

PETITIONER:

LUGA BAY SHIPPING CORPORATION & ANOTHER SOUTH INDIA CORPORATI

Vs.

RESPONDENT:

THE BOARD OF TRUSTEES OF THE PORT OF COCHIN & ANOTHER

DATE OF JUDGMENT: 22/11/1996

BENCH:

S.C. AGRAWAL, SUJATA V. MANOHAR, CJI

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO.2427 OF 1994
J U D G M E N T

Ahmadi, CJI.

These two appeals arise from a common judgment of the Division Bench of the High Court of Kerala on a reference made to it by a learned single Judge of that Court. The High Court found itself confronted with the question whether the Cochin Port Trust is entitled, under the Major Port Trusts Act, 1963, (hereinafter referred to as 'the Major Port Trusts Act') the Indian Ports Act, 1908 (hereinafter referred to as 'the Indian Ports Act') and the Regulations made thereunder, to demand an unconditional cash deposit from the owner of a ship which caused damage to the property of the Port Trust.

The appellants in Civil Appeal No.2427/94, South India Corporation (Agencies) Ltd., are the agents of the vessel, M.T. Larnaca. The appellants in Civil Appeal No. 2426/94, M/s Luga Bay Shipping Corporation, are the owners of the said vessel. The respondents are the Board of Trustees of the Port of Cochin, (hereinafter referred to as 'the Port Trust'), and its Deputy Conservator. The vessel entered the Port of Cochin on June 6, 1984 and was berthed at Berth No. 2. On June 14, 1984, the vessel, while being shifted from Berth No. 2 to the North Tanker Berth, dashed against the northern side of the RCC platform on which the gravity fenders were suspended, causing damage to the platform. Notice of damage to the platform was served on June 20, 1984. The appellants do not dispute that the vessel was berthed in the North Tanker Berth on June 14, 1984. However, they deny that any damage was caused by the vessel to any property of the Port Trust during such birthing. The Port Trust, on the other hand, claims that the damage assessed by the Port Chief Engineer was of Rs.33.82 lakhs. The second respondent, the Deputy Conservator of Port Trust, requested the local agents of the vessel, by a notice dated June 29, 1984, to deposit that amount. They were also informed that the vessel would be allowed to sail from the Port only after the amount was deposited.

The Shipping Corporation, the petitioner before the

Court, filed a writ petition under Article 226 of the Constitution of India which was registered as Original Petition No.5822 of 1984. It prayed for calling of the records leading to the issue of notice (Exhibit P.6) dated June 29, 1984 and to quash the same by an appropriate writ; to declare condition No.6 of the Notification dated January 8, 1980 fixing the scale of rates and statement of conditions for levy of charges by the Port Trust under Sections 48, 49 and 50 of the Major Port Trusts Act ultra vires the Act and the Constitution; to declare Regulations No.3 and 43 of Cochin Port Trust Regulation, 1975 ultra vires the provisions of the Indian Ports Act and the Major Port Trusts Act and to restrain the respondents from enforcing the aforesaid two regulations. We will shortly advert to the impugned provisions of the Notification dated January 8, 1980 and the Cochin Port and Dock Regulation, 1975. The learned single Judge of the High Court referred the case of a Division Bench. The Division Bench posed the question whether the Cochin Port Trust is entitled, under the Major Port Trusts Act, the Indian Ports Act and Regulations made thereunder, to demand an unconditional cash deposit from the owner of the ship which allegedly caused damage to the property of the Port Trust. The Division Bench examined the provisions of Section 116 of the Major Port Trusts Act, and came to the conclusion that, in a situation like the one on hand, the amount of damage must be determined by the Board and that the liability of the Master and owner of the vessel was absolute. Section 116 can be reproduced for ready reference:

116. Recovery of value of damage to property of Board. -- If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of any Board, [or any movable property belonging to any Board,] the amount of such damage shall, on the application of the Board be recoverable, together with the cost of such recovery, by distress and sale, under a Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel:

Provided that no Magistrates shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee."

