shifts.

item Classification for purposes no. of this Scale Any continuous stoppage of work of 15 minutes or under shall be ignored and any continuous stoppage in excess of 15 minutes and up to 30 minutes shall be counted as 30 minutes. If the said continuous stoppage continues in excess of 30 minutes the actual excess rounded off to the next quarter will be calculated as idle time. For example, if there is continuous stoppage for 35 minutes, the idle time will be calculated as 45 minutes.

2. Port Trust Mazdoors sent away or not required after shore work shall have thereof or Rs. commenced at the start of 2.50 per half shift each shift. or part thereof.

3. Allowances for working Rs. 1.25 for each of two hooks simultaneous- mazdoor (Madras ously at a vessel's hatch. Port Trust Shore Mazdoor) employ-

ed at the hooks.

4. Allowances for working of Rs. 1.66 for each more than two hooks Madras Port Trust simultaneously at a vessel's Shore Mazdoor hatch. employed at the hooks.

N. B.-One hour's clear notice in writing must be given of cancellation of labour requisitioned Charges Payable Rs. 5 per mazdoor per shift or part for work at hooks. If cancellation orders are not received in time, charges will be levied for the full period requisitioned.

Note : The above amendment will take effect from the date of Introduction of the Piece-Rate Scheme, viz., March 1, 1958.

Sd/-etc. A circular Exhibit-B was issued by the Board to all the steamer agents on February 25, 1958, explaining the features of the Piece-Rate Scheme for Dock and Stevedore works for the Port of Madras. The Board emphasized that the Piece-Rate Scheme was formulated to increase the out-turn of vessels and sought the cooperation of the steamer agents and the stevedores in the implementation of the scheme and making it a success.

The salient features of the scheme in respect of payment of wages to the workers show that, under the scheme, the worker is assured of a minimum daily wage and that, the actual earnings for a day really depend on his output per shift, they being linked with productivity. A gang of workers consists of one maistri and 14 workers. They handle the goods at a particular point, say a hook. Datum lines have been fixed for different kinds of cargo per hook per shift. 'Datum lines' means the 'standard output' of the work to be performed by a gang in a particular hook during a shift. The output is calculated in deadweight tons. Thus a daily wage rate as well as a wage rate for standard output have been fixed for all categories of workers who have been classified in five categories, one of which is the Port Trust Shore Labour. If the 'workers produce more than the datum lines, they are entitled to the increased wage rate. There is steady increase in the earnings if the output exceeds the 100% of the datum tonnage and at 150% the worker gets twice his daily wage rate and at 200% the piece rate wage is thrice the daily wage rate. These features of the scheme sufficiently indicate the significance of 'idle time' for the workers. If, during a shift, the workers are not actually employed on the job for which they are engaged and have to remain idle, their output of work during that shift, on the basis of tonnage, is bound to be less and, consequently, their earnings would be less than what they could be if they had been continuously employed during the shift. To compensate such loss in earnings due to the time of the workers remaining unemployed idle allowance is granted for such time during which the workers are rendered idle for reasons beyond their control for periods in excess of 15 minutes. The circular shows that idle allowance is paid at the daily wage rate for the following reasons :

- (i) breakdown of cranes or winches.
- (ii) shifting of quay cranes or rigging of ship's derricks.
- (iii) cargo not ready for shipment
- (iv) late arrival of vessels at the berth
- (v) completion of loading and/or unloading before the end of the shift
- (vi) actual rain-time during shift working hours, and
- (vii) any other reason beyond the control of the workmen except slow work on the part of the workmen covered by this scheme.

