

(1991) 09 GUJ CK 0002
In the Gujarat High Court

Halar Maritime Agencies

APPELLANT

Vs

Gujarat Maritime Board and Others

RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 151, 152, 161
Gujarat Maritime Board Act, 1981 — Section 1, 110, 25, 25(2), 26

Citation : (1992) 2 GLR 819

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—In this matter after issuance of notice by this Court respondent have appeared and filed their respective counter-affidavits. It was agreed by the learned Advocates for the petitioner and the respondents that the matter should be finally heard and decided, and accordingly the matter was heard on 20th September, 1991, 24th, 25th and 26th September, 1991 at length and since the matter is finally heard and is now being disposed of by this judgment following formal order is requitted to be passed:

2. Rule. Learned Advocate for the respondents waive service of rule, with the consent of the learned Advocates for the parties matter is finally heard on the aforesaid dates.

3. The petitioner is a proprietary concern carrying on business of Stevedoring and clearing agent at Bedi Port. It is challenging in this petition the action of the Gujarat Maritime Board in appointing landing and shipping contractor for the purpose of loading and unloading the goods at Bedi Port, and in further insisting upon the clearing and forwarding agents and Stevedoring agents to employ the servants of such duly appointed landing and shipping contractor. In order to properly appreciate the challenge of the petitioner to the action of the Gujarat Maritime Board it is necessary to state the relevant facts and simultaneously to refer to some of the relevant provisions of the Gujarat Maritime Board Act, 1981

hereinafter referred as "the said Act" and regulations captioned as "Gujarat Maritime Board (Landing & Wharfage) Regulations, 1986", hereinafter referred to as the "said Regulations".

4. The respondent No. 1, Gujarat Maritime Board is duly established and incorporated u/s 3 of the said Act. It is body corporate having perpetual succession and common seal. Sub-section (4) of Section 3 provides for Constitution of the said Board and it is clear from various clauses of Sub-section (4) of Section 3 that the Board consists of 10 members, 9 of them being State Govt. nominees from various walks of life. The Board represents, inter alia, the trade, commerce and industry and also the interests of shipping as well as the workers of minor ports. The only purpose of referring to the constitution of the Board is to state precisely, the fact that the Gujarat Maritime Board is intended to be a representative body of various classes of interest in the smooth administration, control and management of the ports which are under the control of the Board.

5. It is also required to be noted that the preamble to the said Act clearly brings out the purpose for which the Act came to be enacted and the Board came to be constituted which reads as under:

In Act in make provision for the constitution of a Maritime Board for minor Ports in the State of Gujarat and to vest the administration, control and management of such Ports in that Board and for matters connected therewith.

6. The objectives sought to be achieved as stated by the preamble are:

- (i) Constitution of Maritime Board for minor ports in the State of Gujarat;
- (ii) to vest the administration, control and management of such ports in that Board; and
- (iii) to deal with the connected matters with the administration of minor ports.

7. Sub-section (4) of Section 1 provides that the Act shall apply to all the minor ports in the State to which the Indian Ports Act applies. The area of operation is thus clearly defined.

8. Chapter IV of the said Act deals with property and contracts of the Board. Chapter V of the said Act deals with works and services to be provided at minor ports by the Board. It would be necessary to refer to some of the provisions of this Chapter in order to decide the controversy. Section 25 deals with the power of the Board to execute works within or without the limits of ports and to provide such appliances as it may deem necessary and expedient. The works which can be executed by the Board are enumerated u/s 25(2). Section 26 deals with the power of the Board to undertake certain works and since reliance is placed on this provision, both by the petitioner and the respondents, it is necessary to set out the same hereinbelow

25(1) The Board may undertake to carry out on behalf of any person any works

or services or any class of works or services, on such terms and conditions, as may be agreed upon between the Board and the person concerned.

(2) The Board may, if it considers it necessary or expedient in the public interest so to do, land any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned.