The High Court held that the Board needed to approach the Magistrate only for effecting the recovery of the amount

and that the Magistrate is required to hear the Master of the vessel before issuing a warrant for recovery, but not for quantification of the damage. The High Court went on to examine the provisions of the English Law, as contained in Section 74 of the Harbours Docks and Piers Clauses Act and the ratio of certain cases decided thereunder, and came to the conclusion that the liability of the Master or owner of the vessel with regard to damage caused to dock, wharf, quay, mooring, stage, jetty, pier, etc., is absolute. The High Court also made a reference to Section 131 of the Major Port Trusts Act and held that the provision for a civil suit made therein was without prejudice to any other action that can be taken under that Act and was meant to be employed when the proceeds of sale of the property of the vessel were insufficient to meet the penalties payable or recoverable by the Board. The High Court also examined the provisions of Clause (6) of the Notification dated January 8, 1990 which requires the Conservator of Ports to take necessary steps to ascertain the amount of damages, and to serve a notice specifying the amount wherefor he was entitled to seize the vessel which caused the damage and to detain the same till the amount was paid. That clause further provided that the Conservator could sell the vessel and out of the sale proceeds, recover the damages as well as the cost of seizure, detention and sale. The High Court opined that the Master of the vessel could get the dispute over the quantum of damages resolved by a competent civil court. According to the High Court, in view of the provisions of the Major Port Trusts Act and the Rules framed thereunder, there was no force in the argument of the appellants that assessment of damages done unilaterally by the respondents was against the rules of natural justice and, therefore, void.

Before this Court, the appellants disputed the absolute nature of liability as held by the High Court. The vires of Clause (6) of the Notification mentioned above has also been challenged. Regulation No.43 of the Cochin Port and Dock Regulation, 1975 is also challenged as arbitrary.

We can now refer to Clause (6) of the Notification dated January 8, 1980 which is issued "in exercise of powers conferred by Sections 48, 49 and 50 of Major Port Trusts Act, 1963 and in suppression of the Cochin Port Trust Notification dated August 10, 1974."

"Clause (6) - Assessment and recovery of compensation for damage - If any vessel or drift fouls any pier, wharf, jetty or quay in the Port of Cochin and thereby causes damage thereto the Conservator of the Port shall forthwith take the necessary steps to ascertain the amount of damage so caused. A notice specifying the amount of damage so ascertained and demanding its payment shall be served drift. If the damage is caused by a draft and the owner of such draft is unknown or cannot be ascertained, the notice of the demand shall be posted upon a conspicuous place in the Cochin Port Trust, Deputy Conservator's Office or Custom House. Within a week after the serving or of the posting of the notice of the demand, as the case may be, the said amount shall be

paid. It shall be lawful for the Conservator to seize the vessel or drift which caused damage immediately the damage has been caused together with the tackle, apparel or furniture belonging to the vessel, and detain the same till the amount together with the cost of seizure or detention is not paid, the Conservator may sell the vessel or the tackle, apparel or furniture or the drift and out of such sale proceeds pay to the Cochin Port Trust the amount of damage and the cost of seizure, detention and sale rendering to the master or owner, the surplus, if any, on demand, provided that the demand is made within three years from the date of the sale."

Section 48, 49 and 50 of the Major Port Trusts Act empower every Board to frame certain scales of rates and Section 52 of the Act provides that the date so fixed will have effect only when sanction in this behalf is given by the Central Government. We may now notice Sections 48, 50 and 52 which read as under:

"48. Scales of rates for services performed by Board or other person.

-- (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 hereunder shall be performed by itself or any person authorised under Section 42 at or in relation to the port or port approaches --

(a) transhipping of passengers or goods between vessels in the port or port approaches;

(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) carnage or portage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(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.

(2) Different scales and conditions may be framed for different classes of goods and vessels."

"49. Scale of rates and statement of conditions for use of property belonging to Board.-- (1) Every

Board shall, from time to time, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:-

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or playing for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

(3) Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1)."

"50. Consolidated rates for combination of services.-- A Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in Section 49."

"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."

As can be seen from a plain reading of these provisions. Section 48 empowers the Board to frame the scale of rates for providing certain services while Section 49 empowers the Board to frame the scale of rates for allowing

the use of its property. Section 50 further empowers the Board to frame consolidated scale of rates for any combination of services specified in Section 48 or for any combination of service or services with the user of any property belonging to the Board. In none of the three Sections is there any direct mention of recovery of any damage caused by a vessel to any property of the Port or of the Board.

