

Supreme Court of India

V.S. Dempo & Co. Pvt.Ltd vs Board Of Trustees on 29 March, 1994

Equivalent citations: 1994 SCC, Supl. (2) 349 JT 1994 (3) 109

Author: J S Verma

Bench: Verma, Jagdish Saran (J)

PETITIONER:

V.S. DEMPO & CO. PVT.LTD.

Vs.

RESPONDENT:

BOARD OF TRUSTEES

DATE OF JUDGMENT 29/03/1994

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

KULDIP SINGH (J)

CITATION:

1994 SCC Supl. (2) 349 JT 1994 (3) 109

1994 SCALE (2) 406

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by - VERMA, J.- These appeals by special leave are against the dismissal of the Writ Petition Nos. 174-of 1983, 124 and 146 of 1984 filed by the appellants in the Bombay High Court, Panaji Bench, Goa. The appellants, in the writ petitions had challenged the notification dated 25-10-1983 amended by the notification dated 26-4-1984 by which the Board of Trustees of the Mormugao Port had revised the rates of wharf dues on some export cargo, namely, iron ore and iron ore pellets handled through the Mechanical Ore Handling Plant (referred hereafter as 'MOHP') at Berth No. 9. The increase was made from the existing rate of Rs 27.56 per tonne or part thereof to Rs 28.22 and there was also levy of surcharge subject to rebate of Rs 8.80 per tonne. It was further notified that 50% of the handling charges were payable before receipt of the cargo for unloading and the balance of 50% was to be paid before shipment of the cargo. The appellants challenged the levy of the said surcharge as well as the requirement of payment of 50% of the handling charges before receipt of the cargo for unloading. The writ petitions have been dismissed by the High Court hence these appeals by special leave.

2. It was stated by Shri Ashok Desai, learned counsel for the appellant that in these appeals there was no challenge to the revision of the handling charges from Rs 27.56 per tonne or part thereof to Rs 28.22. The challenge in these appeals has been confined mainly to the levy of the surcharge by the aforesaid notifications. The challenge has been made to notes 1 and 2 of the notification.

3. It would be appropriate to quote the aforesaid two notifications which are as under:

GOVERNMENT OF GOA, DAMAN AND Diu Industries and Labour Department  
Mormugao Port Trust Notification No. 3-GA(8)183 In exercise of the powers conferred under Chapter IV of the Major Port Trusts Act, 1963 and with the prior sanction of the Central Government in terms of Section 52 of the said Act, the following amendments be made to the Schedule of Harbour and Railway Rates published in the Boletim Official No. 21, Series I, dated 31-5-1962 and amended from time to time.

#### Schedule of Harbour and Railway Rates Proposed Amendment

##### Existing Rates Revised Rates

Section 'B' Section 'B' Wharf dues on Export Cargo Wharf dues on Export Cargo Item Item No. Rs No. Rs 27(a) Iron ore handled 27.56 per 27 Iron ore handled 28.22 per through the 1000 kgs. or (a) through MOHP 1000 kgs.

MOHP at Berth part thereof. at Berth No. 9 or part No. 9 thereof.

27(b)	Iron ore pellets	27.56 per 27	Iron	ore
pellets	28.22 per			
handled through		1000 kgs. or	(b) handled	
through		1000 kgs. the MOHP at	part	
thereof.				
MOHP at Berth	or part			
		Berth No. 9	No. 9 thereof.	

Note: In addition to above

(1) handling charges minimum rental surcharge shall be leviable at Rs 8.80 per tonne subject to rebate for the plot allottees holding the plot for a minimum period of 1 year on the following pattern.

On achieving a level of Rate of turnover rebate allowed (Rs per tonne) 6.25 times of nominal plot 1.00 capacity 6.50 times of nominal plot 2.00 capacity 6.75 times of nominal plot 3.00 capacity 7.00 times of nominal plot 4.00 capacity 7.25 times of nominal plot 5.20 capacity 7.50 times of nominal plot 6.40 capacity 7.75 times of nominal plot 7.60 capacity 8.00 times of nominal plot 8.00

capacity Note: 50% of the handling charges shall be (2) payable before the cargo is received for unloading. Balance 50% of the handling charges will become payable before the shipment of the cargo.

