Supreme Court of India
Trustees Of The Port Of Madras vs M/S. Aminchand Pyarelal & Ors on 9 September, 1975
Equivalent citations: 1975 AIR 1935, 1976 SCR (1) 721
Author: Y Chandrachud
Bench: Chandrachud, Y.V.

PETITIONER:
TRUSTEES OF THE PORT OF MADRAS

Vs.

RESPONDENT:
M/S. AMINCHAND PYARELAL & ORS.

DATE OF JUDGMENT09/09/1975

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
RAY, A.N. (CJ)
MATHEW, KUTTYIL KURIEN

CITATION:
1975 AIR 1935 1976 SCR (1) 721
1976 SCC (3) 167
CITATOR INFO :
R 1977 SC1622 (10)
R 1984 SC1543 (21)
R 1987 SC 622 (10)

ACT:
Madras Port Trust Act 1905-Sec. 42, 43, 43A-Port Trust Rules 13- Bye-law-Nature of-Demurrage-Unreasonable-Customs Act Secs. 17(3) & 1(4).

HEADNOTE:
On 10-4-1968, a steamer arrived at the Madras port and landed inter alia a consignment or 202 bundles of black plain sheets of various sizes. The appellants received the goods and stored them in the transit sheds. The goods were imported by the first respondent under an authorisation issued by the State Trading Corporation of India which held a licence to import the goods from Hungary. The clearing agents of the first respondent filed a bill of entry with the Collector of Customs. But, the Customs authorities detained the goods as the specifications in the import licence did not tally with the description of the imported goods. The Customs Authorities then issued a show cause notice to the 1st respondent and after considering his

explanation passed an order confiscating the goods.

The first respondent preferred an appeal against that order to the Board which allowed the appeal. On an application of respondent No. 1 the Customs Authorities issued a certificate stating that the goods were detained by the Customs Authorities from 24-4-1963 to 21-8-1964 for examination under sections 17(3) and 17(4) of the Customs Act, 1962 other than in the ordinary process of appraisement and that the detention was due to no fault or negligence on the part of the correspondent. Acting on this certificate, the appellants waived the demurrage for the period covered by the certificate. As a result of the said certificate, the appellant charged respondent No. 1, Rs. 1963/- instead of Rs. 3,20,951/- by way of demurrage. Thereafter, the respondent No. I cleared the consignment.

In January, 1965, the appellants wrote a letter to the Customs Authorities stating that the certificate was issued erroneously and that the Customs Authorities should reconsider the matter. In April, 1965, the Customs Authorities owned the mistake that the certificate was incorrect as the goods were detained in order to ascertain whether the Import Trade Control formalities were complied with and not for examination and assessment of duty under Sections 17(3) and 17(4) of the Customs Act.

The appellants brought the present suit against respondent No. 1. and the Union of India and Customs Authorities to recover the balance of' demurrage amounting to about Rs. 3 Lacs. The first respondent disputed is liability to pay the demurrage on the ground that it could not be penalised either for the delay caused by the Customs Authorities in clearing the goods or in the issuance by them of a wrong certificate. The first respondent also contended that the scale of charges in the Port Trust Regulations under the heading Demurrage was void and ultra vires both for the reason that it was unreasonable and because the scale of charges was not within the authority of the appellants.

The High Court dismissed the suit for the following reasons

(1) The Scale of rates fixed by the Board is in the nature of bye laws.

(2) Viewed as a bye-law Rule 13(b) under which the Board can charge demurrage for the period during which the goods are detained for. no fault or negligence of the importer or his agent, is unreasonable and therefore void.

(3) In principle, there can be no distinction between cases falling under clause (a) and those falling under clause (b) of Rule 13 and if

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no demurrage is leviable in respect of cases falling within clause (a) no demurrage could

be charged in respect of cases falling within clause (b). The distinction made by the Board between the two kinds of cases was therefore arbitrary and unreasonable.

(4) 'Demurrage', being a charge for wilful failure to remove the goods, can be levied only if the failure to remove the goods is due to the fault or negligence, of the importer or his agent.

(5) Having regard to this well accepted meaning of the word 'demurrage', the authority given to the Board by section 12 of the Act to frame the scale of rates can be exercised only for the purpose of levying charges where the importer was not prevented by any lawful authority from clearing the goods from the transit area and he had defaulted or was negligent in clearing the goods.

(6) Since Rule 13(b) empowers the Board to charge demurrage even when the goods are detained for no fault or negligence of the importer or his agent, it is beyond the authority conferred by section 42 and is therefore, void.

Allowing the appeal,

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HELD:(1) The High Court erred in holding that the sale of rates and statements of condition framed by the appellant under sections 42, 43, and 43A are by-laws. Those sections confer authority on the. Board to frame a sale of rates at which and a statement of conditions under which any of the services specified therein shall be performed. [732-C, 731-F]

2. A bye-law has been said to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. The Board's power to frame a scale of rates and statement of conditions is not a regulatory power to order that something must be done or something may not be done. The rates and conditions govern the basis on which the Board performs the services. Those who desire to avail of the services of the Board are liable to pay for those services at prescribed rates and to perform the conditions framed by the Board. In fact some of the services which the Board renders are optional. Where services are offence by a public authority on payment of a price, conditions governing the offer and acceptance of services are not in the nature of bye-laws. They reflect or represent an agreement between the parties one offering his services at the prescribed rates and the other accepting the service at those rates. [732-D-H]