Item No. I of scale 'E' charges makes the idle allowances, for reasons nos. (ii) to (v) and for breakdown of ship's winches mentioned in reason (i), chargeable against masters, owners or agents

of vessels who control matters giving rise to those reasons. The workers are also paid multiple hook allowance. They are entitled to 'hook allowance' at the rate of 1/4th of the daily wage if two hooks work simultaneously at a hatch and 1/3rd of the daily wage, if more than 2 hooks work at a hatch. One gang of workers handle goods at one point, i.e., at one hook.. If several hooks are simultaneously worked at the vessel's hatch, an equal number of gangs of workers will be employed to handle the goods. The result is that the output per gang is proportionately reduced and consequently its earnings are reduced. There may be further reduction in earnings if the cargo is discharged during half-shift. It is to compensate such losses that under the piece-rate scheme, the workers are paid hook allowance. The simultaneous working of more than one hook at the hatch of a ship helps the ship to discharge cargo fast and sail away quicker. The hook allowance is charged against the master, and steamer agents of the ship as the working of additional hooks benefits the ship.

The writ petitions were disposed of by a learned Single judge of the High Court. He dismissed them holding that the liability to pay the charges - being for services rendered, the charges could be imposed only on the person to whom that service is rendered, that the entrustment of the goods to the Board is by the shipping agent though the entrustment is for ultimate delivery of the goods to the consignees and that the service is rendered to the shipping agent even though the consignee also benefits by that service and it was not necessary for imposing the liability that the shipping agent must exclusively benefit from the service rendered.

On appeal, the appellate Bench reversed the order, allowed the petitions and issued a writ of mandamus as prayed. It held that the Board had no authority to introduce the new scale 'E' rates payable by the master, owner or agent of the vessel, -that the ship-owner's liability ends when the goods had been put over the rail of the ship and from the moment the goods are put within the reach of the Board employees to take charge of them and tally clerk passes the receipt on behalf of the Board. The services in respect of which the new charges are sought to be levied cannot be deemed to be services rendered to the master, owner or agent of the vessel. They must be deemed to be services rendered to the consignee. The purpose of the requisition by the steamer agent was really to avoid delay and consequent congestion and, generally, for the convenience of the Board. The requisition must be treated as one on behalf of the consignees because it is not part of the duty of the steamer agents to take delivery.

The contentions raised before us for the parties are the same as were urged in the Courts below and will be mentioned when dealt with later.

Before we deal with the contentions of the parties, we may refer to the various provisions of law having a bearing on the question before us. Clause (7) of s. 5 of the Act states that 'owner', when used in relation to goods, includes any consignor, consignee shipper or agent for the sale, custody, loading or unloading of such goods. Section 39 provides for the performance of services by the Board and reads:

„(I) The Board shall, according to its powers, provide all reasonable facilities for and shall have power to undertake the following services:--



(a) landing, shipping, or transshipping passengers and goods between vessels in the port and the wharves, piers, quays or docks in possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers by rail, tramway or otherwise within the limits of the port, subject to such restrictions and conditions as the Central Government may see fit to impose; and

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway company or administration under the Indian Railways Act, 1890.

(2) The Board shall, if so required by the owner, perform in respect of goods all or any of the services mentioned in clauses (a), (b), and (d) of sub-section (1), provided that the Board shall not be bound to perform any service which it has relinquished under the provisions of clause (a) of sub-section (1) of section 41-A. (3) The Board shall, if required, take charge of the goods for the purpose of performing the service and shall give a receipt in the form and to the effect prescribed from time to time by the Central Government.

After any goods have been taken charge of and a receipt given for them under this section no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt shall have been given or to the master or the owner of the vessel from which the goods have been landed or transhipped."

Section 40 laying down the responsibility of the Board for loss etc., of goods reads:

"(1) The responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall, subject to the other provisions of this Act and subject also in the case of goods received for carriage by railway to the provisions of the Indian Railways Act, 1890, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words 'in the absence of any special contract' in section 152 of the last-

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tioned Act. Provided that, till the receipt mentioned in sub-section (3) of section 39 is given by the Board, the goods shall be at the risk of the owner.

(2) The Board shall not be in any way responsible for loss of or damage to goods of which it has taken charge, unless notice of such loss or damage shall have been given within one month of the

date of the receipt given for the goods under sub-section (3) of section 39."

Section 41-A deals with relinquishment of services subject to the control of the Central Government and sub-s. (1) of s. 41 provides that any person to whom any or all of the services under cls. (a) and (b) of sub-s. (1) of s. 39 has or have been relinquished under s. 41-A, shall, if so required by the owner, perform in respect of goods 'any of the services so relinquished and for that purpose take charge of the goods and give a receipt in the form and to the effect prescribed from time to time by the Central Government.