Mormugao Port Trust By Order Mormugao, Goa. A.B. Gadgil 25-10-1983 Dy. Secretary GOVERNMENT OF GOA, DAMAN AND Diu MORMUGAO PORT TRUST Notification No. 3-GA(8)184 In exercise of the powers conferred under Chapter VI of the Major Port Trusts Act, 1963 and with the prior sanction of the Central Government in terms of Section 52 of the said Act, the following amendment be made to the Schedule of Harbour and Railway Rates published in the Boletim Official No. 21, Series 1, dated 31-5-1962 and as amended from time to time :

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Existing Rates Revised Rates  
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Section 'B' Section 'B' Wharf dues on Export Cargo Wharf dues on Export Cargo Note (1): Below Item Nos. 27(a) and Note (1): 27(b) In addition to above handling charges minimum rental surcharge shall be leviable at Rs 8.80 per tonne subject to rebate for the plot allottees holding the plot for a minimum period of 1 year on the following pattern. Mormugao Port Trust Mormugao, Goa.

26-4-1984

4. The argument of Shri Desai for challenging Below Item Nos. 27(a) and 27(b) In addition to above handling charges, surcharge shall be leviable at Rs 8.80 per tonne subject to rebate for the plot allottees holding the plot for a minimum period of 1 year on the following pattern.

By Order A.B. Gadgil Dy. Secretary levy of surcharge relates to

4.The argument of Shri Desai fro challenging levy of surcharge relates to note 1. He contends that unless 8 times the nominal plot capacity is achieved there is no rebate available and up to attaining a level of turnover of six times, full charges are payable at the rate of Rs 28.22 per tonne plus Rs 8.80 per tonne. Shri Desai contended that the surcharge is in the nature of a penalty for non-user or non-utilisation or under-utilisation of Berth No. 9 and the primary purpose is not to render specific service to a specified class but to avoid diversion of iron ore traffic from Berth No. 9 to transshippers/reloader vessels. He submitted that in view of the inherent limitation of Berth No. 9 to accommodate vessels of a particular description and the requirement of taking the vessels to transshippers for loading to full capacity this additional surcharge is unwarranted and unjustified under Section 48 of the Major Port Trusts Act, 1963 (hereinafter referred to as "the Act"). He also contended that the demand of payment of 50% as handling charges before the cargo is received for unloading is contrary to the provision of Section 58 of the Act. The challenge on behalf of the appellant to notes 1 and 2 of the notification is in substance on the ground of arbitrariness and unreasonableness in addition to the contention of surcharge being in the nature of penalty.

5. The High Court has taken the view that the levy of surcharge is as a means of inducement, incentive and compulsion to use Berth No. 9 which is permissible according to the decision in Trustees of the Port of Madras v. Aminchand Pyareta<sup>1</sup>. The High Court has also held that the notification read as a whole indicates that there is nothing unreasonable in notes 1 and 2. The challenge to the surcharge has been rejected by the High Court after full discussion, stating as under:

"But the indisputable fact is that the MOHP is being underutilized, either because of bunching of vessels in the Port, or because successively ships of a size bigger than what Berth No. 9 can accommodate are calling on the Mormugao Port for shipment of iron ore, and this underutilization adversely affects the interest of the port. In the circumstances, the scheme (1976) 1 SCR 721 of rebates evolved by the first respondents appears to constitute a reasonable device to remedy the said situation. It acts both as an inducement and compulsion for the use of the MOHP by all the iron ore exporters. Hence, in our view, it is not correct to say that the challenged levy of the surcharge with the graded rebates is arbitrary and violates Article 14 of the Constitution."

The High Court also rejected the challenge to the requirement in note 2 of payment of 50% of handling charges before the cargo is received for unloading and the balance of 50% before the actual loading of the sea-going ships holding that it was within the ambit of Section 58 of the Act.

6. The same two points arise for decision in this appeal. The challenge to note 2 based on Section 58 of the Act may be disposed of first. Section 58 reads as under:

"Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Board, or to be shipped for export, or to be transshipped, shall be payable before the goods are so removed or shipped or transshipped."

The High Court has described the working of the MOHP on the basis of the undisputed averments in the pleadings and summarised the position thus:

"The correctness of these averments is not challenged by the respondents and we can, therefore, safely assume that the handling operations on export iron ore are a continuous process which begins with the unloading of ore, brought in the exporters' barges, into the plot by the MOHP's barge-unloaders and stackers, continues with the reclaiming of the said ore by means of reclaimers and ends with the loading of the sea-going ships by ship-loaders. It becomes thus clear that the unloading of the ore brought by the exporters' barges is the first step in the whole process of this shipping for export."

The conclusion reached by the High Court on that basis is as under:

"In the premises, it would not be correct to say that note 2 contravenes Section 58 of the Act inasmuch as it stipulates that 50% of the handling charges shall be payable before the cargo is received for unloading. Section 58 postulates that the rates in respect of goods to be exported shall be payable before such goods are shipped and since the shipping operation through the MOHP at Berth No. 9 begins with the unloading of the ore from the barges, it cannot be gainsaid that the requirement of payment of 50% of handling charges before the cargo is received for unloading and of the balance 50% before the actual loading of the sea-going ships is well-within the ambit of Section 58 of the Act. Therefore, here also, we find no merit in the petitioners' contention."