3. Bye laws may be treated as ultra vires on the

grounds, amongst others that they are repugnant to the statute under which they are made or that they are unreasonable. But even a bye-law cannot be declared ultra vires on the ground of unreasonableness merely because the court thinks that it goes further than is necessary or that it does not contain the necessary qualifications or exceptions. Kruse v. Johnson [1898] 2 Q.B. 91, relied on. [731-F. 733 B]

4. Port Trusts are bodies of a public representative character who are entrusted by the Legislature with authority to, frame a scale of' rates and a statement of conditions subject to which the shall or may perform certain services. Port Trusts are not commercial organisations which carry on business for their own profit. The Board of Trustees is broad based body representing a cross section of a variety of interests. The requirement of sanction by the Central Government is a restraint on unwise, excessive, or arbitrary fixation of rates. section or a variety of interests. The requirement of sanction by the Central whole or any portion of rates or charges leviable according to any scale in force under section 44. Thus the Statute provides for the necessary safeguards, checks and counter checks as an insurance against fixation and levy of harsh or unjust rates. Section 49of the Act confers power on the Assistant Collector of Customs if he is satisfied that the goods cannot be cleared within a
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reasonable time to permit that the goods might pending clearance be stored in a public warehouse or in a private warehouse. In face of these considerations it is impossible to characterise the scheme for the levy of rates as arbitrary or unreasonable. [734 & G-H, 735 A-C]

5. The High Court erred in equating cases falling under clause (h) with those falling under clause (a) of Rule 13. The two classes deal with different sets of cases. Clause (a) deals with cases where goods are detained for examination under sections 17(3) and 17(4) or for chemical test under section 144 whereas clause (b) deals with cases where the goods are detained on account of Import Trade Control formalities or for compliance of formalities prescribed under the Drugs Act. There is no warrant for the court substituting its own view as to the allowance of three days in a technical matter like the fixation of rates which has been considered by an export Board of Trustees and whose decision has been confirmed by the Central Government. Equating the two clauses of cases dealt with by clauses (a) and (b) of Rule 13 might seem to the court a more prudent or reasonable way of fixing scales of rates but that is not a correct test for deciding the validity of the impugned provision. [735-D-F]

6. The High Court overlooked a fundamental aspect of fixation of rates. The Board is under a statutory obligation to render services of various kinds and those services have

not to be rendered for the personal benefit of this for that importer but in the larger national interest. Congestion in the ports affects the free movement of ships and of essential goods. The scale of rates has, therefore, to be framed in a manner which will act both as an incentive and as a compulsion for the expeditious removal of the goods from the transit area. Ships, like wagons, have to be kept moving and that can happen only if there is pressure on the importer to remove the goods from the Board's permises with the utmost expedition. 1735-F-H; 736 A]

7. As regards the appellants' claim against the first respondent. facts must come before the law because legal principles cannot be applied in a vacuum. No oral evidence was let by the parties and documents do not prove them selves nor indeed is the admissibility of a document proof by itself of the truth of its; contents. The Import Licence stood in the name of the State Trading Corporation. It issued an authorisation in favour of the first respondent. The first respondent was only entitled to charge a commission for the work done by it in pursuance of the authorisation issued by the Corporation. If the appellants were to enforce the statutory lien. the incidence of the demurrage would have fallen on the Corporation in whom the title to the goods was vested. The appellants permitted the goods to be cleared without demanding the demurrage which they claimed later, thereby depriving the respondent of the opportunity and the right to reject the goods as against the supplier. In the absence of any more faces, it is impossible on the record as it stands, to accept the appellants' claim against the first respondent. [737 F-H, 738 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 707 of 1973.

From the Judgment and Decree dated the 23rd December 1971 of the Madras High Court in Civil Suit No. 158 of 1966.

K. S. Ramamurthi, S. Balakrishnan, N. M. Ghatate for the appellant.

A.K. Sen, J. S. Arora and H. K. Puri for respondent No.

1. G. L. Sanghi and Girish Chandra for respondents Nos. 2 and 3.

The Judgment of the Court was delivered by CHANDRACHUD, J.-The Trustees of the Port of Madras, appellants herein, filed suit No. 158 of 1966 in the High Court of Madras for recovering a sum of Rs. 3,1 8,968.04 from the respondents by way of demurrage. The 1st respondent is a firm called M/s. Aminchand Pyarelal, the 2nd respondent is the Union of India and the 3rd respondent is

the Collector of Custom, Madras. A learned single Judge referred the suit to a Division Bench which dismissed it by a judgment dated December 23, 1971. This is an appeal by certificate granted by the High Court under Article 133(1)(a) of the Constitution.

On April 10, 1963 a Steamer "A.P.J. AKASH" arrived at the Madras Port and landed, among other goods, a consignment of 202 bundles of black plain sheets of various sizes. The appellants received the goods and stored them in transit sheds. The goods were imported by the 1st respondent under an authorisation issued by the State Trading Corporation of India which held a licence dated June 16, 1962 to import the goods from Hungary. The Clearing Agents of the 1st respondent filed a Bill of Entry with the 3rd respondent but the customs authorities detained the goods as the specifications in the import licence did not tally with the description of the imported goods. The Customs authorities then issued a show cause notice to the 1st respondent and after considering its explanation the 3rd respondent passed an order on November 12, 1963 confiscating the goods under section 111 (a) of the Customs Act, 1962. The 1st respondent preferred an appeal against that order to the Central Board of Excise and Customs, New Delhi, which was allowed by the Board on July 27, 1964. On August 21, 1964 the Clearing Agents of the 1st respondent requested the customs authorities to issue a certificate for the permission of the transit dues for the period during which the goods were detained. A certificate was accordingly issued by the 3rd respondent stating that the goods were detained by the Customs Authorities from April 24, 1963 to August 21, 1964 for examination under section 17(3) and section 17(4) of the Customs Act 1962, other than in the ordinary process of appraisement and that the detention was due to no fault or negligence on the part of the 1st respondent. Acting on this certificate, appellants waived the demurrage for the period covered by the certificate, whereupon the 1st respondent cleared the consignment on August 25 and August 27, 1964 on payment of the Harbour dues, Cranage charges and Demurrage charges for the period not covered by the certificate.