Section 42 which deals with the scale of rates, reads "The Board shall frame a scale of rates at which and a statement of the conditions under which any of the services specified hereunder shall be performed by itself or by a person to whom any service has been relinquished under section 41-A or partly by one and partly by the other:-

(a) Transshipping of passengers or goods ;

between vessels in the harbour;

(b) landing and shipping, of passengers or goods from or to such vessels to or from any wharf, quay, pier, dock, land or building in the possession or occupation of the, Board or at any place within the limits of the port;

(c) craning or portering of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act, 1908 (XV of 1908)."

Section 44 provides that every scale and every statement of conditions framed by the Board under ss. 42, 43 or 43-A shall be submitted to the Central Government for sanction, and when sanctioned and published, will, have the force of law. Sections 45 and 46 provide for the enhancement of the rates by the Board and the Central Government, if the Board fails to do so, respectively.

Section 50 provides that the rates in respect of goods to be landed shall be payable immediately on the landing of the goods and those in respect of goods to be removed from the premises of the Board, or to be shipped for export, or transhipped, shall be payable before the goods are removed or shipped or transhipped. Section 51 gives the Board a lien on the goods for the amount of the rates leviable under the Act in respect of any goods and for the rent due to the Board on any buildings etc., in which those goods had been placed. Section 52 provides for the priority of this lien of the Board over certain other liens and claims. Section 53 provides for the preservation of lien for freight or other charges including landing charges payable to the ship owner after the the Board. Section 54 provides for the retention of such goods in the custody of the Board at the risk and expense of the

owners of the said goods until such lien is discharged and also provides that the godown or storage rent would be payable by the party entitled to such goods for the time during which they may be so retained.

Section 56 provides for the sale of goods after two months if rates or rents are not paid or lien for freight is not discharged. Section 57 provides for the publication of the notice for sale in the case of perishable goods in the custody of the Board, in the Gazette and section 58 provides for giving notice to the owner of the goods of his address is known. Section 59 provides as to how the sale proceeds are to be applied. It is to be applied in the payment of the expenses of sale in payment of the liens and claims excepted in s. 52 from the priority of the lien of the Board and in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof. goods are landed and the lien for freight or charges takes priority over the aforesaid lien of The Board framed by-laws in exercise of the powers conferred by s. 95 of the Act. By-law no. 2, provides for the regulation of admission to the harbour premises by means of permits etc. They are to be issued to such of the public as have business to transact within the premises in so far as connected with the purposes, services or works of the harbour. By-law -no. 3 provides that the master, owner or the agent of a vessel carrying cargo for discharge at the Port of Madras shall furnish the Traffic Manager, Port Trust.- within not less than six clear working days a true copy of the complete Import General Manifest before being permitted to break bulk. The manifest is to show full details of each consignment manifested, including litreage in the case of liquids in bulk and gross weight in kilos in other cases. Non-submission of such manifests within the stipulated time may result in the vessel concerned not being permitted to break bulk.

By-law no. 4 provides that no goods may be landed or shipped except at places appointed by the Port Trust for each class of cargo. By-law 4-A provides that if any vessel discharges upon any wharf or property of the Port Trust any cargo in such a rotten condition as to be a nuisance or injurious or dangerous to health, the Traffic Manager, Port Trust, may require the consignee thereof or if the consignee should disclaim, deny or dispute the consignment or decline all responsibility for the same or if there should be no consignee, the owner, master or agent of the vessel from which the same had been discharged, to forthwith cause the said cargo or goods or substance to be removed from the property of the Port Trust and, on the failure of such persons to have the goods removed, to have the removal effected by the Traffic Manager in such manner as he may think fit, or cause the same to be destroyed, and to demand the expenses incurred from the said consignee or the said master, owner or agent as the case may be.

