Visakhapatnam Port Trust and Another

Vs

Ram Bahadur Thakur Pvt. Ltd. and Others

Civil Appeals Nos. 3972-74 of 1993

(Dr. A. S. Anand, S. B. Majmudar JJ)

10.02.1997

JUDGMENT

S. B. MAJMUDAR, J.

1. These three civil appeals on grant of special leave to appeal under Article 136 of the Constitution of India bring in challenge a common judgment and order rendered by a Division Bench of the High Court of Andhra Pradesh dismissing two writ appeals moved by the appellant - The Visakhapatnam Port Trust and its Traffic Manager, and allowing one writ petition moved by the respondent-writ petitioner against the present appellants. The said common judgment and order dated 1-10-1992 are assailed by the appellants on diverse grounds which will be highlighted in the latter part of this judgment. The main grievance of the appellants centres round the question of levying of appropriate handling charges from various shippers who seek to export manganese ore from the wharves of the appellant's port. In order to appreciate this grievance it is necessary to note a few relevant introductory facts.

2. The respondents in these appeals were the original writ petitioners before the High Court. They are dealers in manganese ore. They export manganese ore through the Minerals and Metals Trading Corporation of India. For exporting the said ore they naturally require the services of Appellant 1's port through which their manganese ore is loaded in the ships for export. The appellant-Port for that purpose offers various services and facilities to such shippers. The appellant-Port maintains different yards in its premises. One such yard is known as "Eastern Yard" which is divided into several plots of varying extent between 100 square metres and 600 square metres. These plots are leased out by the Port Trust authorities to different shippers. The writ petitioners are the lessees of a few plots. They are at a distance of about 200 metres to 1500 metres from the wharf. These plots are connected by broad gauge railway lines on one side and narrow gauge railway lines on the other side. The ore is transported to the plots on the broad gauge railway line and is transported to ships by narrow gauge railway line. The shippers can also transport the ore to their respective plots by road using dumpers or lorries. The handling of ore from the plots to the ships was previously undertaken by the Port authorities. The entire operation consisted of :

(a) Loading of ore into the skips by the port labour;

(b) Transport of ore from the plots to the vessels utilising the internal narrow gauge railway system belonging to the port.

(c) Transferring the ore from the skips to the ships hold, utilising the port labour.

Under Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (for short "the Act"), the Board of Trustees is enabled to charge for the services rendered by the Board. In exercise of the powers conferred under Sections 48 and 49 of the Act, the Board periodically notifies the scales of rates and conditions and the handling charges for the manganese ore for the said operation were fixed at the rate of Rs. 35 per thousand kilograms for one metric ton. These handling charges were inclusive of equipment hire charges. In May 1986 the writ petitioners received a circular from the Traffic Manager of the Port stating that the then existing N.G. System would not be available and that the revised system would come into force on or around 20-5-1986. The consequence of the abolition was that the shippers were required to employ their own dumpers and loaders to transport the ore from the dump area to the wharf and load the ore on to the ships utilising their slings. No port labour or other personnel and equipment of the Port might be required or utilised as the entire operation would be carried out by the shipper. On 10-6-1986 the Traffic Manager of the Port issued a circular notifying that a provisional consolidated handling charge of Rs. 30 per metric ton for handling export of manganese ore in the new system, would be levied. Consequently the previous handling charges of Rs. 35 were substituted by Rs. 30 per M.T. According to the writ petitioners this levy of charges of Rs. 30 per M.T. under the new system of handling of manganese ore at the appellant-Port was unreasonable and excessive. They made several representations in this connection. According to the writ petitioners for transporting manganese ore from the plots and putting it on board the ship the shippers will have to incur approximately Rs. 37 per M.T. and the Port authorities collect Rs. 30 per M.T. after withdrawal of the services by them. Under these circumstances two writ petitions were filed by respondents in Civil Appeals Nos. 3972 and 3973 of 1993 before the High Court. They were Writ Petitions Nos. 8891 and 14503 of 1986. These writ petitions were heard by a learned Single Judge of the High Court who after hearing the parties came to the conclusion that for substituting the new scale of handling charges for manganese ore for the earlier existing scale of Rs. 35 per M.T. when the Port was providing its own labour and narrow gauge railway line siding for transporting the ore from the dumping yard to the wharf, the procedure required by Section 52 of the Act was not followed by the appellant-Port and hence the new scale of rates could not effectively be pressed in service by the Board against the writ petitioners. So far as the contention of the writ petitioners that the levy of Rs. 30 per M.T. under the new system of handling of manganese ore pursuant to the impugned circulars dated 19-5-1986, 10-6-1986, and 18-7-1986 and resolution dated 26-6-1986 was excessive and unreasonable was concerned, the learned Single Judge observed that it was not for the Court to work out the details minutely to find out the actual cost incurred for the service and then decide at what rate the handling charges should be collected by the Port and that the Central Government will have to consider all these aspects while granting sanction to the new scale of handling charges under Section 52 of the Act. Accordingly the impugned circulars and Resolution of 1986 were quashed and writ petitions were allowed. The appellants herein filed writ appeals against the aforesaid order of the learned Single Judge being Writ Appeals Nos. 1379 and 1380 of 1987 before the High Court. The said two writ appeals along with the companion Writ Petition No. 17407 of 1987 were heard by a Division Bench of the High Court which by the impugned common judgment and order confirmed the decision of the learned Single Judge and dismissed the writ appeals. The companion writ petition was also allowed. The Division Bench noted that the handling charges of Rs. 30 per M.T. with respect to manganese ore and other ores in the light of the fresh system came to be later on sanctioned by the Central Government under Section 52 of the Act and they came in force with effect from 12-2-1992. Therefore, the controversy survived regarding the appropriate handling charges for manganese ores for the period from 20-5-1986 to 12-2-1992 and for that period the Central Government, while exercising its powers under Section 52 of the Act, was required to consider the question regarding fixing of appropriate handling charges after giving notice to the writ petitioners and hearing their

