

SUPREME COURT OF INDIA

Maheshwary Handling Agency Private Limited

Vs.

Board of Trustees of Kandla Port Trust

C.A.No.5277 of 2010

(Indu Malhotra and Sanjiv Khanna,JJ.,)

17.09.2019

JUDGMENT

Sanjiv Khanna,J.,

1. The appellant, Maheshwary Handling Agency Private Limited, is a private limited company engaged in the business of clearing, forwarding and transporting of cargo for import and export as a steamer agent.

2. During the course of their business, the appellant had used facilities at the Kandla Port, Gujarat for storing imported/ exported cargo, for which it was liable to pay charges as per schedule/scales of rates framed by the Board of Trustees of Kandla Port Trust, the first respondent before us (“the Board”, for short) published in the Official Gazette in terms of Section 52 of the Major Port Trusts Act, 1963 (“Port Trusts Act”, for short), which prior to its omission in 1997 read 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 provision 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.”

3. Notification dated 4th November, 1993 published under Section 52 of the Port Trusts Act had fixed a schedule/scales of rates payable for storage of goods/cargo at the Kandla Port. Relevant portion of the Notification dated 4th November,1993, read as under:

“SCALE “G” SCHEDULE OF STORAGE / RENTAL CHARGES

A) For: Open Space

How Charged.	Kutchha Plots (uncemented/ unasphalted) (Rs.)	Pukka Plots (cemented & asphalted) (Rs.)	Bins & raised (Rs.)
Open space of 10 sq. Mtrs. or part thereof per month or part thereof for first three months.	35-00	60-00	70-00
Beyond 3 months	58-00	90-200	105-00

B. For Covered Space

How Charged	Ground Floor (Rs.)	First Floor (Rs.)
Covered space of 10 sq. mts. or part thereof per month or part thereof for first 3 months.	150-00	130-00
Beyond 3 months	225-00	195-00

C) For the containers stored in the storage (Exports & Imports)

How Charged	Empty (US Cents.)	Loaded (US Cents.)
<u>Per Teu per day or part thereof</u>		
First 07 days	Free	Free
Next 07 days to 15 days	45	90
16 to 30 days	90	150
31 to 90 days	115	190
above 90 days	145	240

D) For Refer points

How Charged	US
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Per TEU per day or part thereof:

First 15 days 12.85

1. Application for rental space should be made before storage of goods to the Traffic Manager. Any unauthorised occupation of rented space shall be liable for payment of double the rent as a penalty.

2. Storage charges should be paid in advance. Penal interest at the rate of 18% of the amount due but not paid from the date of which the amount becomes due to the date of actual payment shall be levied for genuine reasons and with permissions of Port Authorities which shall in no case exceed 7 days. If by any reason, payment is delayed beyond 7 days from the date of the amount becoming due, otherwise occupation will be treated as unauthorised.

4. Space allotted cannot be subject (sic - allotted) without the permission of the Traffic Manager.

5. The space allotted should be vacated on notice from the Traffic Manager or other officer on his behalf failing which it will be treated as unauthorised occupation liable for penalty rent under Note-1.

6. The Traffic Manager shall have the right to take over the spaces, allotted on rental basis, which are unoccupied/empty without any prior notice in the interest of the port operation, in such cases, proportionate reduction in rent shall be allowed at the discretion of the T.M.”

4. The Port Trusts Act was amended by the Port Laws (Amendment) Act, 1997 (Act 15 of 1997) whereby Section 52 was omitted and Section 47A was inserted to constitute Tariff Authority for Major Ports (‘Tariff Authority’, for short), a body corporate having perpetual succession and a common seal, consisting of Chairman and members with stipulations as to their term of office, conditions of service, etc contained under Sections 47B to 47H of the Port Trusts Act. In terms of the amended Section 49 of the Port Trusts Act, the Tariff Authority was empowered to fix different scales and conditions for different classes of goods and vessels and for use of any land, building, place, etc. belonging to or in possession or occupation of the Board.