Thinking that the certificate was issued erroneously, appellants wrote a letter dated January 27, 1965 to the 3rd respondent requesting him to reconsider the matter. By his letter of April 12, 1965 the 3rd respondent owned up the mistake and stated that the certificate was incorrect as the goods were detained in order to ascertain whether the Import Trade Control formalities were complied with and not for examination and assessment of duty under section 17(3) and (4) of the Customs Act.

The case of the appellants is that due to the negligent mistake committed by the 3rd respondent in issuing the certificate, they charged to the 1st respondent a sum of Rs. 1963.60 only whereas it was liable to pay a sum of Rs. 3,20,951.64 by way of demurrage. The appellants called upon the 3rd respondent to pay up the balance but the latter, by his reply dated July 6, 1965 repudiated all liability, contending that the Union of India could not be held liable for the negligent or tortious acts of its officers done in good faith during the course of their official duties and that the appellants should seek J their remedy against the 1st respondent.

Later, the appellants brought the present suit against the three respondents to recover the demurrage. The case of the appellants as made out in the plaint is that the liability of respondents 2 and 3 was in the region of contract or quasi-contract, that the appellants were put to a loss due to

the wrong certificate issued by the 3rd respondent and therefore respondents 2 and 3 could not repudiate their liability to pay the demurrage. As regards the 1st respondent, the case of the appellants is that it had contravened the Import Trade Control regulations, that it was fully aware of the true facts that it was not open to it to take advantage of the wrong certificate issued by respondent 3 and that therefore it was also liable to pay the demurrage.

The 1st respondent disputed its liability to pay the demurrage contending that it could not be penalised either for the delay caused by the Customs authorities in clearing the goods or for the issuance by them of a wrong certificate. According to the 1st respondent, the consignment imported in April, 1963 was one of a series of consignments which the 1st respondent had imported under a con tract with the State Trading Corporation for a fixed remuneration. The 1st respondent had not authority to deal with he imported goods - but was bound to hand them over at the agreed price to the State Trading Corporation or its nominee The 1st respondent further stated that the only controversy raised by the Customs authorities related to a difference in the size of the sheets imported under the import licence and that if the appellants had called upon it to pay by way of demurrage a sum as large as over rupees 3 lakhs, the 1st respondent would have rejected the goods as against the supplier unless the State Trading Corporation was willing to accept the goods. The import clearance orders were granted on the recommendation of the Corporation which held the import licence and which arranged for the grant of import clearance permits to persons like the 1st respondent on the basis that the goods were imported on behalf of the Corporation. Finally the 1st respondent contended that the scale of charges in the Port Trust Regulations under the heading "Chapter IV-Demurrage" was void and ultra vires both for the reason that it was unreasonable and because the scale of charges was not within the authority of the appellants. The unreasonableness of the demurrage charges, according to the 1st respondent, was obvious from the fact that whereas the goods were of the value of Rs. 1,31,501 appellants were claiming a sum of over rupees 3 lakhs by way of demurrage.

The 2nd respondent, the Union of India, set out the various facts attendant upon the import of the goods and contended that the appellants had no cause of action against it or the 3rd respondent. The 3rd respondent adopted the written statement of the 2nd respondent.

The High Court held that the levy of demurrage ill cases where the goods were detained by the Customs authorities for no fault or negligence on the part of the importer, was unreasonable and also beyond the powers of the appellants and that the appellants were not entitled to recover demurrage from any of the respondents.

Two questions, mainly, arise for consideration in this appeal : firstly, whether the scale of fees under which the appellants charge demurrage is void as being unreasonable and as being beyond their powers; and, if the answer to the first question is in the negative, whether the 1st respondent is liable to pay the demurrage claimed by the appellants. Counsel for the appellants did not press the claim against respondents 2 and 3. The decision of the first question turns on the relevant statutory provisions but before considering the validity of the levy, it would be necessary to know the procedure which is adopted in the Madras Port during the process of importation and clearance of goods.