objections, if any. It was further directed that whatever payments were made by the writ petitioners during the pendency of the writ appeals and writ petition before the High Court at the rate of Rs. 20 per M.T. in respect of consignments of manganese ore would be subject to the final adjustment to be made in the light of the decision of the Central Government.

Rival contentions

3. At the time of final hearing of these appeals Shri Vinod Bobde, learned Senior Counsel appearing for the appellants, vehemently submitted that the Division Bench of the High Court had ex facie erred in law in taking the view that the rates of handling charges for manganese ore as fixed by the Board's impugned resolution dated 26-6-1986 were required to be sanctioned by the Central Government under Section 52 of the Act and without such prior sanction they could not operate. It was submitted that the earlier sanctioned rate under Section 52 was Rs. 35 per M.T. which held the field from 1-1-1984 and this scale of rates was duly published by the appellant-Port. That thereafter on two occasions the appellant-Port gave remission to alleviate the hardship of the shippers exporting manganese ore by utilising the services offered by the appellant-Port. That one such remission was given by the Board in its Meeting No. 7 of 1984-85 held on 30-10-1984. That was the remission of Rs. 5 per M.T. of manganese ore brought by dumpers to Visakhapatnam Port and exported therefrom. This remission was to be given on the basis of the certificate issued by the Dock Labour Board. Thus this remission was a conditional remission. It was admittedly under Section 53 of the Act. That subsequently when the facility of utilisation of narrow gauge railway line on the premises of the Board was withdrawn the Board by the impugned resolution dated 26-6-1986 gave a fresh remission of Rs. 5 per M.T. from the sanctioned rate of Rs. 35 per M.T. by making it unconditional. Consequently even the impugned resolution dated 26-6-1986 also remained within the four corners of Section 53 of the Act and that the High Court was in error in taking the view that these impugned circulars sought to introduce a new scale of rates which required prior sanction of the Central Government under Section 52 of the Act.

4. It was next contended by Shri Bobde that even assuming that the impugned resolution sought to bring into force new scale of rates in the light of the changed system of services made available by the Board for shipment of the manganese ore, and that such new scale of rates without prior sanction of the Central Government was ineffective during the relevant period from 20-5-1986 to 12-2-1992, then as a logical corollary it should have been held by the High Court that the earlier existing handling rate of Rs. 35 per M.T. remained operative as it would not get substituted by any effective new rate of handling charges of manganese ore and the writ petitioners would be liable to pay the handling charges for the aforesaid relevant period at the rate of Rs. 35 per M.T.

5. It was next contended by Shri Bobde that if the writ petitioners had any grievance about the alleged excessive handling charges or that there was no quid pro quo between these rates on the one hand and the services rendered by the Board on the other and if the High Court found that highly disputed questions of fact arose, for resolution of this dispute, the writ petitioners should have been relegated to the remedy of civil suit. In any case, according to Shri Bobde, Section 54 of the Act could have been pressed in service in such an eventuality and the writ petitioners could have been relegated to the remedy of representation before the Central Government in this connection. Shri Bobde also submitted that even if Section 54 was to be invoked for fixation of appropriate rates which is a delegated legislative function, there was no question of giving any hearing to the objectors-writ petitioners and consequently the direction of the Division Bench about the issuing of notices to the writ petitioners and hearing their objections was clearly misconceived.

6. On the other hand Shri R.F. Nariman, learned Senior Counsel for the respondents, submitted that the old scale of rates for handling of manganese ore levied by the appellant-Board from 1-1-1984 was fixed in the light of the type of services then rendered by the Board and the infrastructural facilities made available by the Board to the shippers in those days. That under the previous system the Port authorities handled the ore from the plots to the ships by utilising the port labour and the internal railway system belonging to the Port and for the entire operation handling charges were levied at the rate of Rs. 35 per M.T. That under the new system sought to be introduced from June 1986 onwards transportation of ore was to be the responsibility of the shippers who had to employ their own labour. Under these circumstances when the Board fixed scale of rates at Rs. 30 per M.T. and when the earlier infrastructural facilities and the benefit of utilisation of internal railway system earlier available to the shippers were withdrawn, the said rate of Rs. 30 per M.T. would obviously become a new scale of rates interlinked with the changed system of conditions for handling manganese ore from June 1986 onwards and consequently prior sanction of such new rates in the light of the new system was a condition precedent under Section 52 of the Act for making this new scale of rates effective. However Shri Nariman, learned Senior Counsel fairly stated that the Board no doubt has powers under Section 53 of the Act to grant exemption or remission of existing rates of charges in special cases as contemplated by Section 53 and in such an eventuality previous sanction of the Central Government may not be necessary. But on the peculiar facts and circumstances of the case the High Court rightly held that impugned rates of handling charges sought to be introduced by the Resolution of 26-6-1986 did require previous sanction of the Central Government under Section 52 of the Act.