9. It may be stated that according to the petitioner this provision only enables the Board to undertake certain functions or works. It is not obligatory or mandatory provision compelling the Board to undertake any of such works, submits the petitioner. From the language of Sub-section (1) of Section 26 it becomes clear that the Board may undertake under this provision the work of service on behalf of any person on such terms and conditions as may be agreed upon between the Board and the concerned person. By placing reliance on this provision the petitioner submits that it is not obligatory for the Board to undertake the work of landing and shipping for and on behalf of any person and such work should be permitted to be done by the Stevedoring agents. In the submission of the petitioner the Board cannot by appointing landing and shipping contractor compel the Stevedoring agents to have services of landing contractor when they do not need such help of landing and shipping contractor. On the other hand, submission of the Board is that the Board has absolute power of control, administration and management of activities of minor ports and when the Board decides to undertake that activity for all classes of persons by contract, the Board is well within its right and power and it cannot be compelled not to perform any of its statutory functions.

10. Further provision on which reliance is placed by the Advocates of both the parties is Section 32 and since provision of Section 32 is relevant for the purpose of deciding this petition, the same is reproduced hereinbelow;

32(1) The Board shall have power to undertake the following services:

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

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

(c) carrying passengers within the limits of the Port or Port approaches, by such means and subject to such restrictions and conditions as the State Government may think fit to impose; and

(d) piloting, hauling, mooring, remooring, hooking or measuring of vessels or any other service in respect of vessels.

(2) The Board may, if so requested by the owner, take charge of the goods for

the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.

(3) Notwithstanding anything contained in this section, the Board may authorise any person to perform any of the services mentioned in Sub-section (1) on such terms and conditions as may be agreed upon.

(4) No person authorised under Sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under Sections 37, 38 or 40.

(5) Any such person shall, if so required by the owner perform in respect of the goods any of the services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

(6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under Sections 151, 152 & 161 of the Indian Contract Act, 1872.

From the language of this Section it is clear that the Board has the power to undertake various services set-out in Clauses (a), (b), (c) & (d) of Sub-section (1) of Section 32. It may be noted that Stevedoring, landing, shipping or transshipping passengers and goods between vessels in port and the wharves, piers, quays, or docks belonging to or in the possession of the Board are the activities enumerated in the said provision. From the language employed in Sub-section (1) of Section 32 there is no room for doubt that there is absolute power in the Board to undertake services referred to therein. The Board itself can undertake such services. Sub-section (3) of Section 32 contains a non-obstante clause and leaves full scope for delegation of such power of functions by the Board to any other person. Use of non-obstante clause in Sub-section (3) is for the obvious purpose of giving over-riding power to the Board to entrust any of its powers conferred by Sub-section (1) to any person on such terms and conditions as may be agreed upon. Scheme therefore is that all services mentioned in Sub-section (1) of Section 32 in Clauses (a), (b), (c) & (d) shall be performed by the Board with further power in the Board to authorise any person to perform any of such services on such terms and conditions as may be agreed upon,

11. Petitioner relies upon the language employed in Sub-section (1) of Section 32 and upon the use of words "Board shall have power" in contrast to the language employed in Section 26(1) by using words "may undertake to carry out". It is the case of the petitioner that Section 32(1) makes it obligatory for the Board to undertake performance of various services referred to in Clauses (a), (b), (c) & (d) of Section 32(1) and since it is permitting performance of said services by private parties it cannot appoint contractor for landing and shipping activity. This submission is devoid of merits and shall have to be rejected for following obvious reasons:

Firstly, Sections 26 and 32 find place in Chapter V which is captioned as "Works and services to be provided at minor ports by the Board". This heading of the Chapter makes it clear that the Board has the power to make provision for certain works and services. The use of the word "provide" implies that it can itself or through some person or agency undertake the works or render services.

Secondly, marginal note of Section 26 reads as "power of Board to undertake certain works".

