SOCIEDADE DE FORMENTO INDUSTRIAL PVT. LTD. AND ORS.

v.

MORMUGAO DOCK LABOUR BOARD AND ANR.

JANUARY 18, 1995

[P.B. SAWANT AND S.C. AGRAWAL, JJ.]

Dock Workers (Regulation of Employment) Act, 1948/Mormugao Dock Workers (Regulation of Employment) Scheme, 1965 : ss.3, 4, 5A, 5B/Clauses 3(e), 3(f), 32, 54—Circulars dated 19.3.1983 issued by Mormugao Dock Labour Board, increasing general levy from 200% to 400% and welfare levy from 30% to 60% in respect of handling by grab crane fitted ships w.e.f. 30.10.1982—Central Government according approval on 11.3.1983—Imposition of levy on the basis of notional employment—Held, is permissible under the Scheme—Circulars neither ultra vires Clause 54 of Scheme nor violative of Article 14 of the Constitution—Prior approval of Central Government in terms of clause 54(3), being a condition precedent, increase in levy not to have retrospective operation but would operate from date of Circulars.

Constitution of India :

Article 14—Mormugao Dock Workers Board—Issuance of Circulars dated 19.3.1983 by—Increase in general levy and welfare levy from 200% to 400% and 30% to 60% respectively in respect of handling by grab crane fitted ships—Circulars challenged as being discriminatory since a higher levy was imposed on ocean going vessels fitted with grab cranes as compared to transhippers—Held, Circulars not violative of Article 14.

In order to ensure greater regularity of employment for registered dock workers and to secure availability of adequate number of dock workers to the registered employers for efficient performance of dock work at the Port of Murmugao, Government of India, in exercise of its powers under the Dock Workers (Regulation of Employment) Act, 1948, framed the Murmugao Dock Workers (Regulation of Employment) Scheme 1965. The scheme applied to stevedoring work and cargo handling from wharf to transit shed and vice verse. The category of stevedors covered by the Scheme were gang workers and winch drivers. The Scheme provided for payment of attendance allowance and disappointment money to registered

A workers, and prescribed that registered employers would pay to the administrative body in such manner and at such time as the respondent-Board, which was entrusted with the responsibility of administrating the scheme, may direct the levy payable under Clause 54(1) of the Scheme and the gross wages due to daily workers.

B The respondent-Board, by a resolution dated 30.10.82, decided to increase the percentage of general levy payable in respect of handling by grab cranes fitted to ships, from 200% to 400% on the actual payment of one set of winch drivers and on the notional employment of two gangs per hook (400% for each gang), and to enhance the welfare levy relating to the C above operations from 30% to 60% of the time rate wages both in respect of winch drivers and in respect of notional employment of two gangs per hook. The Central Government approved the resolution by its order dated March 11,1983. Accordingly, the Board issued a Circular dated March 19, 1983 increasing the general levy and the welfare levy as aforesaid, from the date of the resolution, i.e. 30.10.1982. By another Circular a special levy of D Re.1/- per tonne was imposed in respect of all cargoes manually handled from March 14, 1983. By a subsequent circular dated July 14, 1983 it was clarified that the special levy was to be calculated in respect of cargoes handled with the help of registered dock workers, whether gang workers or winch drivers. The Companies and the firms engaged in mining and E export of mineral ores and carrying on the business of stevedoring in Mormugao Harbour filed writ petitions before the High Court challenging the validity of the Circulars. It was contended on behalf of the petitioners that the circulars were violative of Article 14 of the Constitution inasmuch as higher levy was imposed in respect of loading of mineral ore through F ocean going vessels fitted with grab cranes as compared to loading of ore through transhippers fitted with grab cranes; and, in any event, retrospective increase in the levy was not permissible under the Scheme. The High Court upheld the validity of the circulars, but held that the increased levy and the special levy could not be realised with retrospective effect. Aggrieved, the writ petitioners as also the Board filed the appeals.

G It was contended for the writ petitioner - appellants that imposition of levy based on notional employment of gang workers was ultra vires Clause 54 of the Scheme inasmuch as the said Clause did not authorise levy on notional employment basis. Besides, the ground based on Article H 14 of the Constitution, as raised before the High Court, was also reiterated.