7. It was next contended by Shri Nariman that no fault could be found with the direction of the High Court in requiring the Central Government to consider the objections of the writ petitioners against the proposed fixation of rates by the Board under the new system on the ground that they were excessive and unreasonable and it was for the Central Government to take an informed decision in the matter and that obviously cannot prejudice the appellant-Board. In this connection it was submitted by the learned Senior Counsel for the respondents that by an order dated 10-8-1993 this Court while granting special leave to appeal against the impugned judgment and order of the High Court had directed the respondents to pay the charges at the rate of Rs. 30 per M.T. from June 1986 onwards and accordingly the respondents have paid the balance amounts of disputed handling charges all throughout from June 1986 onwards till 11-2-1992. That in the same order this Court had directed that if ultimately the appellants fail in appeal the amount that is recovered by them from the respondents will be paid by them with interest as may be fixed by this Court. However learned Senior Counsel, Shri Nariman fairly stated that in case this Court is inclined to uphold the order of the High Court, if the Central Government is directed to resolve this controversy between the parties within a fixed period then the payments made by the respondents pursuant to the interim order of this Court dated 10-8-1993 may be made subject to the decision of the Central Government and the rights and obligations of respective parties to this litigation may be directed to be worked out in the light of the said decision of the Central Government. He however added a rider to his submission that in case according to the decision of the Central Government the respondents become entitled to refund of any amount this Court may fix appropriate rate of interest to be paid by the appellant-Board to the respondents on such amounts.

Points for determination

8. In the light of the aforesaid rival contentions the following points arise for our determination :

1. Whether the impugned circulars dated 19-5-1986, 10-6-1986 and 18-7-1986 and the impugned

resolution of the Board dated 26-6-1986 amount to remission of the then existing rates of handling charges for manganese ore covered by Section 53 of the Act or whether these rates require prior sanction of the Central Government under Section 52 of the Act before they could become effective.

2. Whether the impugned rates of handling charges were unreasonable, excessive and based on no proper quid pro quo between the services rendered by the Board and the charges levied by the Board for such services.

3. Whether there was any effective scale of rates for handling manganese ore at the premises of the appellant-Port during the relevant period from 20-5-1986 to 12-2-1992.

4. Whether the directions issued in the impugned judgment, to the Central Government for issuing notices to the writ petitioners and for hearing their objections before fixing handling charges for the period from 20-5-1986 to 12-2-1992 are justified in law.

We will deal with these points in seriatim.

Point 1

9. In order to appreciate the controversy concerning this point it is necessary to have a look at the relevant provisions of the Act. As per Section 1 sub-section (3), the Act in the first instance was to apply to major ports of Cochin, Kandla and Visakhapatnam. Appellant 1 is one such port. This port which is a major port has to have a Board of Trustees duly constituted as per Section 3 of the Act. Various statutory duties are enjoined on the Board by the Act. Section 42 of the Act deals with "Performance of services by Board or other person". Sub-section (1) thereof lays down that a Board shall have power to undertake certain services. The relevant services which are required to be undertaken by the Board are indicated in clauses (a), (b) and (d) of Section 42(1) which read as under :

"(a) landing, shipping or transhipping passengers and goods between vessels in the 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) * * *##

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway administration under the Indian Railways Act, 1890 (9 of 1890); and

#(e) * * *##

Chapter VI of the Act deals with "imposition and recovery of rates at ports". We may refer to the relevant provisions of the said Chapter which have a direct bearing on the controversy posed for our consideration. As per Section 48 sub-section (1) every Board shall from time to time frame a scale of rates at which, and a statement of the conditions under which, any of the services specified in the clauses to this sub-section shall be performed by itself or any person authorised under Section 42 at or in relation to the port or port approaches. Sub-sections (1)(b) and (1)(e) of Section 48 of the Act are relevant in this connection. They read as under :

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

#(c) * * *(d) * * *##

(e) any other service in respect of vessels, passengers or goods, excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act."

A conjoint reading of Sections 42(1) and 48(1) shows that the Board has to frame a scale of rates at which and a statement of conditions under which the services concerned are made available at the major port by the Board concerned. It, therefore, becomes clear that the scale of rates for trans-shipment of goods to and from vessels in the port or port approaches and for landing and shipping of goods from or to such vessels from any wharf, quay, jetty, pier, dock etc. within the premises of the port, has a direct linkage with the conditions under which such services are rendered. Consequently, the scale of rates for such services which are to be offered by the Board of a major port to the shippers concerned has to be ascertained or fixed in the light of the type of conditions subject to which such services are offered.

10. We may now turn to the other relevant provisions of this Chapter. They consist of Sections 52, 53 and 54 which deserve to be extracted in extenso as under :

"52. Prior sanction of Central Government to rates and conditions. - Every scale of rates and every statement of conditions framed by a Board under the foregoing provisions of this Chapter shall be submitted to the Central Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette.

