
2009 eGLR_HC 10005443

Before the Hon'ble MR. K S RADHAKRISHNAN, JUSTICE the Hon'ble MR AKIL KURESHI, JUSTICE

GUJARAT HEAVY CHEMICALS LTD Vs. TATE OF GUJ AND 2 - RESPONDENT(S)

SPECIAL CIVIL APPLICATION No: 1015 of 1988 , Decided On: 14/05/2009

K.S. Nanavati, Devant Vyas, G.N. Desai, Nanavati Associates

MR.JUSTICE AKIL KURESHI

1. The petitioners have challenged the validity of Section 37(2) of the Gujarat Maritime Board Act, 1981(hereinafter referred to as "the Act")to the extent the same empowers the Gujarat Maritime Board("GMB" for short) to fix different rates of charges on the basis of vessels in which the goods are carried. Consequently, the petitioners have also challenged the fixation of wharfage charges at the rate at Rs. 16.50 per tonne specified in Schedule I to the notification dated 30.1.1984 issued by respondent No.2 Gujarat Maritime Board.

2. Briefly stated facts of the present case are as follows :

2.1 The petitioner is a company engaged in manufacturing of Sodaash. Its factory is situated in District Junagadh. The Company imports coal and coke for its consumption which are unloaded at Veraval port.

2.2 Under Section 37 of the Act, GMB is empowered to prescribe scale of rates at which any of the specified services shall be performed. Subsection(2) in particular, permits the GMB to specify different scales of rates and conditions for different classes of goods and vessels and for different ports.

2.3 It is not in dispute that pursuant to powers conferred under Section 37 of the Act, respondent No.2 GMB had issued notification dated 30.1.1984 under which the rates of wharfage for import of coal and coke is specified at Rs. 16.50 per tonne when brought through a Steamer and Rs. 8 per tonne when imported through a Sailing Vessel. It is the case of the petitioners that this distinction between coal and coke being imported through Steamer and through Sailing Vessel for specifying two different rates is illegal and impermissible. It is primarily the focus of the petition that Section 37(2) of the Act is ultra vires the Constitution, particularly, Articles 14 and 19(1)(g) of the Constitution.

2.4 On this premise, the petitioners have challenged the validity of Section 37(2) of the Act and has consequently prayed for a declaration that collection of wharfage at the rate of Rs. 16.50 per tonne from the petitioners is illegal and that petitioners are liable to pay only Rs.8 per tonne towards the said charges.

3. Section 37 of the Act reads as follows :

"37. (1) The 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 32 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) stevedoring, 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) craning 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 of rates and conditions may be framed for different classes of goods and vessels and for different ports."

4. Mainly there are two limbs of challenge under Section 37(2) of the Act. It is firstly the case of the petitioners that power to provide different scales of rates for providing various services by GMB on the basis of vessels through which goods are brought is wholly [Reproduction from GLROnline] © Copyright with Gujarat Law Reporter Office, Ahmedabad

arbitrary and discriminatory. There is no reason for such distinction solely on the basis of vessel in which goods are carried.

4.1 Second limb of the contention of the petitioners is that powers under Section 37 and in particular Subsection(2) thereof are unguided and unchanneled powers, possible of misuse.

5. It is by now well settled that there is a presumption of constitutionality in favour of a statutory provision. Heavy duty lies on one who contends that Act of legislation is ultra vires the Constitution to establish the same through cogent materials. This is too well a settled proposition requiring any reference. One may however, make reference to the decision in case of the State of Jammu & Kashmir v. Triloki Nath Khosa and others reported in AIR 1974 Supreme Court 1. The Apex Court in this regard made following observations :

"24. This submission is erroneous in its formulation of a legal proposition governing onus of proof and it is unjustified in the charge that the record discloses no evidence to show the necessity of the new rule. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. 1959 SCR 279, 297 (b) Ram Krishan Dalmia v. Justice S. R. Tendolkar. A rule cannot be struck down as discriminatory on any a priori reasoning. "That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. The burden thus is on the respondents to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence to prove those facts for "there is a presumption that every factor which is relevant or material has been taken into account in formulating the classifications State of Uttar Pradesh v. Kartar Singh, 1964 (6) SCR 679, 687 In G. D. Kelkar v. Chief Controller of Imports and Exports, Subba Rao C. J. speaking for the Court has cited three other decisions of the Court in support of the proposition that "unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the Court that the said classification is unreasonable and violative of Art. 16 of the Constitution."