The local agents of the ship inform the Traffic Manager of the Port Trust of the probable date of arrival of the ship and submit to the customs House the "Import General Manifest" which contains a description of the goods which are at board for landing at the Port. The Dock Labour Board supplies the labour to the Master of the ship for unloading the goods and for putting them on the quay-side so as to enable the Port Trust authorities to take charge of the goods. The Port Trust labour handles the goods on the shore and when the Port Trust takes charge of the same, it is obliged under section 39(3) of the Madras Port Trust Act, 1950, to give a receipt to the Master of the Ship. With few exceptions, all goods received by the Port Trust are kept in the transit sheds. The Port Trust charges Harbour Dues for receiving the goods, handling them and keeping them in tile transit sheds. The importer then files the Import Application and the Steamer Agent's Delivery order which is in the nature of an authority from the Steamer as bailor, to the Port Trust as the bailee, to deliver the goods to the importer or his agent. Section 45 of the Customs Act, 1962 forbids the person having the custody of any imported goods in the customs area from permitting their removal except under and in accordance with the written permission of the Customs authorities. The goods are cleared by the Customs authorities if the importation is not contrary to any law and if the importer pays the import duty assessed on the goods and the other charges payable under the Customs Act. If the customs officer is of me opinion that the goods have been imported contrary to any prohibition imposed by the Customs Act or the Imports and Exports (Control) Act, or by the orders issued or the rules framed thereunder, a notice is issued under section 111 or section 112 of the Customs Act calling upon the importer to show cause why the goods should not be confiscated. If the importer shows good cause" the goods are released and thereupon the Customs authorities issue a Detention Certificate stating if that be true, that the goods were detained for examination under sections 17(3) and (4) of the Customs Act and that the detention was due to no fault or negligence on the part of the importer.

The Port Trusts are under a statutory obligation to perform certain duties and equally so they have statutory powers to fix scales of fees and rates. The statute with which we are here concerned directly is the Madras Port Trust Act, 2 of 1905, (hereinafter called "the Act"). It is necessary to notice the relevant provisions thereof in order to understand the controversy in this appeal.

Section 5(1) defines the "Board" to mean the Trustee of the Port of Madras appointed under the Act. Section 5(12) defines "Rate" as including any toll, due, rent, rate or charge leviable under the Act. By section 7 the Board consists of 21 Trustees including the Chairman. Section 8 provides that the Chairman of the Board shall be appointed by the Central Government and the remaining trustees shall be (1) the Collector of Customs, Madras, (2) the Municipal Commissioner for the City of Madras, (3) the General Manager, M. & S. M. Railway, (4) the General Manager, South Indian Railway; (5) one representative of the Mercantile Marine Department chosen by the Central Government; (6) one representative of the Defence Services chosen by the Central Government. (7) one representative of the State Government chosen by the State Government; (8) two representatives of labour chosen by the Central Government after consultation with the registered trade unions, if ally, composed of persons employed in the port; and (9) eleven elected trustees. By section 8(2), of the eleven elected trustees one is elected by the Madras Municipal Corporation and the remaining by such provincial or local bodies representing commercial interests as the Central Government may, from time to time, by notification in the official Gazette, specify. Such notification

may also specify the number of trustees that each of such bodies may elect. Section 10 which lays down disqualifications for the trustee's office provides, inter alia, that a person shall be disqualified to be a trustee if, inter alia, he holds any office or place of profit under the Board. This provision does not, however, apply to the Chairman. ex-officio Trustees and Trustees appointed by virtue of office. Section 23(1) lays down the procedure governing the proceedings of the Board while section 23 (2) provides that the Board may, from time to time, appoint committees consisting of not less than five of its members for carrying into effect any part of the provisions of the Act with such powers and under such instructions, directions or limitations as shall be defined by the Board.

By section 39 the Board is under an obligation, according to its powers, to provide all reasonable facilities for, and has the power to undertake the services of the description mentioned in the sub-section among those services are landing of goods from vessels in the Port, and receiving, storing or delivering goods brought within the Board's premises. Section 39(2) imposes upon the Board the obligation, if so required by any owner, to perform in respect of goods all or any of the services mentioned in clauses (a), (b) and (d) of section 39(1). Under section 39(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 prescribed form. After the goods have been taken charge of and the receipt given by the Board, no liability for any loss or damage which may occur to the goods can attach to any person to whom a receipt shall have been given by the Board or to the master or the owner of the vessel from which the goods have been landed. Under section 40 the responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge is, subject to cerain provisions, that of a bailee under sections 151, 152 and 161 of the Indian Contract Act subject to certain modifications.

Chapter VI of the Act which appears under the heading "Imposition and Recovery of Rates" contains provisions which have direct impact on the contentions raised in this appeal. Section 42 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 clauses (a) to (e) of the section shall be performed by the Board. Clause (b) refers to landing of goods from any vessel upon any land or building in the possession or occupation of the Board or at any place within the limits of the Board. Clause (d) refers to "wharfage, storage or demurrage of goods on any such place". Sections 43 and 43-A also confer on the Board power similar to that conferred by section 42. By Section 44 every scale and every statement of conditions framed by the Board under sections 42, 43 and 43-A shall be submitted to the Central Government for sanction and, when so sanctioned and published in the official Gazette, such scale and statement of conditions have the force of law. The Central Government has power under section 44(1a) at any time to cancel any of the scales framed by the Board or to call upon the Board to modify any portion of such scales whereupon the Board shall modify the scales according to the directions of the Central Government. Section 44(2) confers power on the Board, in special cases, for reasons to be recorded in writing, to remit the whole or any portion of the rates or of any charge leviable according to any scale. Under section 50 rates in respect of goods to be landed are payable immediately on the landing of the goods; rates in respect of goods to be removed from the premises of the Board are payable before the goods are removed. Under section 51 the Board has a lien on the goods for the amount of all rates leviable under the Act on the goods and it may seize and detain the goods until the rates are fully paid. This lien has by section 52 priority over all other liens and claims except for