53. Exemption from, and remission of rates or charges. - A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied.

54. Power of Central Government to require modification or cancellation of rates. - (1) Whenever the Central Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to cancel any of the scales in force or modify the same, within such period as that Government may specify in the order.

(2) If any Board against whom a direction is made under sub-section (1) fails or neglects to comply with such direction within the specified period, the Central Government may cancel any of such scales or make such modifications therein as it may think fit :

Provided that before so cancelling or modifying any scale the Central Government shall consider any objection or suggestion which may be made by the Board during the specified period.

(3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly."

A mere look at the aforesaid provisions shows that whenever any scales of rates for trans-shipment

and shipping of goods within the limits or the major port are to be fixed by the Board concerned, such scales of rates can be fixed in the light of the conditions under which such services concerned are offered by the Board to the shippers. Therefore, the given scheme of conditions in the light of which scales of rates by way of handling charges are fixed by the Board has a direct impact on the fixation of such scales of rates. In other words such scales of rates are not fixed in vacuum but in connection with the nature of the conditions under which such services are offered by the Board to the consumers concerned of such services, namely, the shippers. When such scales of rates in the light of a given set of conditions for offering handling services are fixed by the Board they cannot come into force unless such scales of rates and the set of conditions for offering such services get prior sanction of the Central Government as enjoined by Section 52 of the Act. So far as Section 53 is concerned, it confers power on the Board in special cases to give exemption or remission from such fixed and current rates as may have received prior sanction of the Central Government under Section 52 meaning thereby that once the Central Government has sanctioned rates and conditions under which such rates are to be imposed by a Board as laid down by Section 52, if the Board concerned in special cases wants to give any exemption or remission for handling any goods or vessels or class of goods or class of vessels from payment of such fixed rates or charges it can do so under Section 53 of the Act. This postulates that once the approved conditions under which sanctioned scales of rates become effective under Section 52 for offering services by the Board remain the same and yet some remission or exemption needs to be granted by the Board in special cases after following the procedure of Section 53, it is not required to apply to the Central Government for prior sanction of such remission or exemption. So far as Section 54 is concerned, it shows that once scales of rates in the light of the approved and existing conditions under which the services concerned are offered by the Board are sanctioned by the Central Government and if it is brought to the notice of the Central Government that it is necessary in the public interest to modify or cancel such sanctioned rates then the Central Government in exercise of its power under Section 54(1) may pass appropriate orders modifying or cancelling the sanctioned operative rates in public interest. This is a power vested in the Central Government which is independent of the power of remission or exemption of rates and charges available to the Board under Section 53. The Board under Section 53 and the Central Government under Section 54 can, independent of each other, 1 exercise these respective powers within the parameters of the provisions of Sections 53 and 54 of the Act.

11. It is in the light of the aforesaid statutory scheme that the moot question posed for our consideration on this first point for determination has to be answered keeping in view the background facts governing this controversy. It is not in dispute between the parties that from 1-1-1984 the handling charges for manganese ore levied by the appellant-Board were fixed at Rs. 35 per M.T. This rate was duly sanctioned by the Central Government under Section 52 of the Act. At the time when the aforesaid rate was fixed the manganese ore was being transported to the plots situated within the limits of the Port by broad gauge railway line and from those plots the stored manganese ore was being carried to the ships for its outward journey in the course of the export by being transported in skips drawn by a small engine on the narrow gauge railway line. Handling of ore from the plots to the ships was done entirely by the Port authorities at their own cost for which they used to charge handling charges at Rs. 35 per M.T. The operation consisted principally of three activities noted earlier. It was this system of transporting of manganese ore within the precincts of the Port that formed the basis for fixation of the rate of handling charges at Rs. 35 per M.T. of manganese ore. This rate and the conditions under which handling services were then offered by the Board as already noticed were duly sanctioned by the Central Government under Section 52 of the Act. Despite the continuance of this system of handling services offered by the Board from 1-1-

1984, a representation was made to the Board in the closing months of 1984 by the shippers of the manganese ore to the effect that this consolidated rate of handling charges of Rs. 35 per M.T. of manganese ore was excessive as for unloading operation from the wagons, dock labour was being engaged and that in the process of exporting manganese ore at the lowest economic cost some of the exporters started bringing manganese ore to Visakhapatnam Port by dumpers. The Dock Labour during 1984 resolved to levy Rs. 12.50 per M.T. towards Dock Labour Board Charges for manganese ore brought by dumpers to Visakhapatnam Port by the shippers concerned. Therefore, it was represented by the shippers to the Board that in addition to Rs. 35 per M.T. which they had to pay by way of handling charges to the Board they were also required to pay Rs. 12.50 per M.T. by way of handling charges to the dock labour, thus making them out of pocket to the tune of Rs. 47.50 per M.T. Consequently, from the sanctioned and operative handling charges of Rs. 35 per M.T. as levied by the Board from the shippers of manganese ore a remission of Rs. 12.50 per M.T. was sought. It is this representation which was partly accepted by the Board by its resolution dated 30-10-1984 on Agenda Item No. 16. It was resolved by the Board to approve under Section 53 of the Act, a remission of Rs. 5 per M.T. of manganese ore brought by dumpers to Visakhapatnam Port and exported, on the basis of the certificate issued by the Dock Labour Board. In the light of the aforesaid resolution of the Board it becomes clear that though the sanctioned rates or charges for handling of manganese ore were Rs. 35 per M.T., by remission of Rs. 5 per M.T. given by the Board in exercise of its statutory powers under Section 53, the effective and operative rate of handling charges of manganese ore became Rs. 30 per M.T. subject to the shipper concerned producing the requisite certificate issued by the Dock Labour Board. Shri Bobde, learned Senior Counsel for the appellants was, therefore, right when he submitted that this remission was a conditional remission. Nonetheless it cannot be doubted that it was a remission given by the Board from the existing and operative sanctioned handling charges for manganese ore. Thus from 30-10-1984 onwards the effective handling rates for manganese ore, so far as the appellant-Board is concerned, became Rs. 30 per M.T. in the light of the then existing conditions of services offered by the Board, namely, making available to the shippers who wanted to utilise handling services of the Board the use of the skips drawn by a small engine on the narrow gauge railway line from the siding of the plots up to the wharf and transferring the ore from the skips to the ship's holding utilising the port labour.