Thirdly, Section 26(1) simply empowers the Board to undertake to carry out any work or services on behalf of any person. The use of word "may" makes it an enabling provision empowering the Board to undertake any work or services.

Fourthly, in contrast to the language employed in marginal note of Section 26, marginal note of Section 32 reads as "Performance of services by Board or other person". It would mean that the Board has power to perform the services more particularly, stated in the Section.

Fifthly, Sub-section (I) of Section 32 provides that the Board shall have the power to undertake the services. It itself can undertake any of the services stated in Clauses (a), (b), (c) & (d) of Sub-section (1) of Section 32.

Sixthly, the Board can direct any other person to undertake any of those services on its behalf. The use of non-obstante clause in Sub-section (3) of Section 32 leaves no room for doubt that the board may authorise any other person to perform any of the services mentioned in Sub-section (1) of Section 32. It gives an over-riding power to the Board. Seventhly, to accept the submission of the petitioners would amount to ignoring the provisions of Sub-sections (3) to (6) of Section 32. The Board has undoubted power to get the work done or services performed by any person. Such a wide power given to the Board cannot be denied by giving narrow meaning to the provision.

12. It may be stated that while authorising any other person to perform any of the services mentioned in Clauses (a) to (d) of Section 32(1) the Board can impose terms and conditions on such party. By Sub-section (4) it is provided that "no person authorised to perform any of the services under Sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under Sections 37, 38 or 40". Such person who is authorised by the Board is also required to give a receipt to the owner of the goods for the services rendered and such a receipt shall be in the form prescribed by the Board. Such person who is authorised shall exercise liability of bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 for the loss, destruction or deterioration of goods of which he has taken charge. Section 32 is thus a complete Code dealing with performance of service more particularly set out in Clauses (a) to (d) of Section 32(1). Initially, it is the Board which can itself perform such services. It has option to authorise anyother person to perform such services on such terms and conditions as may be agreed upon. Such person who is authorised to perform such services is also subjected to

control specifically enacted by Sub-sections (4) & (6) of Section 32. Such an authorised person is in every respect answerable to the owner of the goods.

13. It is now necessary to refer to Section 110 which empowers the Board to make regulation with respect to or in all the matters set out in Clause (1) of Section 33. Reliance is placed on Clauses (11), (12), (15) & (16) of Section 110. The Board can prepare regulation for safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, buildings and other works constructed or acquired by, or vested in the Board, or of any land or foreshore acquired by, or vested in, the Board. The Board can also make regulations for the reception, portage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board, or persons employed by the Board, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged. Reference to Clauses (11), (12), (15) and (16) of Section 110 makes it clear that there is very wide power in the Board to make regulations and it is the case of the respondents that in exercise of such power the Board has framed regulations known as "Gujarat Maritime Board (Landing & Wharfage) Regulations, 1986". Preamble to said regulations also refers to aforesaid clauses of Section 110, and it is, therefore, clear that the said regulations are made by the Board for the purposes more particularly, set out in Clauses (7), (8), (10), (11), (12) to (17) of Section 110.

14. Having referred to relevant provisions of the Act, it is now necessary to refer to some of the provisions of said Regulations. Clause (2) of said Regulations defines various terms and by Clause 2(v) "Port Authority" is defined to mean Gujarat Maritime Board or any person authorised by the Board u/s 32". It is to be noted that the person authorised by the Board u/s 32(3), thus, becomes Port Authority and in every respect he is answerable as the Board is answerable. Chapter 2 of the Regulations deals with the use of landing places. Conditions for landing or shipping of the goods are prescribed by Clause (4) of the Regulations. Working hours for landing and shipping are prescribed by Clause (5). Area where the goods could be stored is fixed by Regulation No. 6. Regulations No. 7 deals with control of landing and shipping and that being material is reproduced hereunder.