general average and the ship-owner's lien for freight and other charges where such lien exists and has been preserved in the manner provided in section 53. Under section 56, if the rates payable to the Board remain unpaid, it is competent to the Board to sell the goods by public auction after expiry of two months from the time That the goods have passed into its custody and in the case of perishable goods after the expiry of a shorter period not being less than 24 hours. Section 57 requires that the notice of sale must be published in the official Gazette. By section 58 notice is also required to be given to the owner of the goods, if the address of the owner is known. Under section 58-A? notwithstanding anything contained in the Act, where any goods placed in the custody of the Board are not removed by the owner or other person entitled there to from the premises of the Board within one month, the Board may, after due notice, required that the goods be removed forthwith or that in default of compliance the goods would be liable to be sold by public auction. In cases where all the rates and charges payable under the Act have been paid, such a notice for removal of the goods cannot be given before the expiry of two months from the date on which the goods. were placed in the custody of the Board. If the notice is not complied with, the Board may at any time after the expiration of one month from the date on which the notice was served or published sell the goods by public auction. Section 62 preserves the right of the Board to recover the rates by a suit.

Section 95 of the Act which appears ill Chapter XI called "Bye Laws" empowers the Board to make bye-laws not inconsistent with the provisions of the Act, inter alia, for the safe and convenient use of sheds, for the reception and storage of goods brought within the premises of the Board, for the mode of the payment of the rates leviable under the Act and generally for carrying out the purposes of the Act.

Section 109 of the Act which has an important bearing on these proceedings provides that nothing contained in the Act shall affect any power vested in the Chief officer of Customs under any Law for the time being in force. Section 49 of the Customs Act, 52 of 1962, provides that where in the case of any imported goods, the Assistant Collector of Customs, is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse or in a private warehouse if facilities for deposit in a public warehouse are not available.

Acting in pursuance of the power conferred by sections 42, 43 and 43-A, the appellants have framed a "Scale of Rates" payable at the Port of Madras, which has been duly sanctioned by the Central Government under section 44 of the Act. We are concerned with the rates framed under section 42 which are contained in Chapter IV of the Scale of Rates. The various scales of rates arc divided into three parts: Book I, Book II and Book III. Chapter IV is headed "Demurrage " and it occurs in Book I called "Charges for certain 16-L925SupCI/75 services which the Board is prepared to render to the public". The introductory part of Chapter IV says:

> "Demurrage is chargeable on all goods left in the Board's transit sheds or yards beyond the expiry of the free days. After demurrage begins to accrue no allowance is made for Sundays or Board's holidays. The free days are fixed by the Board from time to time."

Scale 'A' of Chapter IV prescribes conditions governing "Free Days", the normal rule being that two working days in the case of coast cargo and three working days in the case of foreign cargo excluding Sundays and the Board's holidays arc treated as free after complete discharge of a vessel's cargo, or the date when the last package was put overside. Rule 13(b) is the focus of controversy between the parties and it would be used to read along, with it clause (a) as well:

> "13. The following free periods are allowed in addition to the free periods applicable as per description of goods:-
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> (a) Periods during which goods are detained by the Collector of Customs for examination under Section 17(3) and (4) for chemical test under Section 144 of the Customs Act, 1962 other than the ordinary processes of appraisement and certified by the Collector of Customs to be not attributable to any fault o.; negligence on the part of the Importers plus one working day. The Customs holidays will also be treated as free days in addition.
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> (b) Where goods are detained by the Collector of Customs, on account of Import Trade Control formalities or for compliance of formalities prescribed under the Drug's Act and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of Importers, demurrage shall be recovered for this period at the rate of 30 per cent of the normal rate, i.e. the rate at which the goods would in cur demurrage had there been no detention by the Customs. This concession in demurrage shall be limited to a period of 30 days plus one working day and demurrage shall be recovered at the full rate (i.e., third slab) for detention beyond the above said period."

Under clauses (c) and (d) of Rule 13, period during which the goods are detained by the Port Health Authority and the periods during which the Board is unable to trace packages owing lo congestion of accommodation, wrong sorting or incorrect tallying are also treated as Free Days.

The High Court dismissed the appellants suit for the following reasons: (1) The Scale of Rates fixed by the Board is in the nature of Bye-Laws; (2) Bye-Laws may be treated as ultra vires for the reasons, inter alia, that they are repugnant to the statute under which they are made or that they are unreasonable; (3) Viewed as a bye-law, Rule 13(b) under which the Board can charge demurrage for the period during which the goods are detained for no fault or negligence of the importer or his agent, is unreasonable and therefore void; (4) In principle, there can be no distinction between cases falling under clause (a) and those falling under clause (b) of Rule 13, and if no demurrage is leviable in respect of cases falling within clause (a), no demurrage could be charged in respect of cases falling within clause

(b). The distinction made by the Board between the two kinds of cases is therefore arbitrary and unreasonable; (5) 'Demurrage', being a charge for wilful failure to remove the goods within the free period can be believed only if the failure to remove the goods is due to the fault or negligence of the importer or his agent; (6) Having regard to this well accepted meaning of the word 'demurrage', the

authority give to the Board by section 42 of the Act to frame the scale of rates can be exercised only for the purpose of levying charges where the importer was not prevented by any lawful authority from clearing the goods from the transit area and he had defaulted or was negligent in clearing the goods; (7) Since Rule 13(b) empowers the Board to charge demurrage even when the goods are detained for no fault or negligence of the importer or his agent, it is beyond the authority conferred by section 42 and is therefore void; (8) All the same, if two views are reasonably possible" a construction which favours the validity of a rule or statute should be preferred to that which renders it void Therefore, under the scale of charges for demurrage provided in Chapter IV, the appellants can levy demurrage only in cases where the delay in clearing the goods is due to the fault or negligence of the importer or his agent.