By-law no. 5 provides that when the Port Trust undertakes the reception, removal, portage or storage of cargo under s. 39 of the Act, it shall deliver it or permit its shipment after all dues shall have been paid and that in the case of cargo of which the Port Trust does not elect to undertake such services, no steamer agent, shipper or consignee may remove any part of such cargo from the harbour premises until authorised by the Port Trust so to do after dues shall have been paid. By-law no. 6 provides that harbour dues on goods landed, together with any other charges incurred under the Port Trust Scale of Rates, shall be paid before removal of the goods from the harbour premises. By-law no. 7 provides that all applications for permission to export or import goods shall be on approved forms and that such forms shall be filled in and signed by the shipper or consignee of the

goods or by his agent. We may also refer to the Manual of Instructions issued by the Board for the Traffic Department. Mr. Desai has urged that the Manual should not be looked into as it is not part of the record. Strictly, this is correct, but whatever extra is contained in the instructions is really amplification or explanation of facts already on record, in the affidavit and the common counter-affidavit filed on behalf of the parties. We can look at the manual of instructions for this purpose. The instructions provide that agents of vessels will inform the Traffic Manager of the probable date of arrival of their steamers and that the Traffic Manager will note his requirements for a quay or a mooring berth on such notice. Instruction no. 3 states that the authority from the steamer agents as bailors to the Trust as bailee to deliver goods may take the form of an endorsement by the steamer agents on the bill of lading and that a bill of lading presented without the steamer agent's endorsement cannot be accepted. Instruction no. 4 deals with the tally sheet and is in these terms "The Form prescribed by the Local Government under section 39(3) of the Madras Port Trust Act for cargo landed into the custody of the Port Trust. The original copy serves the Trust as its record. The duplicate copy, the prescribed receipt, is handed to the tenderer immediately the form has been entered up with the marks, numbers, description (as far as possible) and other particulars, such as outward condition of each individual package and signed by a Port Trust Tally Checker. Great care must be exercised in entering up Tally Sheets as they are the only records for the settlement of claims between the tenderer and the Port Trust and contribute largely towards smooth working. Tally sheets are kept in the Traffic Sections for 28 days after the departure of a vessel and are then filed in the Application Section in the Office of the Assistant Traffic Manager (Shipping).

x x x x x x x Instruction No. 5 deals with receipting and provides "As each tally sheet which is prepared in duplicate with carbon paper is completely filled-in, it should be signed by the Port Trust Tally Checker and the Steamer Agent's representative and the duplicate copy should be handed over to the latter on the spot. This constituted the receipt under s. 39(3) of the Act."

Instruction no. 26 states that the Trust grants delivery of cargo on the authority of delivery orders granted by the steamer agents as bailors. This authority may take the form of an endorsement by the bailor on the bill of lading or a separate delivery order on the Trust issued by the bailor. It is to be noticed from the various provisions of the Act that they do not make it obligatory on the part of the Board to undertake the various services mentioned in s. 39 of the Act.

Section 39, already quoted, empowers the Board firstly, to provide all reasonable facilities, according to its powers, for the services mentioned in the various clauses of sub-s. (1), and secondly, empowers the Board to undertake those services. The Board is thus enabled to undertake those services. Sub-section (1) does not make it a duty of the Board to undertake those services. It is only by virtue of sub-s. (2) that the Board is to perform in respect of goods, if required, all or any of the services mentioned in cls. (a), (b) or (d) of sub-s. (1), those services being in connection with the landing of goods between vessels in the port and the wharves, piers, quays or docks in possession of the Board and in connection with the receiving, removing, shifting, transporting, storing or delivering of goods brought within its premises and despatching goods intended for carriage by neighbouring railways. Sub-section (3) again says that the Board is to take charge of the goods for the purpose of performing the services, if required to do so, and, in that case, the Board is to give receipt in the form and to the effect prescribed by the Central Government. It is therefore clear that

the performance of any of the services mentioned in sub-s. (1) of s. 39 and the taking of charge of the goods are consequent on the Board being required to do so by the 'owner', which is a general term including consignor, consignee, shipper or agent. If the owner does not require the Board to undertake such services and to take charge of the goods for these purposes, the Board is not to undertake those services.