The Notification dated January 8, 1980 issued in exercise of power conferred by Sections 48, 49 and 50 of the Major Port Trusts Act in suppression of the Cochin Port Trust Notification dated August 10, 1974 must be read alongside another Notification dated January 1, 1975 issued in suppression of all previous Notifications issued under Section 6(1) of the Indian Ports Act and Section 29(1) of the Petroleum Act, 1934 by the Cochin Port Trust in exercise of powers conferred by sub-sections (f) to (o) of Section 123 of the Major Port Trusts Act, which inter alia provides by regulation 43 that the "Masters and Owners of vessels shall be held liable for any damage whatsoever that shall have been caused by their vessels or servants to any of the works or property to the Board and the Board may detain their vessels until compensation claimed by the Board is paid or security has been given for the amount of damage caused." The plain language of this regulation therefore shows that the Master or Owner of a vessel can be held liable in damages for any harm caused to the works or property of the Board and empowers the Board to detain a vessel if the compensation/security is not paid or furnished. In substance, the same is the effect of clause (6) of the Notification dated January 8, 1980 extracted earlier. At this stage, reference may be made to Section 65(ii) of the Major Port Trusts Act which reads as under:

"Section 65. Grant of port-clearance after payment of rates and realisation of damages, etc. - If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance to any vessel at the port, a notice stating, -

(i) xxx xxx xxx

(ii) than an amount specified therein is due in respect of any damage referred to in section 116 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realised.

such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised."

This provision, read in conjunction with Section 116, reveals the anxiety of Parliament to ensure that, before a vessel leaves the Indian port, the amount of damages/compensation should be secured. This anxiety is for the obvious reason that once the vessel leaves the Indian shores, it would be well-nigh impossible to realise the dues of the Board. To complete the narration, we may refer to Section 131 which provides, albeit without prejudice to any other action that may be taken under the Act, that a Board may recover by a suit its dues including damages when the

proceeds of sale are insufficient or any penalties payable to, or recoverable by the Board under the Act or the regulations made in pursuance thereof, are insufficient. This provision grants a remedy in addition to the remedy granted to the Board under the provisions of the Act or the regulations to recover the shortfall through a suit.

Section 123 of the Major Port Trusts Act confers a general power on the Board to make regulations. This provision is enacted without prejudice to any power to make regulations contained elsewhere in the Major Port Trusts Act and empowers the Board to make regulations consistent with the provisions of the Act for all or any of the matters enumerated in clauses (a) to (o) thereof which inter alia include:

"(f) for the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, railways tramways, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act;

(n) for ensuring the safety of the port;

(o) generally, for the efficient and proper administration of the port."

The learned counsel for the appellants submitted that the scope of sections 48, 49 and 50 being limited, and not embracing the imposition or recovery of damages, clause (6) of the Notification of January 8, 1980 clearly travels beyond the scope of these provisions and was, therefore, ultra vires. Nor could the said clause be protected by virtue of the regulations for the simple reason that even clauses (f), (n) and (o) of Section 123 do not speak of imposition of damages/compensation for damage caused to the property of the Board. And, in any event, the conferment of power to fix the quantum of damages or compensation unilaterally, without affording the Master or Owner of the vessel an opportunity of being heard, was clearly an infraction of the rule of natural justice.

Section 116 extracted earlier, in unmistakable terms states that if, through the negligence of any person having the guidance or command of any vessel, any damage is caused to any dock or other property of the Board mentioned therein, the amount of such damage as is claimed by the Board shall be recoverable by distress or sale of a sufficient portion of the property on board the vessel under a Magistrate's warrant. This provision therefore entitles the Board to quantify the damage and lay a claim therefor. In the present case, as soon as the damage was noticed on 15th June, 1984 while the vessel was still in the berth, the Agent and Master of the vessel were informed and thereafter the damage was assessed by the Board and claim was made. This action was clearly in terms of the afore-quoted Section 116. If the amount so quantified is not paid, the Board can invoke Section 65(ii) to ensure that port-clearance is not granted to the vessel until the amount of damages/compensation due to the Board has been paid or realised. This is the scheme of the Major Port Trusts Act.

