



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1637 OF 2018

Raj Shipping Agencies Ltd.,
a Company incorporated under the
Indian Companies Act 1956, having
its office at Banaji Mansion, 17,
Banaji Street, Fort, Mumbai – 400 023. ...Petitioner

Versus

The Board of Trustees of the Port
of Mumbai, a body corporate constituted
under the provisions of the Major Port
Trust Act 1963, having their office at
Vijay Deep, Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400 038. ...Respondent

WITH

WRIT PETITION NO.1735 OF 2018

S. S. Offshore Pvt. Ltd., a Company
incorporated under the Indian
Companies Act 1956, having its
office at 4th Floor, Viraj Impex House,
47, P. D'Mello Road, Mumbai – 400 009. ...Petitioner

Versus

The Board of Trustees of the Port
of Mumbai, a body corporate constituted
under the provisions of the Major Port
Trust Act 1963, having their office at
Vijay Deep, Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400 038. ...Respondent

Mr. Prathamesh Kamat a/w. Mr. Kayush Zaiwalla i/b. Ms. Apurva Mehta
for Petitioner in WP/1637/2018.

Mr. Prathamesh Kamat a/w. Mr. Kayush Zaiwalla, Mr. Ashish Verma and
Ms. Apurva Mehta i/b. Mr. Vipin Sharma for Petitioner in
WP/1735/2018.

Mr. Vishal Talsania a/w. Ms. Nina Motiwalla i/b. M/s. Motiwalla & Co.
for Respondent.

CORAM : K. R. SHRIRAM,
JITENDRA JAIN, J.J.

DATED : 27th JUNE 2024

ORAL JUDGMENT:- (Per K. R. SHRIRAM, J.)

1. Since pleadings in the petition are completed, by consent of the parties, we decided to dispose the petition at this stage itself. Rule. Rule made returnable forthwith. As common issues arise, both petitions are disposed by this common judgment. For convenience we take the facts in Writ Petition No.1637 of 2018.

2. Main prayers in Writ Petition No.1637 of 2018 read as under:

“a. Writ of Mandamus or a Writ in the nature of Mandamus; or any other appropriate Writ, Order or direction, to quash the Respondent's Demand Notice dated 18th May 2010 and subsequent Demand Notices for payment of alleged shortfall in the berth hire charges, including interest levied thereon, wrongly claimed from the Petitioner by the Respondent for the period from 8.7.2008 to 28.10.2008;

b. Writ prohibiting Respondent from giving effect to its demand in any way and/or stopping services to Petitioner and/or its vessels in any way relating to the impugned demand;

e. Writ of Mandamus or a Writ in the nature of Mandamus; or any other appropriate Writ, order or direction, directing the Respondent to credit the sum of Rs.2,00,000/- wrongly encashed under Bank Guarantee no.20094541BGP0012 dated 5th February 2009 for the sum of Rs.2,00,000/- to the Petitioner's port deposit account reference no.RAJ01.”

Main prayers in Writ Petition No.1735 of 2018 read as under:

- “a. Writ of Mandamus or a Writ in the nature of Mandamus; or any other appropriate Writ, Order or direction, to quash the Respondent's Demand Notices nos. 1304321-1 dated 01.08.2014; 1404793-1 dated 03.01.2015; 1404793-1A dated 13.01.2015; for the Tug SAGAR I; No. 1403186-1 dated 5.1.2015 for the Tug Sagar Prince and nos. 1403645-1 dated 25.08.2014 and 1403645-1A dated 1.1.2015 for the Tug SAGAR III, including interest levied thereon and subsequent demand notices for payment of alleged shortfall in the berth hire charges wrongly claimed from the Petitioner by the Respondent for the period from 13.12.2013 to 04.01.2015 for Tug Sagar 1; from 13.12.2013 to 05.12.2014 for Tug Sagar Prince and from 01.05.2014 to 25.12.2014 for Tug Sagar III;*
- b. Writ prohibiting Respondent from giving effect to its demand in any way and/or stopping services to Petitioner and/or its vessels in any way relating to the impugned demand;*
- e. Writ of Mandamus or a Writ in the nature of Mandamus; or any other appropriate Writ, order or direction, directing the Respondent to credit the sum of Rs. 5,00,000/- wrongly encashed under Bank Guarantee nos. 0383IGFIN000217 dated 18th February 2017 for the sum of Rs. 3,00,000/- and 0383IGFIN001415 dated 21.04.2015 for the sum of Rs. 2,00,000/- from the Bank of Baroda, to the Petitioner's port deposit account reference no.SSO01.”*

