

(1996) 07 BOM CK 0018

In the Bombay High Court

Case No : Writ Petns. No's. 82, 108 and 109 of 1996

M/s. Sardesai Transhippers Pvt. Ltd. and etc.

APPELLANT

Vs

State of Goa and another

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Constitution of India, 1950 — Article 165

Goa, Daman and Diu Port Rules, 1983 — Rule 38, 40, 43, 54, 64

Ports Act, 1908 — Section 6

Citation : AIR 1997 Bom 326

Hon'ble Judges : T.K. Chandrashekhara Das, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : V.R. Bhanbari and V.P. Thali, for the Appellant; G.U. Bhobe, Government Advocate, for the Respondent

Judgement

Chandrashekhara Das, J.—Common questions arise in these writ petitions and, therefore, we are proposing to dispose of these petitions by this common judgment.

2. The petitioners in these writ petitions are barge owners and they challenge the demand made by the respondents towards wharfage for the use of the wharf at the Panaji port. One of the demands so made is produced in Writ Petition No.108/96 evidenced by Exhibit "A". As per this demand, the respondents sought to realise wharfage dues payable from 1st April, 1984 to 31st May, 1994. Similar notices were given to the other petitioners. The petitioners challenge in these writ petitions these demands on the ground that they are unauthorised levies having no support of law. Before going into more details of these cases, we have to mention here that on an earlier occasion when similar demands were made by the respondents from barge owners, they had approached this Court by way of writ petitions. Those writ petitions numbering about 76 were however, disposed of by a Division Bench of this Court by judgment dated 26th February, 1992. A copy of the judgment is produced in Writ Petition No. 82/96 as Exhibit "B" at page 23. Those judgments were delivered on the basis of minutes of order

submitted by the parties as enumerated herein:--

"(a) Annual licence fees on the basis of not registered tonnage.

(b) Port dues as fixed under the Rules on the basis of the net registered tonnage once a quarter only, viz. once between 1st January and 31st December, in terms of the Schedule to the Ports Act.

(c) Fees for Mooring or Wharfage, whichever and whenever applicable, on the basis of net registered tonnage."

The condition (c) deals with fee for Mooring or Wharfage. The said condition says that Mooring and Wharfage, whichever and whenever applicable should be on the basis of registered tonnage. Going by these conditions, it can be seen that the demand of wharfage can be made only on the basis of tonnage of the vessel. In other words, the said condition says that the parties have agreed to pay the wharfage on the basis of the tonnage. The learned counsel for the petitioners submits that the condition cannot be taken as conceding the power of the Government to levy the wharfage. Therefore, he submits that challenges like the one made in these writ petitions are always open for the petitioner to make. However, we see that there was no considered judgment by this Court on the point raised by the counsel for the petitioners, namely the validity of the imposition of wharfage under the provisions of the Indian Ports Act, 1908 and the Rules made thereunder. Therefore, we venture to examine in this petition the legality or otherwise of the demand made by the respondents by way of wharfage as contained in Exhibit "A".

3. By a Gazette Notification issued in 1967 under S. 4(3) of the Indian Ports Act, 1908, the provisions of the said Act were extended to the port of Panaji and its limits were defined under the said Notification. The movement of the crafts/ vessels of goods or passengers and traffic in the port of Panaji is regulated by and is under the control of the respondents. The main thrust of the argument of counsel for the petitioner is that while the aforesaid Rules, namely Goa, Daman and Diu Port Rules, 1983 relate to the crafts, licensing of crafts, their landing, shipping, storage of goods and occupation of goods in the land space, the levy imposed by the respondents based on the weight of the barge for the purpose of using the wharf has not, however, been authorised by the said Rules. According to the petitioners, their barges ply in the inland waters of Goa, transporting ore and other cargo from the loading points along either the Mandovi river or Zuari river and unload it either at Mormugao Wharf or on ships anchored in midstream or at a transhipper at Mormugao port, all within the limits of the area of Mormugao port. This cargo is unloaded for the purpose of export to other countries. As required under the Customs Act, all the barges are required to obtain Customs clearance after unloading cargo intended for export. The petitioners further submit that there is no Customs office stationed at transhippers or at ships in midstream, but there are Customs offices stationed both at Mormugao wharf and also at Panaji wharf for granting Customs clearance.

