

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

W.A.No. 790 of 2010 IN OP.17869/2002

AGAINST THE JUDGMENT IN OP 17869/2002 of HIGH COURT OF KERALA DATED 11.2.2010

APPELLANTS/RESPONDENTS:

1. THE BOARD OF TRUSTEES OF THE PORT
OF KOCHI, REPRESENTED BY ITS CHAIRMAN
COCHIN PORT TRUST, W/ISLAND, KOCHI-3.
2. THE DEPUTY CONSERVATOR, COCHIN PORT
TRUST, KOCHI-3.

BY ADVS.SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENT/PETITIONER:

M/S. GREAT EASTERN SHIPPING CO. LTD.,
HAVING REGISTERED OFFICE AT "OCEAN HOUSE"
134/A DR. A.B.ROAD, WORLI MUMBAI-400 018
REPRESENTED BY THEIR SENIOR MANAGER-INSURANCE &
CLAIMS MR. R.N.IYER.

R,R BY ADV.SRI.V.B.JINNAH
R BY SRI.ANIL XAVIER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07-01-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

W.A.No.790 OF 2010

Dated this the 7th day of January, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the respondents in O.P.17869/02.

2. The said original petition was filed by the respondent herein seeking to quash Ext.P4, the order passed by the Judicial First Class Magistrate I, Ernakulam in Crl.M.P.No2931/94 under Section 57 of the Indian Ports Act. The respondent also sought a declaration that they are not liable for the alleged damage sought to have been caused to the fender in the Cochin Port Trust on 6.3.1988 and a direction requiring the appellants not to enforce Ext.P4 bank guarantee. The respondent also sought a declaration that Clause 6 of the Port of Cochin (Quay Dues, Stream Dues, Rent, Hire, Demurrage and other charges) Rules, 1975 and Regulations 3 and 43 of the Cochin Port Trust and Dock Regulations, 1975 are ultravires to the Major Port Trusts Act, 1963 and the Constitution.

3. By the judgment under appeal, the learned Single Judge quashed Ext.P4 and directed the appellants to refund the amount

recovered by them by invoking Ext.P4 bank guarantee. Appellants were also directed to pay Rs.20,000/- to the respondents towards cost. In the course of the judgment, the learned Single Judge also held that Clause 6 and Regulation 43 mentioned above are inconsistent with the provisions of the Major Port Trust Act. It is aggrieved by this judgment, this appeal is filed.

4. We heard the counsel for the parties and have considered the submissions made.

5. Briefly stated, the facts of the case are that the respondent is the owner of a vessel by name "Jag Laxmi". The vessel arrived at Cochin Port on 6.3.1988 for mooring at the Cochin Oil Terminal Jetty. The vessel was brought into the jetty under compulsory pilotage of the Port Pilot. After the vessel was berthed, the Port Pilot informed the respondent that at the time of berthing, the vessel came into contact with a fender at the jetty causing damage to the fender. Thereupon, the Master of the vessel arranged a Joint Survey of the damage caused and also lodged a note of Protest. A Joint Survey was conducted and the report indicating the damage was also obtained. The appellants thereupon demanded security to the tune of Rs.10 lakhs from the respondent and permission was refused to the vessel to sail out of

Cochin Port Trust. Under compelling circumstances, the bank guarantee was furnished under protest and the same was kept alive.

6. According to the respondent, the Port authorities did not take any efforts to repair or replace the fender and in response to a query made by them, they were informed the estimated cost of repairs was Rs.9.45 lakhs. Subsequently, it appears that instead of rectifying the damaged fender, the appellants decided to import a new fender from Japan and they also decided to demand the replacement cost from the respondent instead of rectification charges. This was challenged by the respondent before this Court in O.P.17869/02. During the pendency of the original petition, they filed Crl.M.P.2931/94 before the Judicial First Class Magistrate, Ernakulam invoking Section 57 and 59 of Indian Ports Act by filing Ext.P1 complaint. That complaint was disposed of by the Magistrate by Ext.P4 order holding that the respondent is liable for damages sustained to the fender and allowed the appellants to realise Rs.8.5 lakhs towards the replacement cost of the fender. It was in these circumstances, that challenging Ext.P4 and seeking the other reliefs, the original petition was filed.