3. Petitioner has approached this Court to quash the demand notice dated 18th May 2010 and subsequent demand notices raised by respondent against petitioner for payment of Berth Hire Charges. According to petitioner it is incorrectly calculated and levied in respect of petitioner's tug ATUL for the period from 8th July 2008 to 28th October 2008. Petitioner has also sought an injunction restraining respondent from encashment of bank guarantee dated 3rd March 2018 for Rs.2,00,000/- given on instructions from petitioner. Other prayers are also sought like restraining respondent from suspending port

services to petitioner and its tugs and from taking coercive steps, etc.

4. Petitioner owns tugs which are used in the Mumbai Port Area for towing big vessels to the berth from the anchorage and back. Respondent is entitled to levy charges as per the port scale of rates that is approved by Tariff Authority for Major Ports (TAMP), which is an independent Authority constituted under Section 47-A of the Major Port Trust Act, 1963 (MPT Act). It is TAMP that fixes rates and conditions in respect of the services, port dues and other charges levied by Major Ports in India.

5. Respondent has levied Berth Hire Charges on tug ATUL for the period from 8th July 2008 to 20th October 2008 under Section 2.16, Note 1(i) which is on the basis of minimum 1000 GRT (Gross Registered Tonnage). It is petitioner's case that the Berth Hire Charges should be levied not under Note 1(i) & 1(ii) but Note No.4 of Section 2.16, whereby the concessional rate under Note 4 will be applicable to tug ATUL. According to petitioner, the Berth Hiring ought to have been calculated on the actual GRT of tug ATUL, i.e., 284 tons and not on 1000 GRT basis. The short point, therefore, in this petition is whether respondent is entitled to levy Berth Hire Charges on the basis of minimum 1000 GRT on tug ATUL or the Berth Hire Charges should be levied on the actual GRT of 284 tons, the concessional rate prescribed under Note 4 of Section 2.16 of the scale of rates.

6. The scale of rates fixed by TAMP under Section 2.16 of chapter II reads as under:-

“2.16 Composite Berth Hire Charges:

Berth hire charges on vessels, boats and barges berthed at Indira Dock and its Harbour Wall, including Ballard Pier and Ballard Pier Extension, Prince’s & Victoria Docks and its harbour walls:-

<i>Sl. No.</i>	<i>Vessels Berthed at</i>	<i>Rate per GRT for per hour or part thereof</i>	
		<i>Coastal Vessel (in Rs.)</i>	<i>Foreign-going vessel (in US \$)</i>
<i>1.</i>	<i>Indira Dock & its Harbour Walls, Ballard Pier and Ballard Pier Extension</i>	<i>0.119</i>	<i>0.0075</i>
<i>2</i>	<i>Prince’s & Victoria Docks and its harbour walls</i>	<i>0.092</i>	<i>0.0059</i>

Notes:

1. For the purpose of levy of the above charges

(i). The minimum GRT for any vessel except off shore supply vessels will be taken as 1000 and

(ii) The term 'vessel' will include the boats, barges and craft of GRT of 1000 and above.

2. (i) The berth hire shall be leviable from the time a vessel takes the berth till the time it leaves the berth.

(ii) There shall be a time limit beyond which berth hire shall not apply, berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.

(iii) There shall be a 'penal berth hire' equal to one day's berth hire charges for a false signal.

(iv). The Master / Agents of the vessel shall signal readiness to sail only in accordance with favourable tidal and weather conditions.

(v). The time limit of 4 hours prescribed for cessation of berth hire shall exclude the ship's waiting period for want of favourable tidal conditions.