The first four of these reasons relate to the invalidity of Rule 13(b) viewed as a bye-law while the last four relate to its invalidity on the ground that it is in excess of the power conferred by section 42 of the, Act. Both of these sets of reasons appear to us unsustainable.

As stated in "Craies on Statute Law" (7th Ed., pp. 325-

326), bye-laws may be treated as ultra vires on the grounds, amongst others, that they are repugnant to the statute under which they are made or that they arc unreasonable. But the error of the High Court's judgment lies in the assumption that the "Scale of Rates and Statement of Conditions" framed by the appellants under sections 42, 43 and 43-A are bye- laws. Section 42 with which we are concerned confers authority on 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 section shall be performed. Section 43 confers an identical power in the Board in regard to certain other matters while section 43-A authorises the Board to prescribe consolidated rates. Provision for framing bye-laws is made in Chapter XI called "Bye-Laws" and section 95 which occurs in that Chapter mentions the various subjects on which the Board may frame bye-laws. Under Chapter XI, the Board has no power to frame bye-laws for fixing scales of rates or a statement of the conditions under which any of the services specified in sections 42, 43 and 43-A shall be performed. The nearest that section 95 touches the subject of rates is by clause (6) which refers to the mode of the payment of the rates leviable under this Act. The Board having expressly empowered by section 42 to frame. I scale of rates and a statement of the conditions under which it shall perform the services specified in the section and the Board having in terms exercised that power under the aforesaid section, there is no justification for supposing that in framing the scale of rates and the statement of conditions, the Board has purported to frame a bye-law. What the High Court has done is to assume, in the first place, that the Board has not exercised the power which it undoubtedly possesses and which in fact and in terms it did exercise. The High Court then assumed that the Board had exercised the power which it did not possess" a power which the Board has not even purported to exercise. Making these unfounded assumptions, the High Court invalidated Rule 13

(b) on the basis that it was a bye-law and a bye-law could be declared ultra vires on the ground that it is unreasonable. We are unable to accept the High Court's view that the scale of rates prescribed by the Board under sections 42, 43 and 43-A consists, as it were, of so many bye-laws or that Rule 13 is in the nature of a bye-law.

A bye-law has been said to be an ordinance affecting the public. Or some portion of the public, impose by same authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance.(1) The Board's power to frame the scale of rates and statement of conditions is not a regulatory power to order that something must be done or something may not be done. The rates and conditions govern the basis of which the Board performs the services mentioned in sections 42, 43 and 43-A. Those who desire to avail of the services of the Board are liable to pay for those services at prescribed rates and to perform the conditions framed in that behalf by the Board. Indeed, some of the services which the Board may perform are optional and if the importer desires to have the benefit of those services, he has to pay the charges prescribed therefore in the Scale of Rates. For example, any one wanting to use the Board's premises for any of the purposes mentioned in clauses (a) to (d) of section 43 would have to pay the charges prescribed by the Board for the use of its premises. Similarly any one desiring to have the benefit of the Boards's services in behalf of cranage or storage as specified in clauses (c) and (d) of section 42 shall have to pay for these services at the prescribed rates. Whether the services are from the importer's point of view optional in the sense that he may or may not require them or whether the importer has no option save to avail himself of the basic services of the Board as for landing and keeping the goods in the transit area, the services have to be paid for at the scale of rates prescribed by the Board. In such matters, where services arc offered by a public authority on payment of a price, conditions governing the offer and acceptance of services are not in the nature of bye-laws. They reflect or represent an agreement between the parties, one offering its services at prescribed rates and the other accepting the services as those rates.

(1)See Halsbury's Laws of England, 3rd Ed. Vol. 24, p. 510, paragraph 940 citing Kruce v. Johnson [1898] 2 Q.B. 91 at p. 96.

As, generally, in the case of bye-laws framed by a local Authority, there is in such cases no penal sanction for the observance of the conditions on which the services are offered and accepted. If the services are not paid for, the Board can exercise its statutory lien on the goods under section 51 and enforce that lien under section 56 of the Act; or else, the Board may take recourse to the alternative remedy of a suit provided for by section 62.

With this, the entire reasoning of the High Court on the first aspect of he matter must fall because Rule 13(b) has been declared ultra vires on the basis that it is a bye- law and, as such, it is arbitrary and unreasonable. But we would like to point out, since the High Court has taken pains to go into the matter quite elaborately, that even a bye-law cannot be declared ultra vires on the ground of unreasonableness merely because the court thinks that it goes further than is necessary or that it does not contain the necessary qualifications or exceptions. In Kruse v. Johnson(1) a question was raised as to the validity of a bye-law made by a county council for regulating street music. I Lord Russell of Killowen observed in that case .

> "When the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, accompanied by the checks and safeguards which I have mentioned. I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be

> supported if possible. They ought to be, as has been said, benevolently interpreted' and credit ought to be given to those who have to administer them that they will be reasonably administered."

The learned Chief Justice said further that there may be "dases in which it would be the duty, of the court to condemn by-laws made under such authority as these were made (by a county council) as invalid because unreasonable. But unreasonable in what sense ? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifest unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.' But it is in this and this sense only, as I conceive, that the question of reasonableness or unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient or because it is not accompanied by an exception which some judges may think ought to be there."

(1) [1898] 2 Q.B, 91, at pp. 98. 99.