It was further observed in para.27 as follows :

"27. Our reason for saying this is to emphasize that the respondents ought to have furnished particulars as to why, according to them, the classification between diplomaholders and degreeholders is not based on a rational consideration having nexus with the object sought to be achieved. In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to say that they have ~~been treated differently, from others, not even enough that a differential treatment has~~
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been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis."

6. It can thus be seen that by merely contending that Section 37(2) of the Act violates equality clause under Article 14 of the Constitution is not enough. Article 14 prohibits discrimination but not reasonable classification.

7. The Act was enacted to make the provisions for Constitution of a Maritime Board for minor ports in the State of Gujarat and to vest the administration, control and management of such ports in the Board. With this purpose in mind, various provisions have been made in the Act.

Under Section 20, it is provided that from the appointed day in relation to any port, all property, assets and funds and all rights to levy rates shall vest in the Board.

Chapter V of the Act pertains to Works and Services to be provided at minor ports by the Board.

Section 25 of the Act pertains to the power of the Board to execute works with or without the limits of ports as it may deem necessary or expedient.

Various other provisions have been made in Section 26 to 36 under Chapter 5 with respect to the nature of works and services to be provided by the Board.

Section 37 of the Act as reproduced hereinabove, empowers the Board to frame scale of rates at which and conditions under which any of the specified services shall be performed by the Board or any authorised person. Subsection(2) in particular permits the Board to provide different scales of rates and conditions for different class of goods and vessels and for different ports.

38 of the Act empowers the Board to frame the scale of rates and conditions under which property belonging to or in possession or occupation of Board may be permitted to be used.

Under Section 40 of the Act, Board while providing for scale of rates, is permitted to prescribe the lower rate in respect coastal goods i.e. goods other than imported goods or for certain goods in special cases.

Under Section 41 of the Act every scale of rates and every statement of conditions by the Board has to be submitted to the State Government for sanction and shall be effective only when sanction is granted and published by the Board in official Gazette.

Section 42 of the Act provides that the State Government if it considers necessary in the public interest, it may by order in writing with a statement of reasons thereof, direct the Board to cancel any of the scales in force or modify the same within such period as the Government may specify. Under Subsection(2) of Section 42 of the Act, if the Board neglects to comply with such directions of the Government, the Government itself may cancel any of such scales or make such modifications as found fit.

8. From the above provisions made in the Act it can be seen that the GMB has to perform certain functions and provide certain services under the Act for which it is empowered to levy charges. Section 37 of the Act while permitting the Board to provide for scale of rates for various services, also permits the Board to specify different scales of rates on the basis of different classes of goods and vessels for different ports. The Legislature in its wisdom has given sufficient powers to categorize different goods or vessels in which such goods are carried for providing different rates for different services. Nothing has been pointed out by the petitioners by producing material on record to suggest that such classification is arbitrary or discriminatory. The petitioners have thus failed to discharge the onus of establishing that Sub-section(2) of Section 37 of the Act is unconstitutional.

9. Detailed reply has been filed by the Board denying the contentions raised in the petition and stating interalia that for different vessels different rates have been specified by issuing notification under Subsection(2) of Section 37 of the Act.

10. It can also be not stated that powers under Section 37 of the Act are unguided or unchanneled. As already noted, under the Act, Board has to perform various functions and provide various services at different ports in the State. For providing such services, the Board has to collect charges from the consumers of such services. Provision for collecting such charges have therefore to be made bearing in mind the different services provided by the Board under the Act. Thus such charges would have to have nexus with the service provided and cannot be arbitrary or whimsical. Thus within the Act itself there are sufficient safeguards for prescribing such rates. Further, as already noted, provisions have been made under Sections 41 and 42 of the Act for making such prescription of rates by the Board subject to sanction by the Government. Only upon such sanction being granted, such rates would be effective. ~~The State Government even has the power to direct the GMB to cancel any of the~~
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scales or to modify the same within specified time and if not done by the GMB, may itself cancel or modify as found appropriate. Thus quite apart from the Act itself providing sufficient guidelines for collection of different rates by the Board for different services to be provided, prescription of scales is subject to supervision by the Government. Second limb of argument also therefore, must fail.

11. In the result, we find no merits in the petition. Petition is dismissed.

Appeal dismissed