Dismissing the appeals, this Court A

HELD : 1. In view of Clause 54(1) of the Mormugao Dock Workers (Regulation of Employment) Scheme, 1965 empowering the respondent-Board to recover from registered employers the cost of operating the Scheme, and the allowances payable to the gang workers under the Scheme forming part of the cost of operating the Scheme, it would be permissible for the Board to recover the said cost by way of levy by treating the gang workers as notionally employed in the matter of loading the ore by the ocean going vessel fitted with grab crane. There is nothing in clause 54 of the Scheme which prohibits the Board from recovering such cost of operating the scheme in this manner. Besides, notional employment of gang workers in connection with loading of ore on ocean going vessels fitted with grab cranes has been recognised in the settlement of October 17, 1970 wherein it was expressly agreed that whenever gangs are not booked for work, the employer shall pay double levy to the Board chargeable for one gang for each working grab crane. [392-G, 393-B-C] B C D

2.1 The circulars are not violative of the right guaranteed under Article 14 of the Constitution. The High Court was right in holding that ocean going vessels fitted with grab cranes cannot be equated with tran-shippers fitted with grab cranes for the purpose of levy. The former utilise the services of reserve pool workers for operating the grab cranes and the Board has to bear the burden for such workers; whereas the latter employ regular winchmen to operate the grab cranes fitted on the transhipper as their monthly workers and are responsible for paying all their dues such as salary, provident fund, gratuity etc., moreover, they have to engage other staff to operate the transhipper as required under the Merchant Shipping Act and incur further expenses. [395-B, 393-E-G] E F

2.2 The ocean going vessels fitted with grab cranes have always been treated differently from transhippers fitted with grab cranes in the matter of amount payable to the Board. The amount payable by the former is governed by the settlement dated October 17,1970 while the latter are governed by the various agreements of 1977 which have been revised from time to time. [393-H, 394-A] G

2.3 The increased off-take of iron ore since 1979 by ocean going vessels fitted with grab cranes has resulted in loss opportunity of employ-ment for the registered dock workers and consequent increase in the H

A **burden on the Board for the minimum guaranteed wages and other amounts payable under the Scheme. By enhancing the general levy and welfare levy under the Circular, the Board, keeping in view the economics of the cost of loading under the various modes, has sought to balance its financial deficit caused on account of increased off-take of ore through ocean going vessels fitted with grab cranes. In doing so the Board cannot** B **be said to have acted arbitrarily or unreasonably or having subjected the petitioners to hostile or invidious discrimination. [394-E, 395-A-B]**

P.M.A. Setty v. *State of Karnataka*, **[1988] Supp. 3 SCR 155;** *Sen Antonio Independent School District* v. *Bodriques*, **411 U.S. 1 and** *G.K.* C *Krishnan* v. *The State of Tamil Nadu and Anr.*, **[1975] 2 SCR 715, referred to.**

3. As regards retrospective operation of the circulars, the High Court has rightly held that the Circular increasing general levy and welfare levy from 200% to 400% and from 30% to 60% could be made operative only from the date of the Circular i.e. 19.3.1983, and not from 30.10.1982, the date of D **resolution, for the reason that prior approval of the Central Government as required under Clause 54(3) of the Scheme was accorded only on 11.3.1983. Similarly the High Court has rightly held that the circular imposing the special levy could not have retrospective operation. [395-D-E]**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 258 of 1985 etc.

From the Judgment and Order dated 12.10.84 of the Bombay High Court in W.P. No. 60 of 1983.

F M. Chandersekhran, Additional Solicitor General, Soli J. Sorabjee, R.F. Nariman, Mr. Ravinder Narain, Aditya Narain and D.N. Mishra and V. Balachandran for the appearing parties.

The Judgment of the Court was delivered by

G **S.C. AGRAWAL, J.** : These appeals, by special leave, arise out of Writ Petition No. 60 of 1983 filed by the appellants in C.A. No. 258 of 1985, hereinafter referred to as 'the petitioners', in the High Court of Bombay, Panaji Bench, Goa, wherein they had challenged the validity of two circulars dated March 19, 1983 issued by the Mormugao Dock Labour Board, hereinafter referred to as 'the Board'. By one of those circulars the general H levy payable in respect of handling by grab cranes fitted to ships with effect

