
(2013) 05 AHC CK 0102

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 11168 of 2011 69130 of 2010, 12725, 35119, 37337, 32172, 40140, 28925, 21765, 33681, 21351 and 31375 of 2011

M/s. NBK Trade Linker Pvt. Ltd. and Others

APPELLANT

Vs

Railway Board and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3(3)
Constitution of India, 1950 — Article 14, 265
Railways Act, 1989 — Section 2(11), 2(35), 2(41), 29, 29(1)
Railways Board Act, 1905 — Section 2
Wealth Tax Act, 1957 — Section 3

Citation : (2013) 5 ADJ 566 : (2013) 5 ALJ 231 : (2013) 98 ALR 796

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Alope Kumar, Manoj Kumar, M.K. Tiwari, Vivek Kumar Singh, S.K. Tiwari, Kunwar Siddharth Singh, A.K. Gaur, Abhishek Srivastava, Shashi Nandan and C.L. Pandey, for the Appellant; Vivek Singh, A.K. Gaur, Govind Saran, Dinesh Kumar, Sudhir Bharti and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—This bunch of writ petitions challenge the Rate Circular issued by the Railway Board providing for realisation of penal demurrage/wharfage charges. In Writ Petition No. 11168 of 2011, pleadings are complete, which writ petition is being treated as the leading writ petition. Reference of facts and pleadings in Writ Petition No. 11168/2011, shall be sufficient for deciding all the writ petitions.

2. Brief facts of the case are: The petitioners are Private Limited proprietorship concern/partnership concern involved in the trading of coal and are importing coal from outside the State of U.P. through railway wagons.

3. Section 30 of the Railways Act, 1989 (hereinafter called the "Act, 1989")

authorises the Railway Board to notify rates of demurrage and wharfage from time to time and to revise the same. Rates Circular No. 74 of 2005 dated 19.12.2005, was issued by the Railway Board on the subject "Free time and rates of demurrage, wharfage and stacking charges".

4. Paragraph 3.3 of the said Circular provides that in case excessive congestion takes place at any terminal/steel plant, CCM/COM/DRM can increase the demurrage rates, even at progressively increasing rate subject to a maximum of six times of the prevalent rate. The Circular further provides that the above penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period. Similar provision is there for wharfage rates in para 5.4 of the Circular. Wharfage charges were revised by Rates Circular No. 21 of 2007 dated 8.3.2007 issued by the Railway Board. Demurrage and Wharfage charges were levied on the petitioners in accordance with the rate circulars dated 74 of 2005 and 21 of 2007. The Divisional Railway Manager, Varanasi by different orders permitted Railway Station, Indara to realise penal charges in different scales i.e. twice/thrice of the normal charges for the notified period. Various orders issued by the Divisional. Railway Manager, Varanasi of the year 2011 have been brought on the record as Annexure-11 to the writ petition.

5. The petitioners challenging the penal charges imposed by Rates Circular Nos. 74 of 2005 and 21 of 2007 have come up in the writ petition before this Court. Following are the reliefs which have been claimed in Writ Petition No. 11168/2011:

(i) Issue a writ, order or direction in the nature of certiorari quashing the provisions contained in para 3.3 of Rate Circular No. 74 of 2005 dated 19.12.2005 (contained in Annexure 2 to the writ petition) and provisions contained in para 6 of Rate Circular No. 21 of 2007 dated 8.3.2007 (contained in Annexure 4 to the writ petition) being ultra-vires to the Act.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the respondents not to realize the penal demurrage and wharfage from the petitioners on their consignment of rakes delivered at their destination station or on the rakes which are to be delivered.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to impose and realize only demurrage and wharfage as provided u/s 30 of the Railway Act, 1989 on the consignment of the petitioners only after considering the merits of the case i.e. the reason and situation for imposition at the time of delivery and not to realize penal demurrage and wharfage by taking recourse of the impugned circular.

(iv) To issue any, such writ, order, or direction which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

(v) Award the cost of the petition.