It is the steamer-agent, who is in a position to require the Board to undertake these services in respect of the cargo the ship is to unload. He alone is respected to have full knowledge about the time when the ship is to arrive, about the suitability of the berth for that ship, about the quantity and nature of the consignment and about the time the ship would like to be in the dock and consequently about the amount of shore-labour required in connection with the goods to be landed. It is for this reason that it is the steamer-agent who informs the staff of the Board about the arrival of the ship' who has to furnish the manifest giving details of the goods to be landed and who has to submit a requisition about the shore labour required and the period of time during which it would be required. It is admitted for the parties that the steamer-agent used to convey the information about the necessary shore labour and about the period when it was required. The new Form of requisition introduced' from March 1, 1958, contained an undertaking by the steamer-agent for the payment of the labour dues on account of labour remaining idle or on account of labour working more than one hook simultaneously. This was introduced in the Form because such payments were newly introduced and added to the charges which used to be collected by them on the basis of tonnage handled by the shore-labour and possibly also on account of the anticipated objection on the part of the steamer-agents to their liability to pay these charges. The liability to pay these charges, however, does not arise on account of the undertaking but on account of the sanctioned scale of rates at which and the conditions under which the Board would perform those services. Section 44 of the Act provides that such sanctioned rates and conditions shall have the force of law.

The question for determination, in the case, then is whether the law making the steamer-agent liable to pay these charges is good law.

The learned Attorney-General has urged, for the appellant, that the object behind the scale 'E' rates is to expedite the discharge of the cargo at the quay and thus to enable a quantity of cargo to be discharged quickly. The services rendered, by the Board are therefore services to the ship and, consequently, charges for them are to be realised from the steamer-agents.

It is also urged that the harbour dues are collected from the consignees as the Board is a bailee of the ship-owner who is a bailee of the shipper and who is bound by the contract to deliver the goods to the consignee or his nominee, on the presentation of the bill of lading. The Board's taking charge of the goods landed does not amount to its taking delivery of the goods from the ship-owner in fulfilment of the ship-owner's duty to deliver the goods to the consignee, for the simple reason that the Board does not get the goods on the presentation of the bill of lading. There is no doubt that the object of the impugned charges is what is urged for the appellant. The charges are for labour rendered idle on account of some default on the part of the ship-owner or his agent and not on account of anything

-which is within the control of the workmen. We have already referred to the features of the piece-rate scheme showing the necessity for the payment of the idle allowance of the workers for labour rendered idle. Similar considerations justify the payment of that allowance when labour is sent away or not required after the shore work has commenced at the start of the shift.

When more than one hook is worked at the same time, it necessarily means quicker unloading of the goods. This, again, is in the interest of the shipowner. The ship completes its task of landing the goods earlier. The provision for the workers working more than one hook at the same time is therefore again in the interest of the ship-owner.

Another reason for charging the steamer-agent for these payments is that the goods unloaded by the ship need not be for one consignee alone. The goods are not unloaded consignee-wise. It is not possible, and if possible is bound to be very inconvenient, for the Board to work out the proportionate charges for each consignee, in connection with the payment for idle allowance and the hook allowance when cargo is discharged with more than one hook working simultaneously at the vessel's hatch. It is reasonable therefore to make the ship-owner liable for their payment.

There is no doubt that the ship-owner is the bailee of the shipper, the consignor, and that he is responsible for the delivery of the goods to the consignee or a transferee according to the terms of the bill of lading. This duty the ship-owner discharges only when he has delivered the goods to the consignee or such person who is entitled to take delivery in accordance with the endorsements on the bill of lading. Delivery to the Board is not delivery to the consignee or such person, both because the delivery is to be on the presentation of the bill of lading and because the Act contains no provision which would constitute the Board an agent of the consignee for the purpose of taking delivery of the goods.