After unloading the cargo as aforesaid, the barges have either to touch Mormugao wharf or Panaji wharf for getting Customs clearance depending upon the routes of the barges returning either via Zuari river waters or Mandovi river waters to loading points again. It is further the case of the petitioners that the Customs office of Panaji Wharf, is hardly about 50 paces from the wharf. After touching the wharf, one sailor gets down from the barge, runs to the Customs office, gets the endorsement on Customs book, runs back to the barge and the barge leaves the Panaji wharf within about ten to fifteen minutes. The petitioners contended that during this process the barges ply empty and do not carry any cargo. There is also no loading or unloading or storing of any cargo at Panaji wharf but the only purpose of barges touching at Panaji wharf and remaining there for five to ten minutes is to get the Customs book endorsed by the Customs Officer and for no other purpose. It is clear from the above operation that the levy demanded from the petitioners is not for the use of wharf either for loading or unloading or storing any cargo, and according to the petitioners on such use alone (sic) is authorised by the Act to levy any charges against the users of the wharf. Therefore, in short, the petitioners' contention is that the demand made by the respondents now is only for touching the wharf for the aforesaid purpose, namely for obtaining the Customs clearance from the Customs Officer and that too for a short period of five to ten minutes. This, according to the petitioners is unauthorised and is not envisaged or authorised under the Indian Ports Act, 1908, or the Rules made thereunder.

4. Before going any further, in order to examine the arguments advanced on behalf of the petitioners, it is necessary to refer to the relevant provisions of the Indian Ports Act and the Rules and Notification made thereunder. Section 4 of the Indian Ports Act, hereinafter called "the Act" empowers the Government to extend the operation of the Act or define the limits of the area to which the Act should apply. Sub-sec. (3) of S. 4 reads as follows :--

"S. 4(3) :

Limits defined under sub-sec. (2) may include any piers, jetties, landing places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good governing of the port and its approaches, whether within or without high-water mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty years of high-water mark."

Section 6 of the Act whereby the Government is authorised to make rules consistent with the Act which also authorises that if the Government thinks necessary the rules can be made for the purposes enumerated in sub-sec. (1) Clauses (a) to (q). Of these sub-clauses, the following sub-clauses are relevant to be noted for the purpose of this case. Sub-clauses (a), (b), (g), (h), (j) and (k) read thus :--

"S. 6(1)(a) : for regulating the time and hours at and during which, the speed at

which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;

(b) for regulating the berths, stations and anchorage to be occupied by vessels in any such port;

(g) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port;

(h) for regulating the moving and warping of all vessels within any such port and the use of warps therein;

(j) for fixing the rates to be paid for the use of such moorings when belonging to the Government or of any boat, hawser or other thing belonging to the Government;

(k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for licensing and regulating the crews of any such vessels; and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels and may be such rules provide for the fees payable in respect of any such license, and in case of vessels plying for hire, for the rates of hire to be charged and the conditions under which such vessels shall be compelled to ply for hire, and further for the conditions under which any license may be revoked."

By a Notification dated 29th November, 1967, the aforesaid Act has been made applicable and extended to the port of Panaji and other ports mentioned therein. The area of the ports has also been defined under the Notification. It is explicitly made clear in that Notification that the limits mentioned in the Notification with regard to the respective ports shall include all wharf and other works made on behalf of the public for convenience of traffic for safety of vessels or for the improvement, maintenance, or governing of the ports, their approaches whether within or without the high-water mark and subject to any rights or private property therein, any portion of the shore or bank within fifty metres of high-water mark.

5. In pursuance of the above rule-making power, the Lt. Governor of Goa, Daman and Diu had framed rules which are called the Goa, Daman and Diu Ports Rules, 1983. These Rules are framed for the purpose of regulating the movement of crafts, licensing of crafts, landing and wharfage, area for storage of goods, operation of space in landing, etc. and prescribe fees and dues chargeable under the Rules. Chapter IV of the said Rules has the caption : "Landing and wharfage". Rule 38 deals with the manner in which the application has to be made for landing and shipping. Rule 40 which is also in Chapter IV deals with area for storage of goods. Rule 43 deals with facility that is to be provided by port authorities for landing. Rule 54 deals with the allotment of space by the port

authorities in the port and the period during which that allotment should be enforced. Chapter VII deals with miscellaneous matters. Rules 64 which comes under this Chapter reads as follows :--

"R. 64 :-- Levy of port dues and other fees -

Port dues and other fees shall be levied at all the ports at the rates specified in the Schedule."

As mentioned in Rule 67, a Schedule also has been prescribed by the rule-making authority showing fees and dues chargeable under the Goa, Daman and Diu Ports Rules, 1983. Item 26 of the Schedule mentions the rate of port dues. Item 41 deals with the rate of transporting minerals. Item 55 deals with wharfage and reads as under :--

"R. 55; Wharfage -

i)

country craft or sailing Vessels upto 100 tons minimum payable Rs. 5.00

Per day per ton or part thereof

Rs. 0-1 5.

(ii)

country craft or sailing vessels above 100 tons minimum payable Rs, 10,00

Per day per ton or part thereof

Rs. 0-1 5

(iii)

mechanized craft double the rates at (i) or (ii) above."

6. From the foregoing rules and the items mentioned in the Schedule, it can be seen that wharfage can be collected by the Port Authorities at the rates mentioned therein based on its tonnage. For a country craft, sailing vessel upto 100 tons the minimum payable is Rs. 5/- and maximum would be payable Rs. 0.15 per ton per day. For country craft or sailing vessel above 100 tons, the minimum payable is Rs.10/- and the maximum calculated at the rate of Rs. 0.15 per ton per day or part thereof. For mechanized craft, rate double at the rates mentioned for items No. (i) and (ii), namely the country craft, depending upon the weight of the craft.