from October 30, 1982 was fixed at 400% on the actual employment of one set of Winch Drivers and on the notional employment of two gangs per hook (400% for each gang) and welfare levy relating to the above operation was fixed at 60% of the time rate wages both in respect of Winch Drivers and in respect of notional employment of two gangs per hook with effect from October 30, 1982. By the other circular a special levy @ Re. 1/- per tonne was imposed in respect of all cargoes manually handled from March 14, 1983. By a subsequent circular dated July 14, 1983 it was clarified that the special levy is to be calculated in respect of cargoes handled with the help of registered dock workers, whether gang workers or Winch Drivers. The said circulars were issued in exercise of the powers conferred by clause 54 of the Mormugao Dock Workers (Regulation of Employment) Scheme, 1965, hereinafter referred to as 'the Scheme' framed by the Government of India in exercise of the powers conferred on it by the Dock Workers (Regulation of Employment) Act, 1948 hereinafter referred to as 'the Act'.

The Act was enacted with a view to provide for regulating the employment of dock workers. Section 3 of the Act provides for a Scheme for registration of dock workers and employers with a view to ensuring greater regularity of employment and for regulating the employment of dock workers, whether registered or not, in a port. Such a Scheme, among other provisions, can provide for securing a minimum pay in respect of periods during which employment, or full employment, is not available for dock workers to whom the Scheme applies and who are available for work. Under Section 4 the power to frame the Scheme has been conferred on the Central Government in relation to a major port the State Government in relation to any other port. Section 5A or the Act provides for the establishment of a Dock Labour Board for a port or a group of ports. Under Section 5-B the Dock Labour Board has been entrusted with the responsibility for administering the Scheme for the port for which it has been established. The Board has been established by the Central Government under Section 5-A of the Act for Mormugao Port which is a major port. In exercise of the powers conferred by Section 4(1) read with Section 3 the Scheme has been made by the Central Government. As indicated in Clause 2 the objects of the Scheme are to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work. The Scheme applies to stevedoring work and cargo handling from wharf to transit shed and vice-versa and the categories of stevedore workers covered

A by the Scheme are (a) gang workers and (b) winch drivers. The Scheme is only applicable to registered dock workers and registered employers and it does not apply to any dock worker unless he is employed or registered for employment as a dock worker. In Clause 3 various expressions including the expressions 'daily worker', 'dock employer', 'monthly worker', B 'registered dock workers', 'registered employer and 'reserved pool' have been defined. Sub-Clause (e) of Clause 3 defines a daily worker to mean a registered dock worker who is not a monthly worker. The expression 'monthly worker' is defined in sub-clause (k) to mean a registered dock worker who is engaged by a registered employer or a group of such employers on monthly basis under a contract which requires for its ter- C mination at least one month's notice on either side. A "registered dock worker" is defined in sub-clause (n) to mean a dock worker whose name is for the time being entered in the register or record. The expression "dock employer" is defined in sub-clause (f) to mean the person by whom a dock worker is employed or is to be employed and includes a group of dock D employers formed under clause 16(1)(d). Under sub-clause (o) "registered employer" means a dock employer whose name is for the time entered in the employers' register. "Reserve pool" is defined in sub-clause (p) to mean a pool of registered dock workers who are available for work, and who are not for the time being in the employment of a registered employer or a group of dock employers as monthly workers. Clause 32 of the Scheme E makes provision for guaranteed minimum wages in a month and reads as under :

"32. *Guaranteed Minimum wages in a month.* (1) A worker in the reserve pool register shall be paid wages at least for fifteen days F in a month at the wage rate inclusive of dearness allowance as prescribed by the Board appropriate to the category to which he permanently belongs, even though no work is found for him for the minimum number of fifteen days in a month. The days on which work is allotted to the worker shall be counted towards the fifteen G days mentioned above. The guaranteed minimum wages in a month shall be :-

(a) for the number of days for which wages are guaranteed in a month subject to the condition that the worker attended for work H on all days of the month as directed by the Administrative Body.

(b) proportionate to the number of days on which the worker attended for work provided he was excused from attendance on all the remaining days of the month. A

(2). Subject to the provisions of sub-clause (1) the minimum number of days in a month for which wages are guaranteed may be fixed by the Board for each year on the basis of the monthly average employment obtained by the workers in the reserve pool in the lowest categories of stevedore workers during the preceding year until the minimum number of days reaches 21, provided the number so fixed shall not, in any case, be less than the number in the preceding year. B C

NOTE : This method of assessing the average employment is detailed in Schedule II.