7. Control of landing and shipping:

(1) Subject to provisions of the Act, and the regulations, these landing of shipping of goods at a landing place shall be subject to the general control of the Port Authority.

(2) The Port Authority may regulate the landing and shipping of goods so as not to be inconsistent with the Act or these regulations.

Regulation 9 provides for facility for landing or shipping of goods provided by the Port Authority. The Port Authority should normally provide reasonable facilities and services for the landing and shipping of goods. Regulation 9(2) classifies the

goods into two categories. Regulation 9(2) reads as under:

9(2) For the purpose of landing or shipping of goods the Port Authority:

(a) may provide the facilities specified in table "A" appended to these regulations at the Port specified therein;

(b) shall not ordinarily undertake the work relating to landing or shipping of goods specified in Table "B" at the Ports specified in such table.

It is clear from the proviso read with table "A" & "B" appended to the said Regulation that the Port Authority shall not ordinarily take the work relating to landing or shipping of goods with respect to the items set out in table "B". These items are known as underlined items. Table "A" refers to the items for which the Board may provide the facilities of landing and shipping and these items are known as non-underlined items. Such items are set out in table "A". In fact, from the language employed in Regulation 9(2) read with tables "A" & "B" appended to said Regulation the Government is required to issue notification for underlined and non-underlined items, and such notification is issued by Gujarat Maritime Board. Said notification is dated 21st May, 1989. Section 1 of said notification enumerates various items. Some of the items are such in respect of which the Board does not undertake landing and shipping work but rest of the items are non-underlined items and for such items the Board provides for landing and shipping work. A reference to said notification shows that it contains a schedule wherein commodities are classified and rates are mentioned. Some of the items in schedule are underlined and the rest of the items are non-underlined items. Reference to one of the general conditions on which charges are to be recovered is required to be made. Condition No. 1 of said general conditions provide that the Board may handle and take charge of all non-underlined items, landed from or shipped into steamers working either in a stream or along side the berths at the ports as mentioned in table "A" of Maritime Board Regulations.

15. Reference to aforesaid provisions of the Regulations makes it clear that the Board has classified the goods into two categories, i.e., (i) underlined goods and (ii) non-underlined goods and the Board does not undertake performance of service like landing and shipping. It may be stated that underlined goods are more in number and while with respect to balance goods, i.e., non-underlined goods the Board provides for landing and shipping facilities. As stated hereinabove, the Board itself can undertake performance of said services u/s 32(1) or it could u/s 32(3) authorise any person to undertake performance of said services on such terms and conditions as may be agreed upon. It is in exercise of said statutory power that the Board is authorising landing and shipping contract to undertake landing and shipping services for non-underlined goods.

16. It is in the backdrop of the aforesaid provisions and clear picture emerging from the operation of the provisions of the Act and the Regulations, the challenge of the petitioner is required to be examined in this petition.

17. As stated hereinabove, the main challenge of the petitioner is that for the performance of services like landing and shipping petitioner cannot be compelled to employ services of the contractor appointed by the Board because with respect to underlined goods all the services including landing and shipping are being performed by the petitioner or other Stevedoring agents and secondly because major activities within the area are being performed by clearing or forwarding agents and/or Stevedoring agents, and therefore, only for the purpose of landing and shipping work services of contractor employed by the Board should not be imposed on them and the petitioner and other similarly situated Stevedoring agents should be at liberty to employ their own labour for the purpose of landing and shipping. The submission of the petitioner is that the action of the respondent-Board in imposing upon the Stevedoring agents or clearing and forwarding agents' services of landing and shipping contractor is absolutely unreasonable, arbitrary and irrational. It is, therefore, according to the petitioner, violative of Article 14 of the Constitution of India. It is their further case that if the Stevedoring agents could be permitted to undertake performance of services for underlined goods it is irrational to refuse them permission for landing and shipping work with respect to non-underlined goods, and therefore also the action of the respondent-authorities is violative of Article 14 of the Constitution of India. It may be stated at this stage that the regulations framed by the Board or the notification issued by the Board are not challenged in this petition nor is any challenge made to the classification between the underlined and non-underlined goods. In the absence of any challenge this Court will proceed to decide the aforesaid submission on the basis of pleadings made in the memo of special civil application and affidavit-in-reply and affidavit-in-rejoinder.