Now, we come to the scheme of Sections 48, 49 and 50 of the said Act. Section 48 empowers the Board to frame a scale of rates and a statement of conditions under which any of

the services shall be performed by it and these include services to be provided inter alia for landing and shipping of goods from or to vessels in the port, dock, etc. Besides prescribing the rates to be charged for such services, the Board is expected to frame a statement of conditions under which the services would be performed and this could provide for the remedy in case of damage to the Board's property. So also, under Section 49, the Board can frame the rates and statement of conditions for performing the services set out therein. Under these provisions, therefore, it is left to the Board not only to frame the rates of charges for services rendered, but also to make a statement of conditions under which the services would be performed.

Next, Section 123 empowers the Board to make regulations, albeit consistent with the Act, for all or any of the purposes set out therein, which inter alia include the safe, efficient and convenient use, management of docks, etc. This would certainly include consequential remedies in the event of damage to the Board's property. Regulations can be made to ensure the safety of the port and for its efficient and proper administration which would naturally include providing for the eventuality of damage caused to the Board's property while providing services to the vessels, etc., making use of the port, dock, etc. Any such provision, if made, would not be inconsistent with Section 48, 49 and 50 and would certainly be within the scope of Section 123(f), (n) and (o) extracted earlier. We are, therefore, unable to hold that clause (6) of the Notification dated January 8, 1980 is ultra vires Sections 48, 49 and 50 or Section 123 and is quite consistent with the scheme of Section 116 read with Section 65(ii) of the Major Port Trusts Act. Also, we see no inconsistency in Regulation 43 of the Notification dated January 1, 1975.

That takes us to the next contention namely, whether the unilateral action taken by the Board in assessing the damages is in violation of the principles of natural justice. At first blush, the argument made appears to be attractive but, on closer scrutiny, and having regard to the purpose and object of making the said provision entitling the Board to determine the quantum of damages, it would appear that the urgency of the situation demands that the Board should be allowed to determine the liability and claim payment or security for the same before the vessel leaves the shores of the country. We have already pointed out earlier the anxiety of the legislature to provide for immediate action to be taken before the vessel leaves the shore. Once it has left the shore, it would be impossible for the Board to recover the damage caused by the vessel to its property. In order to protect international trade and at the same time ensure that the damage caused to the property of the port is recovered before the vessel leaves the port, it seems essential that the Board should be empowered to determine the quantum of damages and ensure that the vessel does not leave the port before depositing cash or providing security for the same. Besides, to avoid dislocation of traffic, it is essential that the damage caused to the port or property of the Board is repaired without loss of time, for which funds would be required. In the circumstances, it is therefore inevitable that the power to determine the damage must vest in the Board for, otherwise, the vessel may leave the port and the Board would be left to suffer the damage without recovering it from the offending vessel. Therefore, while conceding that the right to be heard before the quantum of damage is determined is an important right, in the very nature of things and having regard to the

urgency of the matter, public interest demands that before the vessel leaves the shores of the country, the estimated damage is paid to or secured by the Board. The interests of justice, insofar as the Board is concerned, would not be safeguarded if this power is not vested in the Board and consequently the vessel is permitted to leave the shores of the country without securing the damage. Besides, if the Master or Owner of the vessel desires to question the quantum of damages determined by the Board, the law does not preclude the filing of a civil suit in that behalf. In the civil suit, the basis on which the quantum of damages was worked out by the Board would be fully reviewed and that would provide a post-decisional hearing to the Master or Owner of the vessel. We are, therefore, of the opinion that in the very nature of things, it is not possible that a pre-decisional hearing should be accorded to the Master or Owner of the vessel before the Board determines the amount of compensation. Even if the Board can ensure that a port clearance is not granted to the vessel, that would not serve the objective as the continued presence of the vessel at the dock or port would block up traffic as urgent repairs would not be possible and the presence of the vessel would not permit other vessels to enter that area. In our opinion, therefore, the High Court was right in coming to the conclusion that in the very nature of things, a hearing before the quantification of damages by the Board is not possible. We, therefore, do not see any merit in this contention either.

In the result, we see no merit in these appeals. The appeals are dismissed with costs.