We do not agree with the contention for the respondents that the expression 'receiving' in cl. (b) of sub-s. (1) of s. 39 of the Act means receiving the goods on behalf of the consignee. The reception of the goods can be on behalf of the ship-owner also. The steamer-agent cannot ask the Board to receive the goods on behalf of the consignee. Sub-section (3) of s. 39 of the Act empowers the Board to take charge of the goods for the purpose of performing certain services which do not include the taking delivery of the goods from the ship-owner. It is true that on the Board's taking charge of the goods and giving a receipt about it to the ship-owner, the master or the owner of the vessel is absolved from liability for any loss or damage which may occur to the goods which had been landed, but this provision by itself does not suffice to convert the receiving of the goods by the Board after they had been landed by the ship-owner to the Board's taking delivery of those goods on behalf of the consignee. The Board simply takes charge of the goods on being required by the steamer-agent to take charge of it.

Section 40 speaks of the responsibility of the Board for the loss, destruction or deterioration of the goods of which it has taken charge as a bailee under ss. 151, 152 and 161 of the Indian Contract Act. Section 148 of the Contract Act states that a bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The

person delivering the goods is called the bailor and the person to whom they are delivered is called the bailee. It is clear therefore that when the Board takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Board is the bailee, and the Board's responsibility for the goods thereafter is that of a bailee. The Board does not get the goods from the consignee. It cannot be the bailee of the consignee. It can be the agent of the consignee only if so appointed, which is not alleged to be the case, and even if the Board be an agent, then its liability would be as an agent and not as a bailee. The provisions of ss. 39 and 40, therefore, further support the contention that the Board takes charge of the goods on behalf of the ship-owner and not on behalf of the consignee, and whatever services it performs at the time of the landing of the goods or on their removal thereafter, are services rendered to the ship. We may now deal with the points urged by Mr. Desai, for the respondents. The first and the main question urged is about the legal obligation of the master in respect of the unloading of the cargo. Mr. Desai has drawn attention to the provisions of the Indian Carriage of Goods by Sea Act, 1925 (Act XXVI of 1925), and especially to the definition of the expression 'carriage of goods' in Article I of the Schedule to that Act. 'Carriage of goods' according to cl. (e) of this Article, covers the period from the time when the goods are loaded on to the time when they are discharged from the ship. Of course, once the goods are landed, they are no more 'carried' by the ship and the expression 'carriage of goods', could only cover the period up to the discharge of the goods from the ship. But that does not in any way affect the consideration of the questions before us. Further, Rule 6 of Article III provided that unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall, prima facie, be evidence of the delivery by the carrier of the goods as described in the bill of lading. This implies that till the time of the removal of the goods into the custody of the person entitled to the delivery thereof under the contract of carriage, the carrier will not be deemed to have delivered the goods in accordance with the terms in the bill of lading. The responsibility of the carrier for the goods does not cease merely by the technical discharge of the goods from the ship but continues up to their delivery in accordance with the terms of the bill of lading.

It is urged by Mr. Desai that under the general law, the responsibility of the master of the ship ceases when he has discharged the goods from the ship and has placed them in such position that the consignee can take charge of them and that whatever is done, thereafter, in connection with the goods, is done on behalf of the consignee and for his benefit.

The charges for labour rendered idle and for labour working more hooks simultaneously, are not charges for services rendered subsequent to the landing of the goods. These are charges which are incurred at the last stage of the process of landing of the goods and therefore prior to the actual landing of the goods. They are, even under the general law, for services rendered to the master of the ship whose liability for loss or of damage to the goods continues up to the placing of the goods on the quay and their receipt by the Board.

The case *Great Eastern Shipping Co. Ltd. v. Govindasamy* (1), is not of much help. It was not disputed, in that case, that when, the master of the ship lands the goods and leaves them in charge of the Port Trust the legal effect is as if the master representing the shipping company has delivered

the goods to the consignee for whom the Port Trust must be deemed to be agents and that, having regard to the practice obtaining in the Madras Port, it was not necessary that there should be a formal requisition by the consignee to the Port Trust to take charge of the goods. This case has not been taken rightly by the Court below to be of any direct authority on the question arising for decision in this case. It is stated at p. 684, in Carver's Carriage of Goods by Sea', 10th Edition, that generally speaking, the consignee of the goods or the charterer is bound to remove the goods from the ship's side, and to provide for that purpose a proper number of men and suitable appliances of the kind ordinarily used at the port, having regard to the manner in which the ship is to be discharged. It is stated at p. 687 "Where the customary manner of discharge at the port requires that the cargo be put out by (1) I.L.R. [1957] Mad. 840.

those working on the ship, say into lighters or on to a quay, it has been held that the word "alongside" may mean, not actually at the ship's side but in a lighter alongside her."