6. Counter-affidavit and supplementary counter-affidavits have been filed by the respondents refuting the claim of the petitioners. Rates Circular Nos. 74 of 2005 and 21 of 2007 have been justified by the Railway Board. It has been pleaded in the counter-affidavit that conditions issued through above circulars are necessary to stop excessive congestion in the terminal and to release the rolling stock in the stipulated time for its better utilisation in the interest of other customers for which higher charges have been introduced. Rejoinder and supplementary rejoinder-affidavits have also been filed by the petitioners.

7. We have heard Shri Shashi Nandan, learned Senior Counsel assisted by Shri Alok Kumar and other learned counsel for the petitioners, Shri A.K. Gaur and Shri Vivek Singh have appeared for the Railways.

8. Learned counsel for the petitioners challenging the Rates Circular Nos. 74 of 2005 and 21 of 2007, submitted that imposition of penal demurrage/wharfage charges are beyond the jurisdiction of the Railway Board. It is submitted that Clause 3.3 of Rates Circular dated 74 of 2005 and para 6 of the Rates Circular dated 21 of 2007 are ultra vires to the Act, 1989, there being no specific provision under the Act, 1989 for levy of penalty for demurrage/wharfage charges, Railway Board cannot prescribe any penal demurrage/wharfage by fixing rates of demurrage/wharfage charges. The power under sub-section 2 of Section 30 of the Act, 1989 empowers the Central Government only for fixing of rates which power cannot be exercised for fixing penal rates for demurrage/wharfage charges. The movement of railway rakes being not in the hands of the petitioners, no penal charges can be realised from the petitioners on account of any excessive congestion on a particular station. The realisation of penal demurrage/wharfage charges have been affected disregarding the Railway Board's Circular dated 22.10.2008, the demand of penal demurrage/wharfage charges is punitive in nature, arbitrary and violative of Article 14 of the Constitution of India. It is further submitted that there was no due publicity before imposing penal demurrage/wharfage charges as required by para 3.3 of the Rates Circular.

9. Learned counsel appearing for the Railways refuting the submissions of the learned counsel for the petitioners submitted that the Railway Board has jurisdiction to fix the rates to the extent of six times of the normal rate in exercise of power u/s 30(2) of the Act, 1989 and the petitioners have remedy of filing an appeal against the order of penal demurrage/wharfage charges. In the instant case the demurrage/wharfage charges have been increased only 2 or 3 times of the prevalent rate. Penal demurrage/wharfage charges have been levied by the Railway Administration with 48 hours prior notice. Circular dated 22.10.2008, issued by the Railway Board is only a clarificatory circular providing penal/higher rates can be increased upto maximum of 6 times of the prevalent rate and these rates can be increased by 2 times or 3 times or so on, and not necessarily 6 times at one go in all cases. Railway must judiciously evaluate the situation and the rates should be increased on merit to the extent considered

justified. It is further submitted that the penal demurrage/wharfage charges were notified with due publicity of 48 hours and in the writ petition there are no specific pleadings regarding the imposition of charges without there being any publicity. Penal demurrage/wharfage charges have been notified for a specific period by due notice before issuing each orders and petitioners are liable to pay demurrage/wharfage charges. It is submitted that the rates circular issued by the Railway Board is in accordance with the provisions of the Act, 1989 and does not violate any provision of law or any constitutional provision.

10. Learned counsel for the petitioners have placed reliance on various judgments of the Apex Court which shall be referred to while considering the submissions in detail.

11. We have considered the submissions of the learned counsel for the parties and have perused the record.

12. From the pleadings of the parties and submissions made following are the issues which have arisen for consideration in this bunch of writ petitions:

1. Whether in exercise of power u/s 30 of the of the Act, 1989, Railway Board can impose penal demurrage/wharfage rates and the penal rate imposed by the Rates Circular Nos. 74 of 2005 and 21 of 2007 are without jurisdiction.

2. Whether while fixing the rates u/s 30 of the Act, 1989 penal rates can be fixed by the Central Government

3. Whether fixing of penal rate under the Rates Circular No. 74 of 2005 and 21 of 2007 are arbitrary and violative of Article 14 of the Constitution.