7. In the judgment under appeal, the learned Single Judge made reference to Section 57 of the Indian Ports Act, 1908, Section 116 and

131 of the Major Port Trusts Act, 1963, Regulation 43 of the Cochin Port and Dock Regulations, 1975 and Rule 6 of Chapter I of the Port of Cochin (Quay Dues, Stream Dues, Rent, Hire, Demurrage and other charges) Rules, 1975. After making reference to these provisions, the learned Single Judge upheld the jurisdiction of the Magistrate in entertaining the complaint made by the respondent. The learned Single Judge also held that there was no provision in the Major Port Trusts Act giving any power to the Port authorities to unilaterally decide the liability and quantum in respect of damages caused to the properties of the Port by a vessel berth in the Port. According to the learned single Judge, the Port could have enforced the recovery of damages only by approaching the jurisdictional Magistrate as provided under Section 116 or by filing a suit as provided under Section 131 of the Major Port Trusts Act.

8. In so far as Regulation 43 and Clause 6 referred to above are concerned, according to the learned Single Judge, the Board of Trustees of the Cochin Port Trust could not have framed these rules, which, according to him, were inconsistent with the provisions of the Major Port Trusts Act. After holding so and taking note of the fact that in a proceeding under Article 226 of the Constitution of India, this Court

cannot re-appreciate evidence unless the same are perverse, the learned Single Judge went into the evidence in detail stating that Ext.P4 is not amenable to any appellate remedy. Accordingly, the learned Single Judge reappreciated the materials and evidence that were available before the Judicial First Class Magistrate and held that he was satisfied that the appellants were unable to prove by any convincing evidence adduced before the Magistrate that the vessel of the respondent was responsible for the alleged accident which caused the damage. Again, after stating that it was not necessary to go into the quantum of damages, the learned Single Judge considered that issue also and held that the claim made by the appellants was against all principles of assessment of damages for negligence and their attempt was to make unjust enrichment of the Port by foisting a totally unsustainable claim on the respondent. It was on these findings, the learned Single Judge quashed Ext.P4 order and ordered refund of the amount realized together with cost of Rs.20,000/-.

9. In so far as the findings of the learned Single Judge that the provisions of the Major Port Trusts Act did not give any power to the Port to unilaterally decide the liability and quantum in respect of the damages caused to its properties and that the Regulations referred to

above were inconsistent with the provisions of the Major Port Trust Act are concerned, in our view, such findings of the learned Single Judge is squarely against the principles laid by the Division Bench of this Court in ***Luga Bay Shipping Corporation and another v. Board of Trustees Port of Cochin [1994 (1) KLT 61]*** which judgment was confirmed by the Apex Court in its judgment in AIR 1997 SC 544. *Luga Bay (supra)* was also a case where M.T.Larnaca which was under a command of a Port Pilot, dashed against northern side of the RCC platform on which gravity fenders are suspended and caused damage to the platform. In similar circumstances, damage was assessed and the Master was called upon to deposit the estimated cost of rectification. The original petition filed before this Court by *M/S Luga Bay (supra)*, the owners of the vessel raised identical contentions raised and all those contentions were rejected by this Court in paragraphs 6 to 10 of the judgment which reads thus:

6. Section 116 of the Major Ports Trusts Act, 1963 states that if, through the negligence of any person having the guidance or command of any vessel any damage is caused to any jetty, 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 that vessel. It states that no Magistrate shall issue such a warrant until the master of the vessel is duly summoned to appear before him and if he appears, until he has been heard. No such

warrant shall be issued 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. This provision, according to us, make it clear that the amount of damages is to be determined by the Board. The Section provides the manner in which the said amount is to be recovered. The Board need approach the Magistrate only for effecting the recovery of that amount. When the Port approaches the Magistrate for effecting the recovery, then Magistrate is to issue summons to the master of the vessel and hear him. This hearing is not in any way connected with the quantification of the damages. Similar provision is contained in S.74 of the Harbours, Docks and Piers Clauses Act, 1847. With reference to this Section in *River Wear Comrs. v. Adamson*, (1877) 2 App. Cas. 743, it was held that the owner or master was not liable under that Section where the vessel had damaged a pier, being driven against it by the violence of the winds and waves, at a time when master and crew had been compelled to escape from on board and had no control over the vessel. This case was explained and distinguished in *Great Western Rly Co. v. Mostyn*, (1928) AC 57, where it was held that there was liability under the abovementioned section where, although there was no negligence, the vessel at the time of the damage was under the direction of the owner or his agent. From these, it is clear that the liability of the owner or master of the ship, as regards the damages to the Port is concerned, is absolute. Likewise, under S. 116 of the Major Port Trusts Act, 1963, the liability of the master or owner of the vessel in regard to the damage caused to the dock, wharf, quay, mooring, stage, jetty, pier, etc. is absolute.

7. Section 131 of the Major Port Trusts Act states that without prejudice to any other action that may be taken under the Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient or any penalties payable to, or recoverable by, the Board under the Act or under any regulations made in pursuance thereof. This Section gives a remedy by a suit to the Board to recover damages.

8. In exercise of the powers conferred by Ss.48, 49 and 50 of the Major Port Trusts Act, 1963, the Cochin Port Trust, with the previous sanction of the Central Government, made the Scale of Rates and Statement of Conditions for the levy of charges as per

notification dated 8-1-1990. Clause 16 thereon provides for assessment and recovery of compensation for damages. It inter-alia states that the Conservator of Ports shall take the necessary steps to ascertain the amount of damages. A notice specifying such amount of damage so ascertained and demanding its payment shall be served on the master or owner of the vessel. Thereupon it will be lawful for the Conservator to seize the vessel which caused the damages and detain the same till the amount is paid. Conservator may also sell the vessel and out of such sale proceeds pay to the credit of the Cochin Port Trust the amount of damage, the cost of seizure, detention and sale. The Board has thus the right to detain the vessel in the Port until the amount is paid or security is furnished. These provisions, according to us, authorise the Board to estimate the damages and call upon the master or owner of the vessel to pay the same. In case of failure, they can detain the vessel.

9. Where master disputes the quantum of damages or the claim made by the Port, it is open to have the dispute resolved by a competent civil court. This right of the master, or the owner of the ship is not in dispute.

10. According to the learned counsel representing the petitioner, the unilateral action taken by the Port Trust in assessing the damages at Rs.33.82 lakhs is in violation of the principles of natural justice and on that sole ground, the order issued by the Trust has to be set at naught. This argument though quite attractive, we are afraid, cannot be sustained. This is more so because the correctness or otherwise of the decision is open to challenge before the civil court. In the cases involving ships, which are to sail away, the decision has to be arrived at without any delay. In cases where the damages are to be ascertained only after complying with the principles of natural justice, vessels will have to be detained in the Port for sufficiently long periods. This will adversely affect the international trade. This is more so in circumstances where foreign ships are involved. They will have to sail away within the shortest time. If decision is not arrived at, the Port Trust would have no remedy to recover the damages. So also if the damage caused to the Port is not repaired with utmost speed, it will cause dislocation to the traffic. Port Trust will not be in a position to wait until the quantum of damages is determined by a Court or by complying with the principles of natural justice. As

observed by the Supreme Court in Karnataka Public Service Commn. v. B.M. Vijaya Shankar, (1992) 2 SCC 206, eventhough the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt with may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bonafide or innocence but for being otherwise arbitrary or against rules. According to us, the case before us can safely be placed in this category, where natural justice, before taking an action, stood excluded. In the instant case, if the petitioner wants to question the quantum of damages fixed by the Port Trust, they can successfully do it by approaching a civil court. Before the civil court, a full review of the order on merit can be asked for. In such a situation, absence of a hearing prior to the decision taken by the respondent cannot in any way vitiate the said decision. In Charan Lal Sahu v. Union of India, AIR 1990 SC 1480, a Constitution Bench of the Supreme Court observed:-