In Slattery v. Naylor(1) it was observed that when considering whether a bye-law is reasonable or not, the court need a strong case to be made out against it, and decline to determine whether it would have been wiser or more prudent to make the bye-law less absolute, nor will they hold that it is unreasonable because considerations which the court would itself have regarded in framing such a bye-law have been overlooked or rejected by its framers. n In the first place, Port Trusts are bodies of a public representative character who are entrusted by the legislature with authority to frame a scale of rates and statement of conditions subject to which they shall or may perform certain services. Port Trusts are not commercial organisations which carry on business for their own profit. Sections 39(1) and (2) of the Act cast on the Board an obligation, according to its powers, to provide all reasonable facilities, if so required by any owner, for various kinds of services mentioned in clauses (a), (b) and

(d) of section 39(1), which include services in regard to landing of goods between vessels and docks in possession of the Board and receiving, storing or delivering goods brought within the Board's premises. The Board under section 39(3) shall, if required, take charge of the goods for the purpose of performing the service. After the goods are thus taken charge of and a receipt given for them, no liability for any loss or damage which may occur to the goods attaches to any person to whom the receipt has been given or to the master or owner of the ship from which the goods have been landed. The responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge is, under section 40 of the Act, that of a bailee under sections 151, 152 and 161 of the Contract Act, subject to some modifications. Thus rates which the Board levies are a consolidated charge for the various services it renders and the liability which it is compelled by statute to undertake.

The Board of Trustees is a representative body consisting of 21 Trustees out of whom eleven are elected. The Collector of Customs the Municipal Commissioner, the General Managers of Railways, a representative each of the Mercantile Marine Department and the Defence Services of the Central Government, and two representatives of labour are the other members of the Board. Out of the eleven elected Trustees, one is elected by the Municipal Corporation and the remaining by provincial or local bodies representing commercial interests. The Board of Trustees is thus a broad- based body representing a cross-section of variety of interests. It is the Board thus constituted that frames the Scale of Rates and Statement of Conditions under which the services shall or may be performed by it. Every scale and every statement of conditions framed by the Board has to be submitted to the Central Government for sanction under section 44 and it is only when it is so sanctioned that it has the force of law. The requirement of sanction by the Central Government is a restraint on unwise, excessive or arbitrary fixation of rates. Section 44(2) confers on the Board the power, in special cases and for reasons to be record-

(1) [1888] 13 App. Cas. 446, 452.

ed in writing, to remit the whole or any portion of rates or charges leviable according to any scale in force under section 44. Thus, the statute provides for the necessary safeguards, checks and counter checks as an insurance against fixation and levy of harsh or unjust rates.

Section 109 of the Act provides that nothing in the Act shall affect any power vested in the Chief officer of Customs under any law for the time being in force. Section 49 of the Customs Act, 1962 confers power on the Assistant Collector of Customs, if he is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, to permit that the goods may, pending clearance, be stored in a public warehouse and if such a, facility is not available, then in a private warehouse. This provision together with section 44(2) of the Act constitutes a measure of mitigation. In face of these considerations, it is impossible to characterise the scheme for the levy of rates as arbitrary or unreasonable.

The High Court contrasted clause (b) of Rule 13 with its clause (d) and held that there is no distinction between the two classes of cases and if cases falling under clause

(a) are wholly exempt from the payment of demurrage, so ought to be those falling under clause (b). The error of this conclusion lies in equating cases falling under clause

(b) with those falling under clause (a). The two clauses deal with different sets of cases: clause (a) deals with cases where the goods are detained for examination under sections 17(3) and (4) or for chemical test under section 144 of the Customs Act, other than for the ordinary processes of appraisement; clause (b) deals with cases where the goods are detained on account of Import Trade Control formalities or for compliance of formalities prescribed under the Drugs Act. We see no warrant for the court substituting its own view as to the allowance of Free Days in a technical matter like the fixation of rates which has been considered by an expert Board of Trustees and whose decision has been confirmed by the Central Government. Equating the two classes of cases dealt with by clauses (a) and (b) of Rule 13 may seem to the court a more prudent or reasonable way of

fixing scales of rates but that is not a correct test for deciding the validity of the impugned provision.

There is a fundamental aspect of the fixation of rates which the High Court has overlooked. What is the object and purpose of the rates which the Board charges to the importer ? Port Trusts do not do the business of warehousing goods and the rates which the Board charges for storage of goods are not levied as a means of collecting revenue. The Board is under a statutory obligation to render services of various kinds and those services have to be rendered not for the personal benefit of this or that importer but in the larger national interests. Congestion in the ports affects the free movement of ships and of essential goods. The scale of rates has therefore to be framed in a manner which will act both as an incentive and as a compulsion for the expeditious removal of the goods from the transit area. Ships, like wagons, have to be kept moving and that can happen only if there IS pressure on the importer to remove the goods from the Board's pre-

mises with the utmost expedition. The appellants in their reply statement filed in the High Court have referred to the Report of the Committee set up in 1967 by the Ministry of Transport and Shipping, Government of India. The Committee consisted of top-level experts, one each from the Ports of New York, London and Notterdam who made a general survey of the Ports and Harbours in India. The Committee observed in its Report: "To effect quick clearance of the cargo from the Harbour, the demurrage rates may be so fixed as to make it unprofitable for importers to use the port premises as a warehouse. "Viewed from this angle, the scale of rates cannot be characterised as unreasonable.