18. It may be noted that at Bedi Port the work of landing and shipping is entrusted by the Board after its constitution and prior thereto by the State since last more than three decades. The Port Authority has been doing the work of landing and shipping of goods through the contractors appointed by the Port Authority. It is the case of the Board that landing and shipping operations are carried out by such contractors in an orderly manner except stray complaints received against such contractors. It may be noted that the respondent No. 3 is appointed as landing and shipping contractor since last more than three decades.

19. It is also required to be noted that the petitioner is working as Stevedoring agent. The grievance of the petitioner is that for handing the goods of their customers for the purpose of loading or unloading they are required to approach the landing and shipping contractor appointed by the Board. According to the petitioner this system of appointing landing and shipping contractors and insistence to utilise their services is not only unreasonable and arbitrary but it leads to number of inconveniences and the grievances which are as under:

(i) The workers of landing and shipping contractors are not doing work in time which results into avoidable delay and hardships to customers.

(ii) The goods of the parties are very often roughly handled resulting into serious

damage to such goods, and for such damage the petitioners are answerable to the customers.

(iii) Since the goods are handled roughly by the workers of the contractors very often captain of the ship/steamer declines to give clean mats receipts.

(iv) At times, the labourers of the contractors leave the work half-way because of change of gang of workers, and very often it becomes difficult fasten the responsibility on any particular labour. The Stevedoring agents like petitioners, therefore, do not have any control over such labourers and they behave most arbitrarily.

(v) The labourers employed by landing and shipping agents are untrained, inefficient which often result into liability to pay heavy demurrage.

20. It is because of such problems/inconveniences faced by the Stevedoring agents that system of appointing landing and shipping contractors is required to be abandoned. If the Stevedoring agents are permitted to employ their own labourers work will be better done and the goods will be better handled than the present handling by the labourers employed by the landing and shipping contractors. The Stevedoring agents like petitioners are being directly answerable to the customers and they would see that efficient labourers are employed and work is done in time and would be to the satisfaction of the customers. Petitioners, therefore, submit that the present system of appointing landing and shipping contractors is required to be voided as arbitrary and unreasonable, and hence violative of Article 14 of the Constitution of India. Even the provisions of the Act or Regulations, according to petitioners, do not justify entrusting landing and shipping work to contractors when major work within the port premises is being done by the Stevedoring agents.

21. In order to appreciate the aforesaid submissions of the petitioner it would be necessary to state as to how the goods are dealt with at minor ports.

22. For the purpose of export of goods they are brought from factory or place of their storage to the port site by forwarding or clearing agents. These agents when they work for export of goods are known as "forwarding agents" and when their services are employed for the purpose of import of goods they are known as "clearing agents". Once the goods brought by them enter the port area, their functions come to an end. It may be noted that as clearing or forwarding agents they enter into private agreements with the customers and such transactions between clearing and forwarding agents and customers are not subjected to any control of the Board. This is the first stage in the process of export of goods.