(3) The minimum number of days for which wages shall be guaranteed under sub-clauses (1) and (2) shall not automatically apply to workers in new categories that may be registered after the date of enforcement of the scheme. The minimum number of days for which wages shall be guaranteed to these categories shall be determined under clause 19(2)(e). The annual refixation of the minimum number of days as under sub-clause (2) shall be done independently in their case also. D E

Explanation. – In sub-clauses (1), (2) and (3) of this clause a 'day' shall mean a 'shift'.

F

In Clause 33 provision has been made for payment of attendance allowance to a worker on the reserve pool register who is available for work but for whom no work is found. Clause 35 makes provision for payment of disappointment money where a worker in the reserve pool presents himself for work and for any reason the work for which he has attended cannot commence or proceed. In that event the worker shall be entitled to full time rate wages subject to the condition that he is available throughout the shift and accepts alternative employment if provided. Clause 39 imposes certain obligations on the registered employers. Under sub-clause (5)(i) it is prescribed that a registered employer shall pay to the Administrative Body in such manner and at such times as the Board may direct the levy G H

A payable under clause 54(1) and the gross wages due to daily workers. Clause 54 deals with the cost of operating the Scheme and provides as under :

B "54. *Cost of operating the Scheme.* - (1) The cost of operating the Scheme shall be defrayed by payments made by registered employers to the Board. Every registered employer shall pay to Board such amount by way of levy in respect of reserve pool workers together with and at the same time as the payment of gross wages due from him under clause 39(5)(i), as the Board may, from time to time, prescribe by a written notice to registered employers.
C If considered necessary, the Board may require any registered employer to pay such amount by way of levy in respect of monthly workers at such rate as it may determine and the amount payable by way of such levy shall not be less than such amount as the Board may fix as the minimum payable by every registered employer.

D (2) In determining what payments are to be made by registered employer under sub-clause (1), the Board may fix different rates of levy for different categories of work or workers, provided that the levy shall be so fixed that the same rate of levy will apply to all dock employers who are in like circumstances.

E (3) The Board shall not sanction any levy exceeding hundred per cent of the estimated total wage bill calculated on the basis of the daily wage rate without the prior approval of the Central Government.

F (4) A registered employer shall on demand make a payment to the Board way of deposit, or provide such of the security for the due payment of the amount referred to in sub- clause (1) as the Board may consider necessary.

G (5) The Administrative Body shall furnish from time to time to the Board such statistics and other information as may reasonably be required in connection with the operation and financing of the Scheme.

(6) If a registered employer fails to make the payment due from
H him under sub-clause (1) within the time prescribed by the Ad-

> ministrative Body, the Administrative Body shall serve a notice on the employer to the effect that, unless he pays his dues within three days from the date of receipt of the notice, the supply of registered dock workers to him shall be suspended. On the expiry of the notice period, the Administrative Body shall suspend the supply of registered dock workers to a defaulting employers until he pays his dues."

Export of iron ore is a major item of export from Mormugao port. The loading of the ore on the ocean going vessel is being done manually by conventional method or mechanically. For the purpose of manual loading the barge carrying the ore comes alongside the vessel which is anchored mid-stream and the ore is loaded on the vessel normally by two units of winch drivers and gang workers, each unit being constituted by four winch drivers and then gang workers per crane and operating by shifts of 8 hours each. The gang workers manually load the ore from the barge on net slings which are lifted by the ocean-going vessel's cranes operated by the unit's winch drivers to its holds. Loading is done mechanically by the mechanical ore handling plant that has been set up at Berth No. 9 at Mormugao port in 1979 as well as by grab cranes. The mechanical ore handling plant can, however, fully load vessels upto 65,000 DWT only and vessels with larger capacity are partly loaded at Berth No. 9 by mechanical ore handling plant and thereafter they are taken to mid-stream where they are loaded to their full capacity either by a vessel fitted with grab cranes which is called "transhipper" or by grab cranes fitted on the ocean going vessel itself. For loading by a transhipper the iron ore is carried to the ocean going vessel in a barge and the transhipper moves between the barge and the ocean-going vessel. The ore is removed from the barge by use of grab cranes fitted to the transhipper and is placed on a conveyor belt and is directly taken to the holds of the ocean-going vessel by the conveyor belt. Where the ocean-going vessel itself is fitted with grab crane the barge containing the ore is brought adjacent to the ocean going vessel and the grab crane of the vessel lifts the ore from the barge and places it directly in the hold of the vessel. Both these forms of loading require only winch drivers to operate the grab crane and they do not require any gang worker to load the ore because the ore is collected and picked by the grab crane itself.