4. Whether wide publicity and due notice of 48 hours is necessary before fixing any penal rates of demurrage/wharfage.

5. Whether wide publicity and due notice was given by the respondents before imposing the penal rates of demurrage/wharfage.

13. The first three issues being interconnected are being taken up together.

14. Before we proceed to consider the respective submissions of learned counsel for the parties, it is necessary to note the statutory scheme.

15. The Parliament enacted the Railway's Act, 1989 to consolidate and amend the law relating to railways. The Indian Railway's Act, 1890 (hereinafter called the "Act, 1890") governed the field prior to enactment of Act, 1989. The other Act relevant for the purpose is the Indian Railway Board Act, 1905. u/s 2 of the Indian Railway Board Act, 1905, the Central Government invests the Railway Board with all the powers and functions of the Central Government. Under the Act, 1890 by Gazette notification dated 31.3.1999, Central Government has invested the Railway Board with all the powers and functions of the Central Government under Sections 30 and 31 of the Railways Act, 1989. Section 2(35) of the Act, 1989 defines "rate". Section 2(35) is as follows:

2(35) "rate" includes any fare, freight or any other charge for the carriage of any passenger or goods.

16. Sections 2(11) and 2(41) of the Act, 1989 defines demurrage/wharfage which are as follows:

2(11) "demurrage" means the charge levied for the detention of any rolling stock after the expiry of free time, if any, allowed for such detention;

2(41) "wharfage" means the charge levied on goods for not removing them from the railway after the expiry of the free time for such removal.

17. Chapter VI of the Act, 1989 relates to "fixation of rates". Section 30 of the Act, 1989, empowers the Central Government from time to time, by general or special order fix, rates for the carriage of passengers and goods. Section 30(2) of the Act, 1989 provides for fixing of rates of any other charges incidental to or connected with such carriage including demurrage and wharfage. Section 30 of the Act, 1989 which is relevant is quoted below:

30. Power to fix rates.--(1) The Central Government may, from time to time, by general or special order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may, by a like order, fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply.

18. Rates Circular No. 74/2005 dated 19.12.2005 has been issued by the Government of India Ministry of Railways Railway Board on the subject Free time and rates of demurrage, wharfage and stocking charges. Para 3.3 which has been challenged in the writ petition lays down following:

3.3 In case excessive congestion takes place at any terminal/steel plant, CCM/COM/DRM can increase the demurrage rates, even at progressively increasing rate subject to a maximum of six times of the prevalent rate. This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period.

19. Rates Circular No. 21/2007, dated 8.3.2007, have been issued by the Government of India Ministry of Railways (Railway Board) revising the rates for wharfage. Paragraph 6 of the said circular which has been challenged in the writ petition is as follows:

6. Levy of Higher Wharfage Charges.

In case of excessive congestion or regularity of excessive congestion at any terminal, CCM/DRM can notify Higher Wharfage Charges up to six times the

prevailing rates applicable for the first 24 hours. Higher Wharfage Charges should be implemented only after giving a due notice of 48 hours and wide publicity, and should be applicable only for the notified period.

20. Learned counsel for the petitioners do not dispute that Railway Board has jurisdiction to fix rates for demurrage/wharfage. Section 30(2) of the Act, 1989 itself contemplates "the conditions subject to which such rates shall apply" could also be laid down by the Central Government while fixing the rates. There can be different rates subject to different conditions. Para 3.3 of the Rates Circular No. 74 of 2005 is in two parts. First sentence of para 3.3 is to the following effect.

3.3 In case excessive congestion takes place at any terminal/steel plant, CCM/COM/DRM can increase the demurrage rates, even at progressively increasing rate subject to a maximum of six times of the prevalent rate.

21. The second sentence begins with the word "This penal demurrage rates". The second sentence obviously refers to progressively increasing rate subject to maximum of six times of the prevalent rate. When a statute empowers an authority to fix rates, the power has to be interpreted in a wide manner so as to meet different situations which may arise. The definition of the word "rate" given in Section 2(35) of the Act, 1989 is a wide definition. The definition is an inclusive definition which has to be interpreted in a wide manner. The word "rate" as defined in the Railway Act, 1890 which is similar to the definition as now contained in the Act, 1989, came up for consideration before the Apex Court in Union of India (UOI) Vs. Motilal Padampat Sugar Mills Co., (P) Ltd., . Following was laid down in paragraph 12.