On behalf of the appellant no infirmity in the above view taken by the High Court on this point has been shown. This challenge of the appellant was therefore rightly rejected by the High Court.

7. We would now deal with the challenge to levy of the surcharge. Section 48 of the Act reads as under:

"48. (1) Every Board shall from time to time 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 any person authorised under Section 42 at or in relation to the port or port approaches -

(a) transshipping of passengers or goods between vessels in the port or port approaches;

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

(c) cranage or portorage 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. (2) Different scales and conditions may be framed for different classes of goods and vessels."

The general power of the Board to make regulations is contained in Section 123 of the Act, Mormugao Port (Shipment of Ore and Pellets from Mechanical Ore Handling Plant at Berth No. 9 and related matters) Regulations, 1979 are material for the present purpose. The object of these regulations is to define the procedure to be observed in respect of utilisation of the services of the MOHP at Berth No. 9 of Mormugao Port Trust including the use of its storage yard and the conditions upon which such services shall be made available with a view to achieve maximum possible efficiency in the working of the plant and to define the procedure to be observed in respect

of the utilisation of other loading facilities in the port. Regulation 2.1 provides that the operation of the MOHP including unloading of ore/pellets and the maintenance of the said plant shall be performed solely by the Board. Regulation 2.5 provides that all vessels shall load ore/pellets in Mormugao Port only at the MOHP except in the cases specifically provided. Some such exceptions are when the vessels are likely to be detained unduly on account of interruption of loading at MOHP due to breakdown of the plant, dredging at Berth No. 9 or other legitimate reasons. Regulation 3.1 requires the Board to designate a part of the plant area to be used for the purpose of storage of ore/pellets. Regulation 3.3 requires the Board to allocate storage plots in such a manner as to ensure the most efficient service of the plots by the MOHP. Regulation 3.7 indicates allotment of the storage plots on the basis of export potential and not more than one storage plot is to be allotted to each applicant. Regulation 6.1 requires berthing of vessels at Berth No. 9 in the order in which they arrive at the port. Regulation 6.6 says that in case of a breakdown of the MOHP causing interruption while loading of vessels permission to continue loading by other means may be given. Regulation 8.1 provides for payment of charges at the specified rates and in the manner specified in the schedule. Regulation 9.1 says that no transshipper/reloader platform shall operate within the port unless permitted by the Board.

8. Reading the impugned notifications with the Regulations it is clear that the allotment of storage plots is made on rational basis depending on the export potential of the applicant and, therefore, nominal plot capacity in note 1 of the notification for the purpose of the rate of rebate allowed is integrally connected with the exercise of allotment of storage plot to the exporter. The rate of rebate available to a particular exporter in accordance with note 1 is, therefore, on rational basis having nexus with the object of achieving the maximum possible efficiency in the working of the Mechanical Ore Handling Plant and the most efficient service of the plots by the MOHP. At the hearing it was shown to us with reference to the facts on record that an exporter availing service of the MOHP to the extent possible was able to earn rebate and only those who avoid its use may have difficulty. The MOHP having been installed at a cost of about Rs 83 crores for the purpose of providing service to the exporters the fixation of handling charges commensurate with the cost of the plant while providing the incentive of rebate ensuring full efficiency and use of the plant is a reasonable exercise of the power available to the Board. It is clear that the charges have to be worked out to avoid any loss and each exporter is given a storage plot on the basis of his export potential to enable him to avail the benefit of the graded rebate which has been given. The affidavit dated 11-1-1985 of A.B. Gadgil, Deputy Secretary of the Board at pages 109 to 146 of the Paper Book gives full facts indicating the attempts of the exporters to avoid full utilisation of Berth No. 9 'using transshippers/reloader vessels owned by them and thereby preventing full utilisation of MOHP'. A cost analysis based on the actual working of the MOHP was carried out and the revised rates specified in the notification were worked out on that basis. The contents of the affidavit along with undisputed facts make it clear that the revision of the handling charges including the levy of surcharge and provision for rebate in note 1 as also the requirement of note 2 of the notification is well within the statutory powers and is neither arbitrary nor unreasonable. In fact, charges prescribed in this manner provide incentive for full utilisation of the MOHP by giving rebate for such use and care is taken to provide for an alternative in case of non-availability of the MOHP for any legitimate reason. There is thus no basis to contend that the charges are in the nature of penalty. It is in fact for the service provided and the rates are to ensure full and efficient utilisation of the

MOHP by the exporter. This is within the permissible exercise of the statutory power.

9. We find no merit in these appeals and they are, accordingly, dismissed with costs - one set, Rs 20,000.