5. The amended provisions came into force with effect from 9th January, 1997. The Tariff Authority, however, had notified the new scale of rates for the Kandla Port vide notification dated 22nd June, 2001 which was applicable retrospectively and with effect from 29th January, 2001. The appellant and the first respondent, viz. Board of Trustees of Kandla Port Trust, are ad idem that the appellant and others who had used storage facility at the Kandla Port were liable to pay the rates stipulated in the Notification dated 4th November, 1993 till the new tariff fixed by the Tariff Authority was made applicable with effect from 29th January, 2001.

6. The issue raised by the appellant relates to validity of circular dated 31st August, 1998 issued by the Traffic Manager, the second respondent, made effective from 1st October, 1998 and read as under:

“KNDLA (sic - KANDLA) PORT TRUST PORT & CUSTOMS BUILDING NEW KANDLA (KUTCH) PIN - 370210

DATE: 31.08.1998 NO. TF/GB/3201/452
CIRCULAR

SUB: Past Clearance of import cargoes from Kandla Port Due to over-style (sic - overstay) of Cargoes inside the port, the port is congested causing inconvenience to both import/export cargoes moving through the port which ultimately may result in diversion of traffic from our port. Due to congestion, port is facing problems with regard to accounting, stacking and delivery of cargoes, etc. and non-availability of adequate storage space for export cargoes.

To overcome all the above problems now it has been decided not to allow storage of cargoes for more than two months and auction such cargoes under the provisions of Customs Act as well as Major Port Trust Act. Further, no renewals will be considered for the areas allotted on rental/warehousing terms if the staya stayal (sic - stay) is more than 60 days.

This will come into force w.e.f. 1st October, 1998.

Sd/-

Traffic Manager Kandla Port Trust”

The impugned circular stated that due to congestion and over stacking at the Kandla Port, problems had cropped up with regard to accounting, stacking and delivery of cargoes etc. and non-availability of adequate storage space for export cargoes. To overcome this problem, storage of cargoes would not be allowed for more than two months and auction of such cargoes would be made under the Customs Act, 1962 and the Port Trusts Act. Further, no renewals would be considered for the areas allotted on rental/warehousing terms if the cargo had remained stored for more than sixty days.

7. The effect of the above circular can be understood if we refer to Notes 1, 4, 5 and 6 of the Notification dated 4th November, 1993, which have been quoted above. The said circular read with the aforesaid Notes meant that any person using the storage facility for more than sixty days would be in unauthorised occupation and thereby liable to pay penalty rent under Note 1, which was double the rent otherwise payable.

8. Aggrieved and challenging the circular dated 31st August, 1998, the appellant had approached the High Court of Gujarat by filing Special Civil Application No. 12954 of 2000 with the prayer that the first respondent should refund the amount collected as penalty rent in terms of the impugned circular. The Civil Application was dismissed by the Single Judge vide judgment dated 14th June, 2007 and the appellant also did not succeed

before the Division Bench which had dismissed the Letters Patent Appeal vide impugned judgment dated 15th July, 2008.

9. The contentions raised by the appellant are that after the amendment vide Act 15 of 1997, applicable with effect from 9th January, 1997, in terms of Section 47A read with Sections 48 and 49 of the Port Trusts Act, only the Tariff Authority could have fixed the tariff/rent and the Traffic Manager could not have directly or indirectly fixed the said tariff, which the latter did by way of issuance of the impugned circular dated 31st August, 1998. Secondly, the circular issued by the Traffic Manager in garb of regulating traffic had the effect of interfering with the scales of rates prescribed vide Notification dated 4th November, 1993 which had not only fixed the rates but had also prescribed an escalating schedule of rates depending upon the period for which the space, whether open or covered or as containers, was used. The schedule of rates, reproduced above, were applicable for the period of storage/use beyond sixty days and, therefore, the Traffic Manager had directly interfered with the notified scales of rates by prescribing that any storage beyond a period of sixty days would be treated as unauthorised. Thirdly, there could be several reasons for storage of goods at the Port for a period over sixty days, which could be well beyond the control of the person storing the goods. The impugned circular did not give any concessions in this regard and did not consider that delays could be on account of customs clearance, inability to load or unload due to external factors or refusal of the shipping company, etc. Therefore, the circular was an attempt by the first respondent to collect higher monetary charges or rentals for use of the port area/facilities. Fourthly, it was submitted that there was not a shred of data or evidence to show that the restriction with regard to duration of storage was justified and necessary for the object and reasons stated. The Port Trust, having monopoly, was required to act in a reasonable manner. Hence, there was a violation of Article 14 of the Constitution of India. Our attention was drawn to the withdrawal of the impugned circular after the issuance of higher rate of scales in 2001 by the Tariff Authority. Fifthly, and lastly, it was submitted that the power of Traffic Manager to issue the impugned circular could not be traced to Regulation 64, which specifically dealt with controlling the goods at the time of loading and unloading of vessels. Regulation 64 reads as under:

“64. Work in port under the control of Traffic Manager.— The loading and unloading of vessels shall be subject to the control of the Traffic Manager, who may at his discretion, prohibit the discharge of such goods which in his opinion are likely to obstruct traffic or cause congestion or hinder the convenient use of the berths. Notwithstanding the provisions of Regulation No. 113, the Traffic Manager may at his discretion also remove to the other areas as under his jurisdiction, any goods upon landing in the port or soon thereafter, the storage of which on port premises is likely to obstruct traffic or cause congestion. The apportionment of Quay space to be occupied by each vessel shall similarly be determined by the Traffic Manager.”

This power under Regulation 64 was regarding goods that were likely to cause traffic congestion and not regarding the rate of storage for a particular period. Therefore, the

impugned circular was beyond the powers available and entrusted to the Traffic Manager under Regulation 64. The Traffic Manager, in this manner, had illegally extracted huge amount of over Rs. 52 lakhs for over-stay of cargo without any justification and reason.

10. We have already quoted the scales fixed by the Notification dated 4th November, 1993 as well as the Notes in the Notification. This Notification was not under challenge in the Special Civil Application or in appeal filed before the High Court. The Notification is not under challenge before us. The appellant also accepts that they were liable to pay the scales specified in the Notification till the new tariff was notified pursuant to the constitution of the Tariff Authority, which it is accepted was notified and applicable with effect from 29th January, 2001. Therefore, for the period prior to 29th January, 2001, the appellant would be liable to pay tariff as per the scales and terms of the Notification dated 4th November, 1993. The issue that arises for consideration is whether the impugned circular dated 31st August, 1998 was in conformity with the terms of the Notification or had the effect of modifying or amending the Notification dated 4th November, 1993.

11. In our opinion, the answer to the question would be in favour of the first and second respondents. The Notification dated 4th November, 1993 had specified rent/usage charges for open space, covered space, containers, office accommodation, etc., which charges were payable dependent upon the space and the length of time used for storage. Note 1 to the Notification stated that a person wanting to use the rental space was required to make an application for storage of goods to the Traffic Manager. It was also specified that any unauthorised occupation of rented space shall make the person liable to pay double the rent as penalty. Note 1 did not specify when and in what circumstances occupation of the rented space would be treated as unauthorised occupation. Note 2 had specified that storage charges would be paid in advance and penal interest @ 18% would be payable on the amount due and not paid from the date when the amount had become due till the date of actual payment. Note 4 had specified that the space cannot be allotted without permission of the Traffic Manager of the Port. Note 5 had stipulated that the space allotted would be vacated on notice from the Traffic Manager or any other officer on his behalf, failing which the occupation would be treated as unauthorised and the person in unauthorised occupation would be liable for penalty rent under Note 1. Thus, for authorised occupation and usage of space/area, permission from the Traffic Manager was required. Further, the Traffic Manager or an officer appointed on his behalf, was empowered to issue notice for vacation of space allotted to a user, failing which the use of the space was to be treated as unauthorised and the person in violation was liable to pay double the rent as penalty.