12....Here the word "rates" merely means the scale or amount of any other charges...

22. Thus, while fixing rates a scale can be fixed containing different rates applicable on fulfilment of different conditions. Thus, rates providing for progressive increase subject to maximum of 6 times of the prevalent rate is within the scope of Section 30(2) of the Act, 1989.

23. The submission which has been much pressed by the learned counsel for the petitioners is that since paragraph 3.3 referred to above refers to progressively increasing rate as a penal, the same is beyond the scope of Section 30 of the Act, 1989. The question for consideration is as to whether while fixing the rate, penal rates can be fixed or not.

24. The word "Penal" has been defined in P. Ramanatha Aiyar's The Law Lexicon 3rd Edition 2012 in following words.

"Penal" Pertaining to punishment and penalty.

In the municipal law of England the words "penal" and "penalty" have been used in various senses. Strictly and primarily they denote punishment imposed and enforced by the state for a crime or offence against its laws, but they are also

commonly used as including any extraordinary liability to which the law subjects a wrong-doer in favour of the person wronged, not limited to the damages suffered. They are so elastic in meaning as even to be familiarly applied to cases of private contracts wholly independent of statutes, as when we speak of the penalty of a bond.

25. In Blacks Law Dictionary the word "penalty" has been defined in following words.

Penalty"(15c) 1. Punishment imposed on a wrongdoer, usu. in the form of imprisonment or fine; esp., a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party's loss). Though usu. for crimes, penalties are also sometimes imposed for civil wrongs. [Cases: Penalties 1].

26. The word "penalty" came up for consideration before the Apex Court in Director of Enforcement Vs. M/s. MCTM. Corporation Pvt. Ltd. and others, . While considering the meaning of "penalty" in the said case following was laid down by the Apex Court in paragraph 7:

7. The expression "penalty" is a word of wide significance. Sometime, it means recovery of an amount as a penal measure even in civil proceedings.. An exaction which is not compensatory in character is also termed as a "penalty".

27. The penal charges under paragraph 3.3 of the Rates Circular No. 74 of 2005 are leviable where excessive congestion takes place at any terminal (Railway Station). The penal rates as contemplated under paragraph 3.3 is nothing but progressively increasing rate subject to a maximum of six times of the prevalent rate. Merely because the said rates have been termed as penal rates, they cannot be held to go beyond the scope of Section 30(2) of the Act, 1989, whereas the scale of rates can be prescribed by Railway Board u/s 30(2) of the Act, 1989, the said scale may also contain a rate which can be termed as penal rates. The object and purpose of prescribing progressively increasing rate is to release the rolling stock within the stipulated time to save economic loss to the railways. Prescribing progressively increasing rates act as a deterrent to the consignee to immediately unload their goods from their rolling stocks or to remove their goods from wharfage. The immediate removal of goods from rolling stocks and wharfage becomes more necessary and imminent when the terminal is congested. The prescription of such rates which is deterrent is with the object and purpose which cannot be said to be unreasonable or violative of any constitutional provisions.

28. The Apex Court in The Trustees of the Port of Madras Vs. Aminchand Pyarelal and Others, , had occasion to consider "Scale of Rates". Rules were framed under the Madras Port Trust Act, 1905. The "Scale of Rates" was framed by the Board. The Trustees of the Port of Madras filed Suit No. 158 of 1966 in the High Court of Madras for recovering a sum by way of demurrage from the respondents. The suit was resisted on various grounds including that the scale of rates fixed by the

Board is ultra vires and void on the ground that it is unreasonable. In the above context the Apex Court had occasion to consider the nature of demurrage and the object for fixing of rates. The Apex Court held that 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. Following was laid down in paragraph 28:

28. 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 premises 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 Rotterdam 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.