3. Sundays and Port non-working days will be treated as normal working days for levy of the above charges and no separate charge will be levied.

4. Every boat and country craft of less than 1000 GRT and pleasure yacht and a lash barge entering the Docks shall be levied berth hire charges of Rs.5.417/US \$ 0.4374 per hour or part thereof for the first 200 GRT or part thereof and Rs.2.707/US \$ 0.2187 per hour or part thereof for every additional 100 GRT or part thereof in respect of coastal/foreign- going vessels respectively. This concessional rate will be admissible to local craft, boats and barges except off shore supply vessels whether self propelled or not and plying in foreign and coastal trade. The concessional rates shall also be admissible to lash barges and pleasure yacht irrespective of their tonnage. Each barge will be separately charged berth hire charges treating each as a distinct vessel. However, when the barges make use of wharf crane, the composite berth hire charges as prescribed at Note I above shall be levied.”

7. Before we proceed further, it will also be useful to reproduce Sections 2(aa), 2(z), 30, 42(4), 47-A, 47-F and 49 of the MPT Act read as under:-

“2. Definitions. - In this Act, unless the context otherwise requires,-

(a) ...

(aa) “Authority” means the Tariff Authority for Major Ports constituted under section 47-A;

(b) to (y) ...

(z) “vessel” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;”

“30. Existing rates, etc., to continue until altered by Board.—As from the appointed day, all rates, fees and other charges in relation to any port, shall, unless and until they are varied by the competent authority in accordance with the provisions of this Act, continue to be levied and collected at the same rate at which they were being levied and collected by the Central Government or, as the case may be, any other authority immediately before such day.”

“42. Performance of services by Board or other person. -

(1) ...

(2) ...

(3) ...

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount [specified by the Authority, by notification in the Official Gazette]”

“47-A. Constitution and incorporation of Tariff Authority for Major Ports.—(1) *With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.*

(2) *The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.*

(3) *The head office of the Authority shall be at such place as the Central Government may decide from time to time.*

(4) *The Authority shall consist of the following Members to be appointed by the Central Government, namely:—*

(a) *a Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;*

(b) *a Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade;*

(c) *a Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.”*

“47-F. Authentication of all orders and decisions of the Authority. *All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.”*

“49. Scale of rates and statement of conditions for use of property belonging to Board.—(1) *[The Authority shall from time to time, by notification in the Official Gazette, 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 plying 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).]”

8. Therefore, under Section 30 the existing rates, unless altered by the competent authority or any other authority shall continue to be levied at the same rate at which they were being levied. Authority as defined under clause 2(aa) means TAMP. Under Sections 42(4) of the MPT Act, even a person authorised under Sub-section 3 shall not charge or recover for such service, any sum in excess of the amount specified by the Authority, i.e., TAMP. Sections 48 and 49 of the MPT Act provides the Authority (TAMP) shall from time to time frame scale of rates at which and the statement of condition under which, any of the services specified thereunder shall be performed by board or any other person authorised under Section 42 at or in relation to or within the limits of the Port or Port approaches. Therefore, it is the TAMP that will fix the scale of rates and statement of conditions. Admittedly, the scale of rates that was prevailing in 2008 was fixed by TAMP and it is in the scale of rates, there is a disagreement between petitioner and respondent on the interpretation of Section 2.16 which has been fixed by TAMP.

9. When the disagreement arose regarding the rate being charged by respondent and what petitioner felt was chargeable, petitioner made a representation to TAMP. TAMP called for response from respondent and after considering the response from respondent addressed the disagreement as under:-

“4.1. From the various submissions made by RSAL and MBPT, it is understood that the Scale of Rates prevailing in the year 2008 prescribed levy of the berth hire charges on Vessels (including the boats, barges and craft) at minimum 1000 GRT. The Scale of Rates also prescribed levy of concessional berth hire charges on every boat and country craft of less than 1000 GRT and pleasure yacht and a lash barge entering the Docks. Concessional berth hire charges was not specifically prescribed in respect to Tugs. Even though the Tug of RSAL was less than 1000 GRT, the MBPT has chosen to levy Berth hire charges on the Tug by levying at a minimum of 1000 GRT by treating it as a Vessel.