We may now consider some cases on which reliance is placed for the respondents.

In Peterson v. Freebody & Co. (1), the facts were different from those of the present case. The Court was considering the liability of the consignee for demurrage paid by the ship-owner, on account of the delay in the discharging of the cargo. The suit was between the ship owner and the consignee. The charter-party provided:

"The discharging to take place in eight days... The cargo to be brought to and taken from alongside the ship at merchants' risk and expense. The ship to deliver the cargo with such dispatch that unnecessary delay can be avoided. The ship to discharge over side in the river or dock into lighters or otherwise, if required by consignees."

Lord Esher, M. R., stated at p. 297 "Wherever the delivery is to be, the shipowner, on the one hand, must give delivery. If he merely puts the goods on the rail of his ship, he does not give delivery : that is not enough. If, on the other hand, the consignee merely stands on the other ship, or on the barge or lighter, or on the quay, and does nothing, he does not take delivery. The shipowner has performed the principal part of his

-obligation when he has put the goods over the rail of his ship; but I think he must do something more-he must put the goods in such a position that the consignee (1) [1895] 2 Q.B.D. 294, 296, 297.

can take delivery of them. He must put them so far over the side as that the consignee can begin to act upon them; but the moment the goods are put within the reach of the consignee he must take his part in the operation. At one moment of time the ship-owner and the consignee are both acting-the one in giving and the other in taking delivery; at another moment the joint act is finished." These observations apply when the goods are to be delivered to the consignee alongside the ship and not when they are

-handed over to the Statutory body, like the Board, as a sub-bailee. How the delivery is to be made depends on the terms of the bill of lading and the custom of the Port. The case is no authority for the



proposition that in all circumstances the master of the vessel is not responsible for the performance of the acts subsequent to his placing the goods in such a position that the consignee can get them, as contended for the respondents. The delivery contemplated in these observations, is not, in our opinion, equivalent to the landing of the goods at the quay as contemplated by the various provisions of the Act. We have already discussed that the landing of the goods by the ship-owner on the quay and placing them in charge of the Board does not amount to delivering them to the consignee, even though it absolves the master of the ship from further responsibility for the loss or damage to the goods. The case reported as *British Ship-owners' Co. (Limited) v. Grimond (1)*, is again, not of help, as it simply held that delivery to the porters, whom the consignee was obliged by the Harbour Regulation to employ and pay for the purpose of receiving, was delivery to the consignee. In the present case there is nothing to show that the consignees are obliged by (1) (1876) III Ses. Oases IV Series 968.

the Board to engage the shore-labour. Further, in the above case, Lord Justice Clerk said at p. 972 "The question of delivery is as much one of common-sense as of technical rules. The general rule is that goods are delivered when they are so completely in the custody of the consignee that he may do as he pleases with them." When the goods are placed in the charge of the Board, the consignee is not at liberty to do anything he likes with them and therefore, in the view expressed by Lord Justice Clerk, the making over of the goods to the Board does not amount to delivery to the consignee.

In *Sze Hai Tong Bank Ltd. v. Rambler Cycle Co. Ltd.*, (1) it was said :

"It is perfectly clear. law that a ship-owner who delivers without production of the bill of lading does so at his peril. The Contract is to deliver, on production of the bill of lading, to the person entitled under the bill of lading..... The shipping company did not deliver the goods to any such person. They are therefore liable for breach of contract unless there is some term in the bill of lading protecting them. And they delivered the goods, without production of the bill of lading, to a person who was not entitled to receive them. They are therefore liable in conversion unless likewise so protected."