23. After the goods enter the port area the custody of the goods from forwarding agent is to be taken. Such custody is taken by "port authority" as defined in the said regulation. The port authority may be Gujarat Maritime Board or any other person authorised by the Board u/s 32(3) of the said Act. Therefore, if the Board has authorised the landing and shipping contractor by appointing him in exercise

of powers conferred upon it by Section 32(3) of the said Act, it is such contractor who becomes the port authority. On receipt of the goods from the forwarding agent such port authority is required to give a receipt, endorsement whereof is also prescribed under the Regulations. This receipt is prescribed under Regulation No. 10 and is to be found in form No. 1 which is known as "Receipt for cargo received for shipment". Such receipt is signed by landing and shipping contractor on behalf of the port authority. Once the receipt is given by the landing and shipping contractor to the clearing and forwarding agent the function of clearing and forwarding agent, vis-a-vis, the customer comes to an end and the liability of the landing and shipping contractor begins. Such contractor would thereafter take the goods to Barges through his labourers from wharf. This barges duly filled in by goods would go upto steamer. It is pertinent to note that the labourers of the contractor would remain in the barges and would travel along with the goods upto steamer. As soon the barges duly filled in by the goods reaches the steamer, labourers of the contractors are required to load the goods from barge into slings. Once the goods are lifted and loaded into slings and barge emptied by the labourers the work of landing and shipping contractor, vis-a-vis, such goods would come to an end. This is the second step to be undertaken in the process of export and this is entrusted to the contractors appointed by the Board. It may be noted that when the goods are loaded into slings the captain of the ship would give mat receipt to landing and shipping contractor. Once such receipt is received by landing and shipping contractor his function comes to an end and he is protected by that receipt known as "mat receipt".

24. After this second stage the stage is that of unloading the goods from slings into ship. This work is done generally by the persons who are known as stevedoring agents. The labourers employed by stevedoring agents would pull the slings through cranes and once the slings reach the Board the goods are unloaded from slings into the ship. It may be noted that the labour component involved in the stevedoring is only to the extent of removing of goods from slings at the ship level and unloading such goods into the ship. It is also required to be noted that for stevedoring work private agreements are entered into between the customers and stevedoring agents and such transactions are generally not controlled by the Board.

25. From the aforesaid three stages it becomes clear that the first and third stages are generally controlled by clearing and forwarding agents and stevedoring agents respectively and they employ their own labourers. It is only after the goods enter the port area and they are taken up to barges and put into slings that the services of landing and shipping contractor are employed and it is for this work the Board is entrusting the performance of services to landing and shipping contractor.

26. It may also be noted that the terms and conditions subject to which landing and shipping contractor employed by the Board shall function and the rates which they shall charge are fixed by the Regulations and it is not open to said

contractor to negotiate or bargain any terms and conditions either with clearing or forwarding agents or with stevedoring agents. It may also be noted that as per Section 32(6) the liability of said landing and shipping contractor is that of a bailee and it is not correct to state that for any damage of the goods the forwarding and clearing agents or stevedoring agents are responsible. It is the responsibility of landing and shipping contractor and for any damage done to the goods they would be liable as bailee and therefore there is no justification in the grievance of the petitioner that the stevedoring agents and or clearing or forwarding agents are exposed to liabilities arising from damage to the goods.

27. In view of the aforesaid method of transportation of goods it shall have now to be determined as to whether the exercise of power by the Board in authorising any person u/s 32(3) of the said Act to undertake landing and shipping work, more particularly, described herein-above, can be said to be arbitrary and/or unreasonable so as to be voided by this Court as violative of Article 14 of the Constitution of India.