Vessels fitted with grab cranes were introduced some time in 1970. The introduction of the said vessels gave rise to industrial unrest and it was

A resolved by a settlement dated October 17, 1970 arrived at under Section 2(p) of the Industrial Disputes Act, 1947 between M/s V.M. Salgaocar & Bros. Pvt. Ltd. and the workmen employed for stevedoring work at Mormugoa Harbour. The said settlement provided for employment of suitable winchmen from amongst the reserve pool winchmen as their direct employees. As regards gang workers, the following provision was made in B the said settlement :

> "(a) As regards gang workers, the employers may place requisition for these workers, if they require, with the Pool Office of the Dock Labour Board. Gangs booked for work on vessels equipped with C grab-cranes, will be given hazeree on the same basis as given to the winchmen.
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> (b) Wherever gangs are not booked for work, the employer shall pay double the levy to the Dock Labour Board chargeable for one D gang for each working grab-crane."

Insofar as the owners of transhippers are concerned since they were employing their own winchmen they claimed that they were not required to register themselves under the Scheme and they were not liable to pay any levy under the scheme on the ground that the cargo handled by them E was outside the Scheme. A writ petition (W.P. No. 47 of 1971) was filed by M/s Chowgule & Co. Pvt. Ltd., owners of a transhipper vessel, in the Court of Judicial Commissioner of Goa wherein it was contended that the owners of the transhipper were not doing dock work within the meaning of the Scheme and they were entitled to employ their own labour and they F were not required to pay any levies for the cost of administering the Scheme. The said writ petition was disposed of by the Judicial Commissioner by his judgment dated August 19, 1974 whereby the contention that the owners of the transhipper were outside the Scheme and did not perform dock work was rejected and it was held that they were liable to pay levy for the winchmen. It was, however, held that the owners of the G transhipper were not liable to pay notional levy on the basis of gangmen who were not actually utilised by the said owners. The Board as well as the owners of the transhipper filed appeals against the said judgment of the Judicial Commissioner in this Court and the said appeals were disposed of in terms of an agreement dated July 8, 1977 whereby it was agreed that the H owners of the transhipper shall register themselves as employers within the

meaning of the Scheme with liberty to employ their own workmen on their transhipper who would be treated as monthly workers under the Scheme and that the owner of the transhipper would pay a flat rate levy of 7 paise per tonne of cargo handled though the transhipper which rate of levy would not be changed except by mutual consent of the parties. It appears that similar agreements were entered into with other owners of transhipper vessels in 1977. The rate of levy was revised from 7 paise per tonne to 21 paise per tonne and in April, 1983 a formula was agreed upon for future revision of the same. The said levy is composite and all inclusive.

In the course of time the number of ocean going vessels fitted with grab crane has increased and the volume of Cargo handled by such vessels has also been increasing from year to year. According to the figures supplied by the Board the tonnage handled manually in 1969-70 was 65,56,229 which came down to 11,58,587 in 1982-83. The total tonnage handled by transhippers/reloading equipment in the year 1969-70 was 2,23,052 and it went up to 50,09,509 in 1982-83. On account of the use of mechanised loading of ore in the vessel the requirement of gang workers has been reduced but there has not been corresponding reduction in the strength of the workers. The Board, therefore, passed a resolution on October 30, 1982 setting up a committee to study the comparative cost upto the point of landing in handling of ore by various modes and to recommend a scheme for rationalisation of levy structure for all modes of handling of ore, for consideration by the Board. At the same time the board decided to increase the percentage of general levy in respect of handling by grab crane fitted ships from 200% to 400% and the welfare levy from 30% to 60% The Central Government gave its approval to the said increase by its order dated March 11, 1983. Thereafter the Board issued the impugned circular dated March 19, 1983 increasing the general levy from 200% to 400% and the welfare levy from 30% to 60%. Similarly the Board decided to impose a special levy @ Re. 1/- per tonne in respect of all cargo handled manually by the registered dock workers. The said proposal was approved by the Central Government by letter dated March 14, 1983 and thereupon the impugned circular dated March 19, 1983 was issued by the Board imposing the special levy @ Re. 1/- per tonne in respect of all cargo manually handled by the registered dock workers with effect from March 14, 1983. The said circular was clarified by the Board by resolution dated July 14, 1983 that the special levy is authorised to be collected in respect of all cargos handled with the help of registered dock workers whether

A gangworkers or winch drivers. The said clarification was also approved by the Central Government by its letter dated December 21, 1983.