That takes us to the question whether the scale of rates fixed by the Board is beyond the power conferred on it by section 42 of the Act. If section 42 were to authorise the Board to fix rates of 'Demurrage'. it might perhaps have been arguable that the Scale of Rates and the Statement of Conditions must conform to the accepted meaning of the word 'Demurrage'. But the statute has placed no such limitation on the power of the Board to fix the rates. By Section 42 power is conferred on the Board to frame "a scale of rates at which and a statement of the conditions under which any of the services 1> specified" in the section "shall be performed". And the Board has fixed the scale of rates and the statement of conditions for the services it may have to perform. It is difficult to see in what manner or respect the Board has exceeded its power under section 42.

The High Court seems to have thought that the Board had the limited right to fix rates of demurrage and therefore rates could only be levied on goods which were not removed from the Board's premises due to some fault or negligence on the part of the importer or his, agent. The High Court was probably misled in this conclusion by the use of word 'demurrage' in clause (d) of section 42. But 'demurrage' is surely not a service to be performed by the Board and is, on any view, a charge leviable on goods. Clauses (a) lo (d) of section 42 refer to various services like transshipment of passengers and goods, landing and shipment of passengers or goods, cranage or porterage of goods and wharfage or storage of goods. It is these services in respect of which section 42 authorises the Board to frame a scale of rates and the statement of conditions. The circumstances that the Board has used the expression 'Demurrage' as a heading for Chapter IV of the Scale of Rates or that it has used that expression in Rules 13(b) and (c) cannot constitute a fetter on its powers to fix the rates. The validity of the exercise of that power has to be judged on the language of section 42 which is the

source of the power.

The High Court has cited many texts and dictionaries bearing on the meaning of 'Demurrage' but these have no relevance for the reason that demurrage being a charge and not a service, the power of the Board is not limited to fixing rates of demurrage. Besides, it is plain that the Board has used the expression 'Demurrage' not in the strict mercantile sense but merely to signify- a charge which may be levied on goods after the expiration of Free Days Rule 13(b) itself furnishes a clue to the sense in which the expression 'demurrage' is used by the Board. It provides, inter alia, that "demurrage" shall be recovered at a concessional rate for a period of thirty days plus one working day where the goods are detained for compliance with certain formalities and where the Collector of Customs certifies that tile detention of goods is "not attributable to any fault or negligence on the part of Importers".

The High Court was therefore in error in holding the scale of rates fixed by the Board as ultra vires and void on the grounds that it is unreasonable and that it is in excess of the power conferred by section 42 of the Act.

The only question which now remains to be considered is whether the respondents are liable to pay the demurrage demanded of them by the appellants. The appellants' claim against respondents 2 and 3 has no foundation in law and was rightly not pressed by the appellants' counsel. Respondent 3 is the Collector of Customs who, obviously., cannot be made personally liable to pay the demurrage. Respondent 2 is the Union of India against whom and respondent 3. the appellant's claim is said to reside partly in the region of "contract or quasi-contract". We are unable to spell out any such basis on which the claim of the appellants could rest. The issuance of an incorrect 'Detention Certificate' by the 3rd respondent cannot also help the appellants to fasten the liability for demurrage on respondents 2 and 3 on the ground of their negligence. As observed by the High Court, all the relevant facts were before the appellants who could, with reasonable care, have avoided the consequences flowing from the Certificate issued by the 3rd respondent.

As regards the appellants' claim against the 1st respondent, the High Court was prepared to hold the latter liable to pay the demur rage except for the fact that the scale of rates was unreasonable and beyond the power of the Board. As we have set aside the High Court's findings on those points, it has to be examined whether the 1st respondent is liable to pay the demurrage. Unfortunately, parties fought in the High Court a legal battle and gave no importance to facts on which the liability of the 1st respondent may be said to rest. Facts must come before the law for, legal principles cannot be applied in a vacuum. No oral evidence was led by the parties and we find it difficult on a mere Perusal of documents to say that respondent 1 ought to be held liable to meet the appellants' claim. Documents do not prove themselves nor indeed is the admissibility of a document proof by itself of the truth of its contents. Import Licence No. CL/ 53/3/02105-1 dated June 16, 1962 under which the goods were imported stood in the name of the State Trading Corporation of India. It issued an authorization in favour of the 1st respondent which, as the documents go, was liable to deliver the consignment to the nominees of the Corporation. The 1st respondent. it would appear, was only entitled to charge a commission for the work done by it in pursuance of the authorisation issued by the Corporation. The 1st respondent had no title to or interest in the goods except to deliver them in accordance with the instructions of the Corporation. If the appellants were to enforce their statutory

lien, the incidence of the demurrage would have fallen on the Corporation in whom the title to the goods was vested. The appellants permitted the goods to be cleared without then demanding the demurrage which they claimed later, thereby depriving the 1st respondent of an opportunity to reject the goods as against the supplier unless, of course, the Corporation was within to accept them and along with them the liability for the payment of demurrage. In the absence of any more facts we find it impossible on the record as it stands, to accept the appellants' claim against the 1st respondent. Out of 15 issues framed in the suit, issues 1 and 10 only pertain to the liability of the 1st respondent and on those issues, the facts appearing; on the record are too scanty to support the appellants' claim against the 1st respondent. We., therefore, hold that the claim against the 1st respondent must also fail In the result, we confirm the decree of the High Court dismissing the appellants' suit, though for entirely different reasons. In the circumstances, there will be no order as to costs.

P.H.P. Appeal dismissed .