12. The aforesaid remitted rate of handling charges continued up to the middle of 1986 when the impugned circulars and the Resolution saw the light of the day. It is necessary to have a look at these circulars for appreciating their correct scope and ambit. The Traffic Manager of the appellant-Port by circular dated 19-5-1986 informed all concerned that a new system of handling manganese ore will be introduced by the appellant Trust. It recited that under the revised system, the stocked ore will be transported to the wharf by employment by the shippers of dumpers and loaders and loading with net slings dispensing with the existing narrow gauge system. This new system was to come into force after completion of loading of manganese ore on the expected vessel on or around 20-5-1986 and the manganese ore shippers were requested to note that the narrow gauge system would not be available thereafter. This was followed by another circular dated 10-6-1986 issued by the Traffic Manager of the appellant-Trust notifying that a provisional consolidated handling charges of Rs. 30 per M.T. for handling export of manganese ore etc. in the new system would be levied. It is obvious that this circular referred to the rate of notified consolidated handling charges as provisional because it had to be approved by the Board. It is this provisional rate which was placed for consideration of the Board of Trustees in its meeting dated 26-6-1986. Agenda Item No. 19 which was placed for consideration of the Board recited as follows :

"Agenda Item No. 19 : Manganese Ore Shipment - Collection of handling charges in respect of OHL workers in the new system of handling manganese ore exports."

The Resolution of the Board stated that it approved the collection of consolidated handling charges of Rs. 30 per M.T. only for handling manganese ore shipment in the new system. This Resolution clearly indicates that the Board resolved to levy fresh handling charges of Rs. 30 per M.T. in the light of the new system of offering such services meaning thereby that the aforesaid rate of handling charges of manganese ore would be levied by the Board despite withdrawal of the facility of narrow gauge railway line for the shippers. In other words thenceforward the shippers had to carry at their own cost the dumped manganese ore from the plots to the wharf by employing their own dumpers and modes of transport. Thus the very system of offering of handling services by the Board underwent a sea change as per the Resolution of 26-6-1986. Of course the rate remained Rs. 30 per M.T. which was already holding the field prior to the said Resolution on account of the remission of 30-10-1984 as noted earlier. But though the rate of handling services apparently remained the same, when viewed in the light of the then existing infrastructural facilities of narrow gauge railway line being available to the shippers it now became operative as a new rate in the light of entirely a new system of shipment services offered by the Board for handling of manganese ore at its port. Thus in substance the rate fixed by the Board as per its Resolution dated 26-6-1986 by way of handling charges of manganese ore became a new scale of rates in the light of a new set of infrastructural services offered by the Board. In the light of this Resolution the Traffic Manager issued the impugned consequential circular dated 18-7-1986 by which it was notified that the provisional consolidated handling charges of Rs. 30 per M.T. only for handling export of manganese ore etc. in the new system communicated vide its office circular cited, was the final rate. A conjoint reading of the circulars dated 19-5-1986, 10-6-1986 and 18-7-1986 and the Resolution dated 26-6-1986 leaves no room for doubt that from 21-5-1986 entirely a new system for handling the manganese ore at the port came into existence and in that light a new handling rate for manganese ore was being fixed by the Board. Once that happened Section 52 of the Act directly got attracted because the scale of rates at Rs. 30 per M.T. having a direct nexus with the statement of new conditions for offering handling services by the Board was sought to be got implemented by the Board. Hence prior sanction of the Central Government became a must for such new impost. The submission of Shri Bobde, learned Senior Counsel for the appellants, that even at this stage the Board sought to give a remission from the existing sanctioned scale of rates, that is, Rs. 35 per M.T. as was current from 1-1-1984, cannot be accepted for the simple reason that the Board had already given remission of Rs. 5 per M.T. to the shippers of manganese ore subject to the condition laid down by the Resolution of the Board dated 30-10-1984 with effect from that day. That remission was in the light of the then existing conditions of infrastructural facilities made available by the Board to the shippers concerned who had to bear the burden of this rate. The Board was perfectly justified in exercising its powers under Section 53 of the Act in granting the said remission for a class of goods, namely, manganese ore. But at the stage of latter Resolution dated 26-6-1986 there was no occasion for the Board to reduce further the said rate of Rs. 30 per M.T. in the light of the very same earlier existing system of handling of manganese ore. The entire earlier existing system of handling manganese ore was given a go-by and a new system was sought to be introduced as expressly mentioned in the circulars of 19-5-1986 and 10-6-1986 in the light of which the Board Resolution dated 26-6-1986 saw the light of the day. The moment the new system of handling of manganese ore got introduced any fixation of handling charges of manganese ore in the wake of introduction of such a new system of handling of manganese ore exports would necessarily clothe the new rate with the characteristics of being freshly settled handling charges. Once this conclusion is reached the exercise of the Board undertaken as per Resolution dated 26-6-1986 required, for its efficacy, the prior sanction of the Central Government as enjoined by Section 52. Admittedly, that was not done by the Board. The fixation of an appropriate scale of rates chargeable from the shippers concerned who are now to be offered a different and truncated type of infrastructural facilities, would call for an exercise to be