The committee that was constituted by the Board for rationalisation of levy structure, in its report dated September 30, 1983, has expressed the view that vessels fitted with grab cranes be classified into two categories B based on the biting capacity and it has recommended that the levy be charged at Rs. 3.25 per tonne in respect of ore loaded through grab cranes upto 7 tonnes biting capacity and Rs. 3.75 per tonne in respect of ore loaded through vessels fitted with grab cranes above 7 tonnes biting capacity. The Committee also recommended that in case of lumpy ore C loaded through vessels fitted with grab cranes such rates be reduced by 25 paise per tonne in respect of both the categories. The committee further recommended that these levy rates be subject to change every year proportionate to the increase in the levy rates in respect of ore loaded through winches/cranes with the help of gangworkers and winch drivers. According D to the committee, there was no difference in the FOB rates in respect of ore loaded through ship's gear either through cranes/winches or grab cranes and that the cost of loading in respect of vessels fitted with grab cranes was such cheaper then the one through, cranes/winches and, therefore, there was much scope for increasing the levy rate in respect of ore loaded through vessels fitted with grab cranes.

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Petitioner No. 1 is a company registered under the Companies Act, 1956 and is engaged in mining and export of mineral ores particularly iron ore. Petitioner No. 2 a shareholder and the Managing Director of Petitioner no. 1. Petitioner no. 3 is a partnership firm carrying on the F business of stevedoring in Mormugao Harbour and are engaged by petitioner no. 1 to handle the loading operations of petitioner no. 1 at Mormugao port. Feeling aggrieved by the circulars dated March 19, 1983 increasing the general levy as well as welfare levy and imposing the special levy the petitioners filed the writ petition giving rise to these appeals. In the said writ petition they assailed the validity of the impugned circulars G mainly on the ground that the said circulars were violative of the right to equality guarantee under Article 14 of the Constitution inasmuch as much higher levy has been imposed in respect of loading of ore done through ocean going vessels fitted with grab cranes as compared to loading of ore through transhipper fitted with grab cranes. It was submitted that although H grab cranes were used for loading by both the modes the petitioners were

saddled with the levy in respect of notional wages for gang workers although the services of the gang worker were not being required for the loading operation through grab cranes and that while wages of gang worker are not taken into account in the matter of fixing the levy in respect of loading through transhipper, the notional wages of the gang workers have been taken into account while imposing the levy in respect of loading done through going vessels fitted with grab cranes. The other ground that was urged was that the increase in the levy has been made applicable with retrospective effect on the basis that the approval of the Central Government was obtained ex-post facto and that such retrospective increase in the levy was not permissible under the Scheme.

On behalf of the Board it was pointed out that the owners of the transhipper stand on a different footing from the petitioners inasmuch as the transhippers are not required to utilise the services of the Board by requisitioning the supply of dock workers under the agreements arrived between the transhippers and the Board and that still they pay levy for handling of ore and that the amount of such levy was originally fixed at 7 paise in 1977 which was increased to 21 paise in September, 1980 and that now a formula has been evolved with consent whereunder the amount of levy payable by transhipper-owners comes to about 35 paise per tonne. In this regard it was also submitted that the owners of transhippers are required to invest huge capital cost and the same are manned by a staff crew as required under the Merchant Shipping Act and that the transhippers are made to operate on special conditions imposed on them by the Government of India and that transhippers are required to have their own set of workers for operating their cranes and other equipment with the result that they have to maintain two sets of crew and further the transhipper owners do not draw labour from the Board, not even winch driver. In the reply to the writ petition filed on behalf of the Board it was stated that the Board has been suffering budgetary deficits since 1979-80. It was pointed out that one of the factors for the continuous drain on the finances of the Board has been the increased off-take of iron ore by vessels fitted with grab cranes. According to the Board in 1979-80 only two small vessels fitted with grab cranes called at Mormugoa port. In 1980-81 the number of such vessels was three while in 1981-82 it was five, but in 1982-83 the said number was 11 and some of them were large vessels and this has resulted in loss of opportunity of employment for the registered dock workers. It was submitted that since the Board has to pay amount of

A minimum guaranteed wages and other amounts under the Scheme to workers irrespective work being available or not, the financial burden on the Board has increased. It was pointed out that efforts have been made since 1979 to reduce the strength of registered dock workers on the roll of the Board by introducing voluntary retirement scheme and other schemes and it has been brought own from 2314 to 1148 (consisting of 864 gang B workers and 284 winchmen) and that the impugned increase in levy was justified and is not unreasonable, arbitrary or discriminatory.