29. The objects and purpose for fixing rates for demurrage charges as laid down by the Apex Court in the above said case is regarding sea port which is also clearly applicable in the context of Railway Station where also there is necessity of removal of goods with utmost expedition. Section 30(2) of the Act, 1989 uses the phrase "fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage..... Thus, in addition to fixing rates for demurrage and wharfage, Central Government is fully empowered to fix the rates of "any other charges incidental to or connected with".

30. The penal rates connected with demurrage charges thus can be statutorily fixed. Thus the mere fact that the progressively increasing demurrage charges to the maximum of six times are also referred to as penal charges does not make the charge beyond the authority of Section 30 of the Act, 1989 unreasonable or violative of Article 14 of the Constitution of India. Our above view finds full support from the judgment of the Apex Court in Jagjit Cotton Textile Mills Vs. Chief Commercial Superintendent N.R. and Others, . In the above case, a rule

namely; Indian Railways Conference Association Rules framed under Indian Railway Act 1890 came for consideration. Rule 161-A of the said rules provides for penalty for loading coal beyond the permissible capacity of wagons. The recovery of penal charges from the consignees was challenged. It was contended that "rate" as defined u/s 3(13) of the Act, 1890 cannot mean any penal charges, the submission, which has been pressed in this bunch of writ petitions.

31. Section 30 of the Act, 1989 is similar to Section 29 of the Act, 1890. The Apex Court in the case of Jagjit Cotton Textile Mills (supra) held that the words "other payment" used in the Act, 1890, Section 3(13) fully covers the word "penal charge" as levied by Rule 161-A. Following was laid down in paragraphs 21 and 22:

21. It is, however, contended for the Railways that for purposes of Rule 161A of the IRCA, the rule making power of Section 47(1)(g) is not relevant in this context that Rule 161A is protected by Section 29(1) and Section 54(1) of the old Act. We shall therefore, refer to Section 29(1) and Section 54(1) to find out if this contention of the Railways is well founded. Section 29 reads as follows:

29: (1) The Central Government may, by general or special orders fix maximum and minimum rates for the whole or any part of a railway, and prescribe the conditions in which such rates will apply.

(2) The Central Government may, by a later order, fix the rates of any other charges for the whole or any part of a railway and prescribe the conditions on which such rates of charges shall apply.

(emphasis supplied)

Under Section 3(13) of the old Act, "rate" is defined as including "any fare, charge or other payment for the carriage of any passenger, animals or goods." In our view, "other payment" could be by way of a penal charge as levied by Rule 161A.

22. Again Section 54(1) states that the railway administration may impose conditions not inconsistent with the Act or with any general rules made thereunder, "with respect to the receiving, forwarding or delivery of any animal or goods." In our view one such "condition" could be by directing that penal charges could be collected before delivering the goods.

32. The above law laid down in paragraphs 21 and 22 are complete answers to the submissions of the learned counsel for petitioners that while fixing the rates of demurrage, the Railway Board cannot provide for any penal charges.

33. In paragraph 49 of the Jagjit Cotton Textile Mills (supra) also following proposition was laid down.

49....So far as the words "rates and other charges" used in Section 55(1) are concerned, it is necessary to refer again to the definition of the word "rate" in Section 3(13) of the old Act. It says "rate" includes "any fare, charge or other

payment for the carriage of any passenger, animal or goods", (emphasis supplied) In our view, whether we go by the words "other charges" used in Section 55 or the words "other payment" in the definition of "rate" in Section 3(13), they clearly include the "penal charges" leviable under Rule 161-A of the Rules. Thus, u/s 55(1), it is permissible for the Railways to withhold the delivery of the goods from the consignee unless the consignee pays the penal charges also. That is the effect of the "lien".

34. Learned counsel for the petitioners have placed reliance on the judgment of the Apex Court in Collector of Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd., .