"The rules of natural justice can operate only in areas not covered by any law validly made. The general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not in terms exclude this rule or prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits then such a statute would be construed as excluding the audi alteram partam rule at the pre-decisional stage. If the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected the administrative decision after post-decisional hearing was good".

In the instant case since the petitioner's right to question the correctness or otherwise of the quantum of damages fixed by the respondent before a Court of law is not taken away, the absence of hearing prior to the decision will not make that decision void or illegal."

10. In appeal, the Supreme Court in **Luga Bay Shipping Corporation and another v. Board of Trustees of the Port of Cochin**

and another (AIR 1997 SC 544), reappreciated the very same contentions and rejected all the contentions by holding thus:

"6. Sections 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, 49, 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) transshipping 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 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 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."

7. 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.

8. The Notification dated January 8, 1980 issued in exercise of powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act in supersession of the Cochin Port Trust Notification

dated August 10, 1974 must be read alongside another Notification dated January 1, 1975 issued in supersession 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 of 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) that 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."

Section 65 (ii)

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.

9. 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 be 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.

10. 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 aforequoted 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.

11.*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 Sections 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. So also, we see no inconsistency in Regulation 43 of the Notification dated January 1, 1975.

12. 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 interest of justice, insofar as the Board is concerned, would not be safe-guarded 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 damages. 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."

11. The above principles laid down by this Court and the Apex Court are a complete answer to the findings of the learned Single Judge on the issue of the competence of the Board to unilaterally assess the damages, its right to demand the same and its entitlement to frame the Regulations. These principles also show that the remedy of the Master or his agent who disputes the quantification or the liability is to file a suit before the concerned Civil Court challenging the same.

12. In so far as the finding of the learned Single Judge that the appellants were not able to prove by a convincing evidence adduced before the Magistrate that the vessel was responsible for the alleged accident is concerned, the correctness of this finding of the learned

Single Judge will have to be appreciated in the context of the scope of enquiry that is permissible under Section 57 of the Indian Ports Act.

Section 57 of the Indian Ports Act, 1908 reads thus:

“Ascertainment and recovery of expenses and damages payable under this Act:-

(1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.”

13. A reading of Section 57(1) shows that the power under this provision can be invoked if any dispute arises as to the sum to be paid in any case as expenses or damages under the Act. If such a dispute is raised, the said dispute shall be determined by the Magistrate upon an application made to him for that purpose by either of the disputing parties. This provision, therefore, shows that the nature of the dispute which is to be determined by the Magistrate on an application made to him is only as to the sum to be paid in any case as expenses or damages. In other words, it is the quantification of the sum that is payable as

expenses or damages under the Act which is capable of being determination by the Magistrate and an enquiry of a dispute in relation to the liability for payment or expenses is outside the scope of Section 57. Such a dispute can be resolved only by a Civil Court as held by this Court and the Apex Court in the *Luga Bay (supra)*. If that is the scope of enquiry under Section 57 of the Indian Port Act, 1908, the learned Single Judge could not have found fault with the appellants on the ground that the evidence adduced by them did not prove that the vessel of the respondents was responsible for the accident causing damages. If that be so, the learned Single Judge also could not have found lack of bonafides on the quantum of damages claimed by the respondent.

The sum and substance of the above discussion is that the judgment of the learned Single Judge allowing the original petition is unsustainable. Accordingly the judgment of the learned Single Judge is set aside and the appeal is allowed.

Sd/-
ANTONY DOMINIC,
Judge

Sd/-
ALEXANDER THOMAS,
Judge