The High Court has rejected the contention urged on behalf of the petitioners that the impugned circulars are violative of Article 14 of the C Constitution. The High Court has pointed out that in vessels fitted with grab cranes the services of the reserve pool winch drivers are required during the loading operation only where as the owners of the transhippers use winch drivers employed by them throughout the year as monthly workers and the liabilities of the Board towards the latter workers are D much lower than the liabilities towards the former and that apart from the liability for the payment of the dues to the reserve pool workers the Board has also to incur expenses in order to keep in readiness an adequate number of reserve pool workers to satisfy the needs of the registered employers as and when required, even though the services of the reserve pool workers may be required for only two or three days at a time and, E therefore, it could not be said that grab crane fitted vessels and transhippers are equals. According to the High Court though both use mechanised method for loading of cargo on the ocean-going vessels the dissimilarities resulting from different systems of engaging dock workers are so marked, significant and of such import that make them unequal and a classification F distinguishing them one from another was reasonable and justified. In this context, the High Court has also mentioned that a registered employer engaging monthly worker like the transhipper has to pay all the dues such as salary, provident fund, gratuity, etc. whereas in the case of reserve pool worker the burden to pay all the dues including disappointment money and the attendance allowance is borne by the Board and that these two factors G have a direct impact on the cost of operating the scheme and the liability of the Board. The High Court has also rejected the contention that the levy which involves imposition in respect of notional employment of gang workers is unreasonable and arbitrary since no gang worker is employed for handling cargo in the grab crane fitted vessels. The High Court has H pointed out that use of grab crane method gave cause to unemployment of

gang workers in an increasing proportion and that while under the conventional method the maximum output of a unit of four winch drivers and ten gang workers is 300 tonnes of cargo per hook per shift, the cargo handled by grab crane fitted vessels is on an average 2520 tonnes per grab crane per shift and that this gives cause to a higher rate of unemployment of dock workers (both winch drivers and gang workers) from the reserve pool with the consequent increase in the liabilities of the Board if the grab crane method of handling cargo is used. The High Court has observed that the responsibility for such unemployment was impliedly admitted by some users of the grab crane method of cargo handling inasmuch in the agreement that was entered into on October 17, 1970 it was agreed that whenever gangs are not booked for work the employer shall pay double the levy to the Board chargeable for one gang for each working grab crane which implies that the principle of charging levy on notional employment of gang workers was found to be reasonable and fair by the trade, labour and the Board. While upholding the validity of the impugned circulars the High Court has, however, held that the said increased levy could not be raised with retrospective effect and can only operate prospectively. In this context, the High Court has pointed out that in view of Clause 54(3) of the Scheme prior approval of the Central Government was required before the Board could sanction any levy exceeding 100% of the estimated total wage bill calculated on the basis of daily wage rate and that the increase in the levy under the impugned circular exceeded 100% of the estimated total wage bill and, therefore, the levy could only be imposed after obtaining the approval of the Central Government. According to the High Court Clause 54(3) of the Scheme denotes that the Board cannot fix the levy retrospectively and since the approval of the Central Government is a condition precedent to the levy and without it no levy could be imposed the resolution passed by the Board on October 30, 1982 has no value since it has to be preceded by the approval of the Central Government. The High Court has, therefore, held that the impugned circular regarding enhancement of the general levy and welfare levy could not have retrospective effect from October 30, 1982 and it could take effect only from March 19, 1983. Similarly as regards the special levy the High Court has observed that the said levy could only take effect from July 14, 1983 the date of the resolution clarifying the matter and not from March 14, 1983 as communicated by the impugned circular.

Both sides have filed appeals against the judgment of the High Court.

A C.A. No. 258/85 has been filed by the petitioners while C.A.No. 541/85 has been filed by the Board.