35. In the aforesaid case the issue considered by the Apex Court was as to whether Section 3(3) (as it stood prior to 1994 amendment) of Additional Duties of Excise (Goods of Special Importance) Act, 1957 whether there was power for penalty and confiscation, it was held that the authorities were not empowered to impose penalty or take confiscation for non-payment of additional duties by resorting to Central Excise Act, 1944 or the rules framed thereunder. It was held that the 1994 amendment was effected to remedy the defect in the unamended Section 3(3) of the Central Excise Act, 1944. Following was laid down in paragraphs 6, 8 and 19:

6. A perusal of the said provision shows that the breach of the provision of the Act has not been made penal or an offence and no power has been given to confiscate the goods. It only provides for application of the procedural provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder. It is no longer res integra that when the breach of the provisions of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The authority has to be specific and explicit and expressly provided. The Act created liability for additional duty for excise, but created no liability for any penalty. That being so, the confiscation proceedings against the respondents were unwarranted and without authority of law.

8. A comparison of the amended provisions with the unamended ones would clearly demonstrate that the words "offences and penalties" have consciously been inserted therein. The cause of action for imposing the penalty and directions of confiscation arose in the present case in the year 1987. The amended Act, therefore, has no application to the facts of this case.

19. It is now a well-settled principles of law that expropriatory legislation must be strictly construed (see D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and others). It is further trite that a penal statute must receive strict construction.

36. There cannot be any dispute to the proposition laid down by the Apex Court in the aforesaid case. In the present case the penal demurrage and wharfage

charges are leviable by virtue of paragraph 3.3 of the Rates Circular No. 74 of 2005 which has statutory force, thus penalty can very well be realised. The above case was on its own facts and does not help the petitioners in the present case.

37. Learned counsel for the petitioners further relied on the judgment of the Apex Court in *State of Kerala Vs. Madras Rubber Factory Ltd.*, .

38. In the aforesaid case the Apex Court held that a charge under a taxing statute can only be under the Act and not under the Rules. Present is a case where the rates are to be fixed for the carriage of passengers and goods which power has been contemplated to be exercised by the Central Government by general or special order. The Act, 1989 is not a taxing statute. The proposition laid down in the *State of Kerala (supra)* has no application in the facts of the present case.

39. The last case relied on by the learned counsel for the petitioners is *Commissioner of Wealth Tax, Gujarat-III, Ahmedabad Vs. Ellis Bridge Gymkhana*, . The Apex Court in the said case held that the before taxing any person, it must be shown that he falls within the ambit of charging section. Following was laid down in paragraphs 5 and 31:

5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

31. This judgment really goes against the contention made on behalf of the Revenue. The Court first laid down that a charging section of a taxing statute has to be strictly construed. The Court found that the charging section of various taxing statutes had imposed tax on Hindu Undivided Families as well as on "individuals". It has been held under various fiscal statutes that Mapilla Tarwads cannot be taxed as a Hindu undivided family but will have to be taxed as an "individual". If "individual" is understood under the Wealth Tax Act, in the same sense in which it has been understood in various fiscal statutes, then "individual" u/s 3 of the Wealth Tax Act will include a Mapilla Tarwad. But in the various tax Acts mentioned in that judgment "individual" has not been interpreted to include a firm or an association of persons.

40. There cannot be any dispute to the proposition as laid down in the above case. In the present case the provisions of rates circular are clear and are clearly applicable. The above case also does not help the petitioners.

41. In view of the foregoing conclusion, we are of the view that the prescription of penal rates for demurrage and wharfage in the above mentioned rates circulars are fully within the competence of the Railway Board under the Act, 1989 and the said provisions are neither arbitrary nor violative of Article 14 of

the Constitution.

42. The last two issues relate to publicity and notice of the progressively increasing rates of demurrage and wharfages.

43. Paragraph 3.3 of the Rates Circular No. 74 of 2005, contemplates "This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours". The said circular clearly providing of giving wide publicity and due notice of 48 hours has to be complied with before implementing the progressively increasing rates. The respondents even do not contest the requirement of wide publicity and due notice of 48 hours. Thus, it is held that the before implementation of progressively increasing rates wide publicity and due notice of 48 hours is necessary.