undertaken subject to the requirements of Section 52 and would go out of the sweep of Section 53 as it would not amount to remission of existing rates of handling charges having a nexus with the erstwhile and unchanged system of infrastructural facilities which no longer remained available to support such a remitted rate of handling charges. In other words the very foundation on which the earlier handling rates operated was knocked off and entirely a new foundation of infrastructural facilities of services came into being. Any handling rates fixed in connection with such a new foundation of handling-services-infrastructure necessarily would assume the form of a new scale of rates. Shri Bobde's submission flies in the face of the express recitals found in the impugned circulars of 1986 in the light of which the impugned Resolution of the Board dated 26-6-1986 was passed. The scope and ambit of the Resolution of 26-6-1986 can be better highlighted as under :

When the effective rate of handling charges was Rs. 30 per M.T. prior to May 1986, the shippers were given facility to carry their load of dumped manganese ore from plots to wharf by utilising narrow gauge railway line belonging to the Port authorities. This facility was made available by the Board at its own cost. If value of this infrastructural facility for carrying dumped ore from plots to wharf was at a distance of 200 metres to 1500 metres from the plots concerned, is approximately taken at Rs. 6 per M.T., the burden of handling charges at the aforesaid rate would work out as under :

Total burden of handling charges to be borne by the shippers would then be Rs. 30 per M.T. Out of this amount Rs. 6 per M.T. would be spent by the Board for providing the facility of narrow gauge railway line. Only balance of Rs. 24 per M.T. would be available for being credited to the coffers of the Board as real handling charges recovered from the shippers concerned. Thus in substance Rs. 24 per M.T. would be the real handling charges benefit of which would be available to the Board.

However, after May 1986 when the narrow gauge railway line facility was withdrawn and the shippers had to spend for carrying dumped ore from plots to wharf and once Rs. 30 per M.T. was still being charged by the Board as handling charges, the shippers in fact would be out of pocket to the tune of Rs. 36 per M.T. by way of handling charges as Rs. 30 per M.T. net would be collected from them by the Board and in addition thereto the shippers would be spending an amount at the rate of Rs. 6 per M.T. by way of transport charges for carrying the dumped ore from the plots to the wharf as that much earlier benefit would now be lost to the shippers. Consequently, the Board would now collect by way of real handling charges a net amount of Rs. 30 per M.T. instead of the earlier real scale of rates of Rs. 24 per M.T. Thus in essence and substance the scale of rates of handling charges would go up from Rs. 24 per M.T. to Rs. 30 per M.T. for being made available to the Board and that would get credited to the coffers of the Board. This effect of the new scheme of handling charges introduced by the Board by the impugned Resolution, therefore, cannot be said to be amounting to a mere remission from the erstwhile earlier existing scales of handling charges. It is misnomer to suggest that still the Board can be said to have given a remission and not a hike in the scale of handling charges by introducing a new system of transporting of ore within its premises. Nor can it be said with any justification that the Board was not required to get this new scale of handling charges which included a real hike in the charges, sanctioned by the Central Government under Section 52 of the Act. In fact from 1992 the Board itself had got the new system of handling charges and the scales of charges, in absence of narrow gauge railway line facility which had stood withdrawn from the suppliers, sanctioned by the Central Government under Section 52 of the Act. If that is so, it is axiomatic that it should have got the changed Scales of rates of handling charges in the light of the new system of handling services introduced from May 1986 also sanctioned by the Central Government.

We, therefore, find that the Division Bench of the High Court was justified in taking the view that the impugned Resolution dated 26-6-1986 seeking to bring into effect new rates of handling charges in the light of entirely new system of services then offered by the Board required prior sanction of the Central Government under Section 52 of the Act and could not be treated to be representing a scheme of remission as envisaged by Section 53 of the Act. Point 1 is answered accordingly.