12. Regulation 128 reads as follows:

“128. Quays, etc. to be under the authority of the Traffic Manager:

The quays, sheds, gates and the land within the Port boundaries shall be in the charge of the Traffic Manager who shall direct and manage all operations connected with the landing and shipping of goods, and with their storage in the shed and in the open. He shall have proper custody of all goods lying in the Port and taken whatever steps he may consider necessary for the proper maintenance of order.”

The Traffic Manager of the Port is obligated to control and manage the port operations, check obstructions to traffic movement and remove hinderance for efficient and proper use of berths, landing and shipping of goods and storage in the sheds and open area. Regulation 64 quoted in paragraph 9 above stipulates that loading and unloading of vessels was subject to control of the Traffic Manager who had the discretion to prohibit discharge of goods which are likely to obstruct traffic, cause congestion or hinder convenient movement at the Port.

13. It is clear from the Notes that the Notification had empowered and left it to the Traffic Manager to deal with the question of unauthorised occupation, including the time limits or period during which the goods could be authorised to be stored. The Notification had not specified when and in what circumstances use of the storage area would be treated as unauthorised as this was left to the wisdom of the Traffic Manager who was the person in-charge and responsible for efficient and proper functioning of the port operations and mandated to take the need based decisions on the basis of prevalent facts and circumstances. This latitude was necessary as the schedule of rates fixed vide Notification dated 4th November, 1993 were applicable till a new Notification or amendment was made by following the procedure prescribed vide Section 52 of the Port Trusts Act, which would require approval from the Central Government.

14. Prescribing different slabs or rates for storage of cargo for different periods was meant to fix rates for the rent payable and not to deny or curtail the power of the Traffic Manager to authorise and permit use of sheds and space for storage of cargo/containers. As per the Notes, the Traffic Manager, on an application by the owners or their agents was to grant permission for authorised storage. Storage without the permission or contrary to the permission was unauthorised. Further, the space allotted was to be vacated on notice from the Traffic Manager. On failure to comply, and vacate the space, the use was treated as unauthorised occupation and the person in default was liable to pay double the rent for unauthorised use.

15. It is obvious that the first portion of the Notification prescribing escalating rates for use of open area and sheds did not vest any right to occupy such space for unlimited period of time. This, we hold, is the exact purport of the Notes, which have been read harmoniously with the first portion of the Notification. The Traffic Manager had authority and discretion for allotment of space for storage on rent and to withdraw allotment of space depending on the availability and to ensure that the port operations were not hindered and obstructed due to congestion and shortage of space. We, therefore, would reject the contention that the Traffic Manager was not competent to fix time limit for storage. The contention is unacceptable and would be contrary to the Notes and the powers vested and given under the Regulations to the Traffic Manager.

16. We are in this case not required to examine whether delegation of powers to the Traffic Manager in the Notification was excess or invalid, for this issue or contention has not been raised. As noted earlier, validity of the Notification is not questioned and under challenge. Read in this manner, we do not think levy of penalty for unauthorised

occupation of the space for period beyond sixty days of storage as fixed vide the impugned circular would be illegal and invalid. In fact, it would be in conformity and in consonance with the Notification and in particular Notes 1, 4 and 5 thereof. The circular had brought about uniformity, clarity and transparency in the use of storage facilities at the Kandla Port. The circular though issued on 31st August, 1998 was made effective and applicable from 1st October, 1998. Therefore, the parties were given time to take steps to avoid the usage of the storage facility from being declared as unauthorised.

17. Other contention of the appellant as to absence of data indicating the details of congestion is an afterthought as this contention was not raised and argued before the High Court. The impugned circular specifically recorded that there was congestion at the Port which had necessitated issuance of the circular stipulating that storage of goods beyond the period of sixty days would be treated as unauthorised occupation. The said circular ensured uniformity and equal treatment without discretion as upper time limit of sixty days was prescribed for storage of goods failing which penalty was payable. Period of sixty days is sufficient and long and cannot be termed as unreasonable and violating Article 14 of the Constitution. The aforesaid reasoning would take care of the other arguments raised by the appellants, which we would reiterate were not argued before the High Court.

18. For all the foregoing reasons, the appeal fails and is dismissed. There would be no order as to costs.