4.2. In the above referred correspondences, RSAL has highlighted that in the MBPT SOR, 'Vessel' is defined to include anything made for the conveyance mainly by water of human being or goods and a caisson and that the Tug defies the above definition in every sense as it is not meant to convey or transport human being or goods and that it is used for the sole purpose of assisting bigger vessels in pulling, navigating or maneuvering them. The RSAL has submitted that the sole purpose of a Tug is to assist bigger vessels in pulling, navigating or maneuvering them.

4.3. RSAL vide its above referred correspondences has also highlighted the aspect that the MBPT while levying the licence fee on the same tug of RSAL, has categorized the Tug as a 'Boat' and levied charges on the said Tug as applicable to a boat.

4.4. Given that the Tug defies the definition of 'Vessel' and that the MBPT has already treated the same Tug of RSAL as a boat while levying the licence fees on per GRT basis (based on Sl. No. 4 of Part II under Section 2.10 of the then prevailing Scale of Rates of MBPT) and also since the MBPT in its subsequent general revision of 2015 has amended its Scale of Rates so as to bring the Tug under the scope of levy of concessional berth hire charges on Tug of less than 1000 GRT, which is leviable on per GRT basis, we are of the opinion that the berth hire charges on Tug of RSAL or for

that matter any other tug also may have to be levied berth hire on par with boats and on per GRT basis, without a floor level of 1000 GRT, even if it pertains to the period prior to the amendment effected by the MBPT.

5. *This issues with the approval of the Competent Authority.”*

10. According to TAMP, therefore, respondent should charge only on the basis of actual tonnage of the tug ATUL under Serial No.4 of Part II of Section 2.16. Notwithstanding this, respondent insists on charging on the basis of 1000 GRT under Note 1(i) of Section 2.16 of part II of scale of rates. In our view, the view expressed by TAMP is binding on respondent as it is TAMP that has interpreted the scale of rates fixed by it. Further, since respondent has not challenged the interpretation/clarification of TAMP which was given on 1st March 2017. Infact by this decision dated 1st March 2017, TAMP has only clarified what it meant by clauses in Section 2.16 of the scale of rates and in our view that is binding on respondent. Mr. Talsania submitted that in paragraph 2 of the communication dated 1st March 2017, TAMP had initially accepted respondent's submissions. We do not agree with Mr. Talsania because the paragraph as it reads only reproduces the stand taken by respondent. Mr. Talsania also submitted that respondent did not agree with the interpretation of TAMP. TAMP having come to a final decision accepting the submissions made by petitioner, if respondent was unhappy with the finding of TAMP it could have challenged the same. It has not.

11. Mr. Talsania also submitted that communication dated 1st March 2017 was not an order passed by TAMP but only an opinion. We are not inclined to accept this view. Even if it is an opinion of TAMP, every order or judgment is the opinion of the Court, Authority or the Forum interpreting the provisions of law. In this case also, by the said communication dated 1st March 2017, TAMP has only interpreted what it meant by Section 2.16 in the Scale of Rates that it had fixed. Further, in the communication dated 1st March 2017, at the end, in paragraph 5, it is stated that “this issues with the approval of Competent Authority”.

12. It is important to note that TAMP has given its decision on 1st March 2017 after giving hearing to Petitioner and Respondent. The power to give decision and its authentication is to be found in Section 47-F of the Act. The phrase “decision” is not defined under the Act. A decision would mean a conclusion preceded by reason to arrive at conclusion. Whenever a question is determined after weighing reason for and against a proposition, it is a decision. A decision means not merely a view but an objective determination based upon facts and circumstances of each case after examining the material on record and after hearing the parties who are going to be aggrieved by that. In the instant case before us, the communication dated 1st March 2017 would constitute a decision since it determines an issue at what rate respondent is entitled to charge based on the documents produced and

after hearing respondent. Therefore, in our view, the contention of Mr. Talsania that the same does not constitute a “decision” is to be rejected.

13. In these circumstances, rule is made absolute in terms of prayer clauses (a), (b) and (e).

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]