Point 2

13. So far as this grievance of the writ petitioners is concerned, the learned Single Judge took the view that it was not for the Court to go into the minutest details about the value of the services rendered by the Board and its exact correlation with the rate of the handling charges sought to be recovered by the Board for offering these services. Shri Bobde, learned Senior Counsel for the appellants, was right when he contended that if it was felt by the Court that highly disputed questions of fact arose for its decision the writ petitioners could have been relegated to the remedy by way of a civil suit where matter could have been thrashed out on proper evidence. However, that was not the only alternative remedy to which writ petitioners could have been relegated by the Court. Under the scheme of the Act it appears clear that Parliament in its wisdom has entrusted the task of monitoring and regulating the scales of rates and statements of conditions under which various services are offered by the Board under the Act to the shippers, to the apex authority of the Central Government. The scales of rates and statements of conditions framed by the Board in rendering these services have to get prior sanction of the Central Government before they become effective. Even that apart the Central Government in public interest may direct the Board to suitably modify or cancel such rates in exercise of its powers under Section 54 and if the directions of the Central Government are not followed by the Board the Central Government itself can cancel such rates or may make such modifications therein as it may think fit after considering the objections of the Board concerned. These statutory powers entrusted by Parliament to the Central Government both under Sections 52 and 54 of the Act leaves no room for doubt that under the scheme of the Act itself the Central Government is the ultimate authority for deciding about the propriety and justness of the scales of rates of services to be rendered to the shippers by the Board of the ports concerned governed by the Act. In the light of this statutory scheme, therefore, the reasonableness of the settled scales of charges for handling goods as tried to be recovered by the Board under the Act could be validly made the subject-matter of scrutiny of the Central Government by aggrieved parties by invoking the Central Government's powers under Section 54 of the Act. When the writ petitioners raised the contention about the excessiveness and unreasonableness of the scales of rates of handling charges of manganese ore sought to be recovered from them by the Board and when such contention required scrutiny of relevant evidence which may be led on the point the High Court was perfectly justified in leaving that question to be decided by the Central Government. It is obvious that it will be for the Central Government to decide this question and to pass appropriate directions in this connection which would be binding on the appellant-Board. In short the question whether the scales of handling charges sought to be levied from the respondents for handling their manganese ore during the relevant period between 20-5-1986 and 12-2-1992 were just, fair and legal or not was justifiably left by the High Court to be decided by the Central Government instead of deciding it itself. Point 2 is answered accordingly.

Point 3

14. In this connection, it was vehemently urged by the learned Senior Counsel, Shri Bobde for the appellants, that the Division Bench in the impugned judgment had wrongly assumed that once it was held that the impugned scale of rates sought to be introduced by the Board as per its Resolution

dated 26-6-1986 was ineffective in the absence of prior sanction from the Central Government under Section 52 of the Act, there was a hiatus or a vacuum during the period between 20-5-1986 and 12-2-1992 and during that time there was no effective scale of handling charges at all which could have been charged by the Board from the shippers concerned of manganese ore. To that extent Shri Bobde's contention is well sustained. While answering Point 1 we have already held agreeing with the High Court that the new scale of rates for handling charges of manganese ore pursuant to the Board's Resolution dated 26-6-1986 was ineffective without prior sanction of the Central Government under Section 52 of the Act. But as a consequence of the said finding it would not necessarily follow that no other effective scale of rates for handling manganese ore would be left in the field. Of course the extreme contention of Shri Bobde that the earlier scale of rates which was in force from 1-1-1984, namely, Rs. 35 per M.T. of manganese ore would remain operative during this period cannot be accepted. The reason is obvious. As already noticed, the earlier effective scale of rates as sanctioned by the Central Government which was operative from 1-1-1984 being Rs. 35 per M.T. was already remitted though conditionally by the appellant-Board itself by its Resolution dated 30-10-1984. Thus from 30-10-1984 the effective scale of rates for handling charges of manganese ore remained Rs. 30 per M.T. It is this rate which must be treated to have continued during the interregnum period from 20-5-1986 till 12-2-1992. Of course even this remitted rate of Rs. 30 per M.T., from 20-5-1986 onwards had operated in absence of the availability of infrastructural facility of narrow gauge railway line which had stood withdrawn by the Board from the shippers. Consequently, whether the said existing remitted rate of Rs. 30 per M.T. from 20-5-1986 in the light of the withdrawn infrastructural facility of narrow gauge railway line, which in its turn had shifted the burden of transport charges of manganese ore from plots to the wharf on the shoulders of the shippers, resulted in a lopsided rate and whether it, therefore, became unreasonable or not and by then whether it was backed up by proper quid pro quo or not would remain a burning and moot question which had to be resolved by the appropriate authority under the Act. All the same it could not have been assumed by the High Court in the impugned judgment that during the relevant period from 20-5-1986 to 12-2-1992 there was no effective scale of rates for handling manganese ore at all. To that extent it must be held that the Division Bench was in error when it persuaded itself to hold that view. The said finding of the High Court is, therefore, set aside. Point 3 is answered accordingly. This takes us to consideration of the last point for determination.