7. The main argument of the counsel for the petitioners is that only under Rule 38 the Government can levy any fees or charges which are called "wharfage" and he further submits that such charges can be levied only in respect of goods. In other words, unless the wharf is used for loading and unloading of goods, the wharfage fees cannot be levied. He took us through the various provisions and

sub-clauses and submitted that Rule 38 only mentions about the landing of goods and also the loading of goods and no other charges are leviable under the Rules. He submits that merely because a vessel touches the wharf for some purpose other than loading or unloading of goods or passengers no fees are chargeable under the provisions of the Act. No fees are chargeable under Rule 54 also since no space is being allotted. He further submits that, as already mentioned, the barge only touched the wharf for a few minutes for the purpose of personnel going to the Customs office which is close to the wharf for getting endorsement on customs documents. This argument of the petitioner though prima facie may appear to be of substance, but when we examine the scheme of the Act and the Rules, we find the same to be without any substance. As we pointed out earlier, S. 6 of the Act authorises to frame rules which include also the power of levying different amounts of charges. Rules 64 authorises the levy of port dues and other fees as specified in the Schedule. Item 55 of the Schedule under "wharfage" prescribes the rates or charges leviable for vessels which touch or park near the wharf. Therefore, the kind of levy imposed which the Government has demanded from the petitioners cannot be said to be unauthorised.

8. The learned counsel for the petitioners has also argued that even going by the grammatical meaning of the word "wharfage", wharfage cannot be collected unless there is berthing of the vessel along the wharf for loading or unloading of the goods. He brought to our notice the meaning of "wharfage" contained in several dictionaries. In the Shorter Oxford English Dictionary. "wharfage" means provision of or accommodation at a wharf; the stowage of goods on a wharf; the loading and unloading at a wharf; charge or dues exacted for the use of a wharf. According to Black's Dictionary of Law, "wharfage" means the money paid for landing goods upon, or loading them from, a wharf; charge for use of wharf by way of rent or compensation. According to Stroud's Judicial Dictionary, "wharfage" or "Key age", is a duty for pitching or lodging (loading) of goods upon a wharf; a duty for wharfage and carnage cannot be due where the party has not had use of the wharf or crane; wharfage are dues for landing on the wharf. The Random House Dictionary defines "wharfage" as the use of the wharf to charge higher rates for wharfage; storage of goods at a wharf; the charge or payment for the use of a wharf. Going by these meanings wharfage can be collected by the authorities for the use of wharf. For what purpose the wharf is used is, therefore, immaterial. Here in this case the wharf is being used by the petitioners for going to the neighbouring building of Customs Office for Customs clearance. It is a different thing when the Customs Office is shifted from the existing place and put up at a distance from the wharf. Perhaps in such a situation the petitioners would have no occasion to go to the wharf at all with the barge, in which case the petitioners need not use the wharf; but so long as the wharf is used for any purpose whatsoever, the port authorities are empowered to collect fees or charges from such users at different rates depending upon the use to which the wharf is put to. Therefore, the contention of the counsel for the

petitioners that wharfage can be collected by the authorities only when there is loading and unloading of the goods or when accommodation is provided in the wharf for some purpose, is without any substance.

9. Another argument advanced by the petitioners is that no quid pro quo is provided under the Rules enabling the Government to levy fees or charges demanded, which are impugned in the writ petitions. To this argument also we cannot agree for the simple reason that money spent on the wharf has been detailed in the reply filed by the State Government. Paragraph 6 of the affidavit filed on behalf of the second respondent has made it clear what are the facilities provided in the wharf and the expenditure incurred by the Government in this behalf. Therefore, the challenge of the levy imposed by the State Government cannot be sustained on that score also. We find, therefore, the writ petitions have no merit and are liable to be dismissed.

10. Before parting with this case, we have to make certain observation regarding the procedure and machinery provided by the Government for collection of this fee. While we uphold the imposition of fee as demanded by the port authorities from the petitioners, we have to note that no proper machinery has been provided by the State Government to collect the tax. The Government is collecting the charges on the basis of the statistics provided by the Customs authorities. The Government has not made or appointed any officer to supervise and collect the charges. This state of affairs is not at all satisfactory. Without providing any machinery, fees are being collected upon the materials available from another source on which Goa Government has no control. Fee or charge collected in such fortuitous circumstances is unheard of in law. The materials available with the Customs office can be used by the Government for counterchecking of the collections made. Collection of fee solely based on such material is not proper. We hope that Government attention will be bestowed on this aspect of the matter and provide proper machinery and staff for collecting the wharfage.

11. In the result, the writ petitions are dismissed. Rule discharged.

Petitions dismissed.