44. Learned counsel for the petitioners also contended that the above part of paragraph 3.3 in respect of wide publicity was not complied with. It is relevant to note the pleadings in the writ petition with regard to the aforesaid submission. Only paragraph in the entire writ petition regarding the publicity is paragraph 39 of the writ petition. Paragraph 39 of the writ petition is to be following effect:

39. That in addition to above it is also submitted that without making publicity of the enhancement of rate, the provision for enhancement of rate has been made by the Railway Authorities, even by ignoring the instructions contained in letter dated 22.10.2008 of Railway Board as the same is only being communicated internally. On request the petitioner obtained photocopy of the certain letters which contains the direction for imposition of enhanced penal demurrage and wharfage for particular period from the officials of the respondent No. 5. A true copy of the letters indicating the arbitrary exercise of power by the respondent No. 7 are collectively being filed herewith and marked as Annexure 11 to this writ petition.

45. There is no specific pleadings by the petitioners in the writ petition that 48 hours notice was not given to the petitioners before implementing which progressively increasing rates. In para 39 of the writ petition, there is no specific pleading with regard to the implementation of progressively increasing rates for any notified period, nor there is any challenge for any particular demand of increased demurrage charges. The submissions made in para 39 of the writ petition are only general submissions. The pleadings in paragraph 39 of the writ petition is that the provision for enhancement of rate has been made by the Railway Authority even by ignoring the instructions contained in the letter dated 22.10.2008 of Railway Board.

46. Before we proceed further, it is relevant to note the contents of the Circular dated 22.10.2008 issued by the Railway Board which is as follows:

Vide Rates circulars referred to above, Railway can increase the demurrage and wharfage rates, even at progressively increasing rate, subject to maximum of six times of the prevalent rate. These penal/higher rates are to be implemented in

case of excessive congestion at any terminal and only after giving wide publicity and due notice of 48 hours.

It has come to the notice of Board that Zonal Railways are levying penal demurrage and wharfage charges at a rate of six times of the prevalent rate in a routine manner. It is to clarify that in terms of extant instructions, penal/higher rates can be increased upto maximum of 6 times of the prevalent rate, implying thereby that these rates can be increased by say, 2 times or 3 times or so on, and not necessarily 6 times at one go in all cases. In fact, Railway may decide to levy variable rates like 2 times for first 3 hours detention, 3 times for next 12 hours detention and so on and so forth.

Railway must judiciously evaluate the situation and the rates should be increased on merit to the extent considered justified. Levy of six times rates should be resorted only when the situation becomes very alarming.

47. The aforesaid circular was issued to clarify that the penal/higher rates upto the maximum of 6 times which is not to be imposed at one go. The said circular clarified that the Railway may decide to levy the variable rates like 2 times for first 3 hours detention, 3 times for next 12 hours detention and so on and so forth. From the materials brought on the record, it is clear that demurrage charges which were imposed on the petitioners were only 2 times or 3 times of the prevalent rates. No violation of the Circular dated 22.10.2008 has been proved.

48. In the supplementary counter-affidavit, Railway has brought on record the decision taken by the competent authority for imposing the penal rates for a fixed period. In the supplementary counter-affidavit filed by the Railways one of the notices pasted on the notice board of good shed of Indara Railway Station dated 7.1.2011 has been brought on the record.

49. As observed above, there are no pleadings in the writ petition that 48 hours notice was not given to the petitioners. Insofar as publicity with regard to the increased/penal rates is concerned, suffice is to say that there being no specific pleadings regarding any particular imposition or instance, we are unable to examine the materials in the above regard. The 48 hours notice having been given by the Railways to the petitioners the penal rates could have very well be implemented by the Railways. Thus, on the above ground, we do not find no error in the levying of penal rates. It is further relevant to note the prayers made in the leading writ petition as quoted above. The main prayer was to quash the provisions contained in paragraph 3.3 of Rate Circular No. 74 of 2005 dated 19.12.2005 and provisions contained in para 6 of the Rate Circular No. 21 of 2007 dated 8.3.2007 and a mandamus has been sought commanding the respondents not to realise the penal demurrage and wharfage charges from the petitioners. Thus, we do not find any infirmity in the imposition and realisation of penal rates on above counts.

50. In view of the above, none of the submissions of the petitioners have any

substance. Petitioners are not entitled for any relief in this bunch of writ petitions. All the writ petitions are dismissed. No costs.