28. Firstly, it may be noted that there is a statutory power in the Board by Section 32(3) of the Act to authorise any person to perform any of the services mentioned Clauses (a) to (d) of Section 32(1) on such terms and conditions as may be prescribed by the Board. Validity or constitutionality of this provision is not tender challenge, and in fact, the petitioner has heavily relied on Section 32(1) of the said Act. Once the validity and/or constitutionality of this provision is conceded or in my opinion there is ample power in the Board to authorise any person to perform landing and shipping services on such terms and conditions as may be prescribed by the Board. It may be noted that such landing and shipping services are entrusted to various persons only with respect to non-underlined goods and said goods are more in number and received in large quantity. It is the case of the Board that at the Bedi Port there is cargo traffic to the tune of 5,000 to 6,000 tonnes everyday. If such cargo traffic is not channelised through authorised contractor, and if labourers of stevedoring agents are to be permitted within the port area and if the customers are to depend upon such labourers, innumerable problems would arise for the Board/Port authority. It is their case that by entrusting the work of landing and shipping to properly selected contractors the Board can ensure the safety of the operations and can also ensure proper and orderly management of the cargo traffic. It is further case of the Board that at Bedi Port different varieties of cargo of large number of consigners and consignees are required to be handled. Keeping in mind all relevant factors and looking to the volume of work and the nature of work the Board has started the practice of appointing landing and shipping contractors at Bedi Port. In my opinion, when there is undoubted power u/s 32(3) with the Board to appoint authorised person to perform any services including landing and shipping services and when such practice is, followed consistently for the last more than three decades and when it is found by the respondent-Board that such practice is necessary for the proper control, management and regulation of cargo traffic, such decision cannot be branded as arbitrary or unreasonable.

29. I am of the opinion that the action of the respondent-Board in authorising the contractor to perform landing and shipping work at Bedi Port is not only consistent with statutory power u/s 32(3), but for the reasons aforesaid, it is informed by reason, based on consideration of all the relevant and germane factors. It has kept in mind the overall necessity of smooth, safe and efficient regulation, management and control of cargo from port area to slings. It has also rightly relied upon the practice which has been consistently and successfully followed for more than three decades. It has also rightly pointed out the fact not a single stevedoring agent has objected to such entrustment of work of landing and shipping to a contractor except the present petitioner for the first time this year. Thus, the action of the respondent-Board being reasonable and having been taken only upon lawful and relevant considerations cannot be said to be arbitrary, unreasonable or violative of Article 14 of the Constitution of India. I, therefore, do not accept the submission of the petitioner that the action of the respondent-Board in authorising a contractor to perform services of landing and shipping on such terms and conditions as may be agreed upon is arbitrary, unreasonable, discriminatory or violative of Article 14 of the Constitution of India.

30. The petitioner has challenged the action of the respondent-Board on the ground that at two other minor ports, namely, Magdalla and Dahej no practice of appointing landing and shipping contractor is followed. He submits that only at Bedi Port landing and shipping contractor is appointed, and therefore, the Board is acting discriminately so as to treat the stevedoring agents at the said port differently from the stevedoring agents at Bedi Port, in the affidavit-in-reply, filed by Mr. J.R. Pathak, Traffic Manager of Gujarat Maritime Board, it has been pointed out that at Magdalla Port import and export of cargo is of single consigner/consignee who has his industry very close to the port area. The Board has referred to Gujarat State Fertiliser Co., Essar Gujarat, Reliance Petrochemicals Ltd. etc. which are importing large quantities of cargo for themselves and who have constructed their own jetties at their own cost. At Dahej port cargo of Gujarat Narmada Fertiliser Co. is being imported and their goods belong to single consignees. Thus at Magdalla and Dahej ports cargo of these two or three companies is to be handled. There is neither variety of cargo nor large number of consignees/consigners. The volume of traffic is considerably less. In fact, there is no other traffic at the said two ports excepting the cargoes of said companies and the said companies have invested huge amounts in constructing their own jetties. If they are permitted to continue to handle their cargo in their own way the Board is not wrong in permitting to handle their own cargo. Cases of these two ports cannot be compared with the case of Bedi Port and I think that the Board is justified in treating Bedi Port differently from the said two ports. It is to be noted that at Bhavnagar the Board is having landing and shipping contractor. Therefore, wherever there is large volume of work and there are large number of consigners/consignees the Board has consistently followed the practice of appointing an authorised landing and shipping contractor, and I do not see any substance in this challenge also. These being the only

submissions and since same are not accepted by me, this petition deserves to be dismissed.

31. In the result this petition fails. Rule is discharged. Ad interim relief granted earlier by this Court stands vacated. No order as to costs.