Clause 2 of the Bill of lading provided :

"During the period before the goods are loaded on or after they are discharged from the ship on which they are carried by sea, the following terms and conditions shall apply to the exclu-

(1) [1959] A. C. 576, 586.

sion of any other provisions in this bill of lading that may be inconsistent therewith, viz., (a) so long as the goods remain in the actual custody of the "carrier or his servants" - (b) whilst the goods are being transported to or from the ship..... (c) in another cases the responsibility of the carrier, whether as carrier or as custodian or bailee of the goods, shall be deemed to commence only when the goods are loaded on the ship and to cease absolutely after they are discharged therefrom." It was

held that this clause did not protect the shipowner in spite of the width of these expressions and its operation must be limited and modified to the extent necessary to enable the effect to be given to the main object and intent of the contract and at least so as not to permit the carrier deliberately to disregard his obligation as to delivery against the production of the bill of lading. In the present case, it was further contended that as between the master of the ship and the consignee, the Act made it obligatory that the consignee gets his goods from the Board and not direct from the master of the ship, and that therefore the Board acts as the agent of the consignee. We have not been referred to any provision in the Act which supports this contention. Assuming, however, that the consignee cannot take delivery of the goods at the quay from the ship direct, it does not follow that the Board receives the goods as the agent of the consignee. The only reasonable conclusion in the circumstances can be that the place of delivery is shifted from the side of the ship to the warehouses where the Board stores the goods till the consignee appears to take delivery on the basis of the delivery order by the steamer-agent which is usually an endorsement on the bill of lading, and the quay be considered a part of the ship. In Hamburg, it is so considered, as would appear from the following note at p. 37 of the German Law of Carriage of Goods by Sea, by Sieve King:

"Where goods are shipped from or discharged on to a quay, the question arises whose agent the owner of the quay is. This of course depends upon the wording of the rules and bye laws regulating the passing of goods over the quay. As a rule (in Hamburg for instance) the quay is considered as forming part of the ship the owner of the quay is the agent of the master. The fact of the shipper having handed the goods over to the owner of the quay is tantamount to a receipt for the same on the part of the master; the goods discharged upon the quay are considered as still being in the possession of the master until the consignee has received them from the quay."

If the Board was an agent of the consignee, it was bound to deliver the goods to the consignee and should not have any rights of retaining the goods till the payment of the rates and other dues for which it had a lien on the goods. The provision of there being a lien on the goods for the payment of the dues of the Board or the freight, make it clear that the Board did not have the custody of the goods as an agent of the consignee.

It is further contended that s. 42 draws a distinction between services performed in respect of the vessel and those performed in respect of the goods; that the former services are rendered to the master of the ship and the latter to the consignee, the owner of the goods and that service rendered by receiving the goods from the ship at the quay is therefore service to the consignee. We do not construe the expression "any other service in respect of vessel, passengers or goods" in cl. (e) of s. 42 of the Act in this manner.

If it is interpreted as suggested, the Board must charge the passenger to whom services are rendered. This is not done. Any charges so incurred must be realised from steamer-agents who may, in their turn, charge the passengers for the same.

We do not agree with the contention that the charges for labour rendered idle are in the nature of compensation or damages in respect of any loss, inconvenience or expenses caused to the Board or its shore-labour in consequence of any default attributed to the master of the ship. There is no question of damages. The labour has been engaged. It is paid for the time during which it remains idle, for no fault of its own. Charges for that are levied from the person who required that labour and is responsible for its remaining idle. Of course, if the idle time was due to the default of the labour, no such charges are required to be paid by the ship-owner.

We are therefore of opinion that the impugned charges were rightly levied by scale 'E' on the master, owner or agent of the vessels and that the Board could insist on the steamer-agent requisitioning the shore-labour to express an undertaking in the form for requisitioning labour that he will pay the charges laid down in the Board's scale of rates from time to time in respect of labour rendered idle or not properly utilised and also for working more than one hook simultaneously at a vessel's hatch.

We therefore allow the appeals with costs here and the Courts below, set aside the order of the Court below and dismiss the writ petitions. There will be one hearing fee. Appeals allowed.