Point 4

15. Shri Bobde, learned Senior Counsel for the appellants, was right when he contended that there is no question of invocation of principles of natural justice or hearing the affected parties when legislative action is brought on the anvil of scrutiny or for that matter even an action of a delegated legislative authority is brought in challenge. It is axiomatic that a legislative exercise or exercise by a subordinate legislative agency imposing any tax or fee or charges would not require the affected parties to be heard before such charges or impost are levied. But this argument of Shri Bobde may be relevant at the stage of Section 52 of the Act wherein the scales of rates and statements of conditions framed by the Board are put up for prior sanction of the Central Government. However the said situation would not prevail when a grievance is made by the aggrieved parties concerned who submit that the sanctioned scales of rates which are prevalent and operative require modification or cancellation in public interest as they are unreasonable, excessive or wholly or partly lack the back-up of quid pro quo. As and when such grievances are made and are required to be examined by the Central Government in exercise of its statutory powers and functions under Section 54 of the Act, if the Central Government gets convinced that in public interest appropriate modifications or cancellation of rates are required to be made, then it would be the statutory obligation of the Central Government to direct the Board concerned accordingly and it will be

equally the duty of the Board to carry out such suggested modifications or cancellations as directed by the Central Government. At that stage if the objections of aggrieved parties are directed to be considered by the Central Government in public interest no fault can be found with such a direction. Therefore, we find that the directions issued by the Division Bench in the impugned judgment can be well sustained under Section 54 of the Act by treating the objections raised by the writ petitioners before the High Court as amounting to a request to get appropriate modifications or cancellations of the scales of rates for handling manganese ore at the appellant's port in public interest. It is obvious that the Central Government in exercise of its powers under Section 54 of the Act can undertake the exercise enjoined by the said section if it considers it necessary in public interest so to do. The Central Government being an impersonal body functioning far away from the places where the major ports and other ports are situated it would be obvious that relevant facts for invoking exercise of its powers under Section 54 of the Act will have to be brought to the notice of the Central Government and that can be done only by aggrieved interested parties by way of representations. Filing of such representations before the Central Government by the aggrieved parties concerned, therefore, cannot be said to be contra-indicated by Section 54 sub-section (1). Once such representations are moved it will be the statutory obligation of the Central Government to consider the said representations and for effective discharge of its power-cum-duty entrusted to it under Section 54(1) it may be open to the Central Government in appropriate cases to even permit the aggrieved parties' representationists to be heard in person, if so thought fit, and thereafter if the Central Government thinks it fit to make appropriate modification or cancellation of the settled and sanctioned scale of rates of handling charges as leviable by the Boards concerned it can proceed under Sections 52 and 54 of the Act calling upon the Board to effect such modifications or cancellations and in the process it has to consider the objections or suggestions of the Boards concerned as laid down by the proviso to sub-section (2) of Section 54. If before effecting such cancellations or modifications in the scale of rates the Boards concerned have to be heard, if found necessary, or their objections are to be considered there is no reason why the aggrieved parties who move the Central Government invoking its powers under Section 54(1) should be treated as total strangers whose objections should not be considered by the Central Government. Of course it has to be left to the Central Government as to how to consider such objections. But it cannot be said that if a competent court gives a direction in an appropriate case to the Central Government to give notice to the objectors, call for their objections and to consider the same such a direction would be dehors the scope and ambit of Section 54 of the Act. It must, therefore, be held that the directions issued by the Division Bench of the High Court in the impugned judgment can be effectively sustained under Section 54 of the Act, if not under Section 52 thereof. Point 4 is, therefore, answered in the affirmative.

16. In the light of our conclusions and findings on the aforesaid points for determination we may take stock of the situation. The impugned decision rendered by the Division Bench of the High Court and the ultimate directions issued therein will have to be sustained subject to the rider that the High Court was not justified in taking the view that during the period from 20-5-1986 to 12-2-1992 there was no effective scale of rates for handling manganese ore. The appeals, therefore, are liable to fail.

17. Now remains the question as to what final directions should be issued in the light of the interim order passed by this Court on 10-8-1993. As we are confirming the order of the High Court directing the Central Government to decide the question about the appropriate scale of rates of handling charges of manganese ore at the Visakhapatnam Port during the period from 20-5-1986 to 12-2-1992 and as that direction has remained stayed for all these years, we direct the appropriate authority in the Central Government to decide the said question after issuing notice to the writ

petitioners and considering their objections, if any, and also after considering the objections, if any, raised by the Board in this connection. The said exercise should be completed by the appropriate authority in the Central Government within a period of four months from the date of receipt of copy of this order at its end. Respondent-writ petitioners were directed by an interim order of this Court dated 10-8-1993 to pay the handling charges at the rate of Rs. 30 per M.T. from June 1986 onwards. We are told that for the entire period till 12-2-1992 the respondents have paid up the balance of the amounts and the balance of the handling charges accordingly. As the question about the charging of appropriate scale of rates of handling charges is being left to be decided by the Central Government by our present order, it would be in the interest of justice to direct that though these appeals are being disposed of, the question of refunding any amounts of excess handling charges paid by the respondents during the aforesaid period is left to be decided in the light of the ultimate decision of the Central Government on this question. It is obvious that in the light of the decision of the Central Government if it is found that the appellant-Board is liable to refund any excess amount of handling charges to the respondents as collected by it from the respondents during the relevant period, it will be bound to refund the same within a period of eight weeks from the date of decision of the Central Government with interest at the rate of 12% per annum from the date of payment of the excess amount of handling charges by the respondents to the Board till the actual refund thereof by the Board to the respondent-writ petitioners. The appeals are dismissed accordingly with no order as to costs in the facts and circumstances of the case.