We will first take up C.A. No. 258/85 filed by the petitioners. In this appeal the learned counsel has confined his challenge to the enhancement of the general levy from 200% to 400% and welfare levy from 30% to 60%. B The learned counsel for the petitioners has assailed the imposition based on the notional employment of gang workers. It has been urged that such an imposition is ultra vires clause 54 of the Scheme inasmuch as the said clause, on a true construction, does not authorise levy on notional employment basis. The other ground that has been urged to assail the levy is based C on Article 14 of the Constitution and it has been contended that there is no real or substantial difference between owners of transhipper and the petitioners so as to justify their being classified into separate categories and that the said classification has no nexus to the object of the levy which is to meet the social costs incurred by the Board for reserve pool gang workers. The said consideration for imposing the levy applies to both the D modes for loading, i.e., through transhippers fitted with grab cranes and ocean going vessels fitted with grab cranes yet the notional levy is imposed exclusively in respect of loading through ocean going vessels fitting with grab cranes.

E As regards the first contention urged by the learned counsel for the petitioners based on clause 54 of the Scheme it is necessary to bear in mind that the object of the Scheme, as set out in clause 2(1), is to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock F work. The Scheme seeks to achieve these twin objects by maintaining a reserve pool of registered dock workers who are available for work and a worker in the reserve pool is guaranteed minimum wages in a month under clause 32 as well as attendance allowance under clause 33 and disappointment money under clause 35. Clause 54(1) empowers the Board to recover from registered employers the cost of operating the Scheme. Since the G Scheme applies to gang workers the cost of operating the Scheme includes the payments made to gang workers under the various clauses of the Scheme. Normally a gang consists of four winchmen and 10 gang workers to operate a crane per shift. For operating the grab crane only winchmen are required and gang workers are not required. But insofar as the Board H is concerned it has to keep gang workers on its Rolls and to pay their

minimum wages and other allowances payable under the Scheme to the gang workers in the reserve pool. Since the wages and allowances payable to the workmen under the Scheme form part of the cost of operating the Scheme it would be permissible for the Board to recover the said cost by way of levy by treating the gang workers as notionally employed in the matter of loading the ore by the ocean going vessel fitted with grab crane. There is nothing in clause 54 which prohibits the Board from recovering such cost of operating the Scheme in this manner. In this context, it may also be mentioned that notional employment of gang workers in connection with loading of ore on ocean going vessels fitted with grab crane has been recognised in the settlement that was entered into on October 17, 1970 by M/s V.M. Salgaocar & Brother Pvt. Ltd. wherein it was expressly agreed that whenever gangs are not booked for work the employer shall pay double the levy to the Board chargeable for one gang for each working grab crane. It is, therefore, not possible to accept the contention urged on behalf of the petitioners that it was not permissible for the Board to impose the levy on the basis of notional employment of gang workers although the gang workers were not actually employed in the task of loading iron ore in the vessels fitted with grab cranes.

Coming to the other contention based on Article 14 of the Constitution we are in agreement with the view of the High Court that grab crane fitted vessels cannot be equated with transhippers fitted with grab cranes for the purpose of levy and that there are features which indicate that they cannot treated at par. In this context, it has to be noted that transhippers employ regular winchmen to operate the grab cranes fitted on the transhipper as their monthly workers and are responsible for paying all their dues such as salary, provident fund, gratuity, etc. Ocean going vessels fitted with grab cranes on the other hand utilise the services of reserve pool workers for operating the grab cranes and the Board has to bear the burden for such workers. Moreover, the owners of transhippers have to engage other staff to operate the transhipper as required under the Merchant Shipping Act and they have to incur expenses for maintaining the said vessel apart from the heavy amount which has been invested in the vessel itself. It can also not be ignored that ever since the introduction of grab cranes for the purpose of loading the ore at Mormugoa port in 1970, the ocean going vessels fitted with grab cranes have been treated differently from transhippers fitted with grab cranes in the matter of amount payable to the Board. The amount payable by ocean going vessels fitted with grab cranes is

A governed by the settlement dated October 17, 1970 while the transhippers are governed by the various agreements of 1977 which have been revised from time to time. Having regard to all these circumstances we are unable to accept the contention urged on behalf of the petitioners that since transhipper as well as the ocean going vessels fitted with grab cranes both use grab cranes for the purpose of loading the ore they should be treated B alike in the matter of imposition of levies by the Board.

It has been said that "no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the court does well not to C impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services". (See *P.M.A. Setty* v. *State of Karnataka*, [1988] Supp 3 SCR 155 at p. 189). The same thought is expressed in *San Antonio Independent School District* v. *Bodrigues speaking through Justice Stewart*, 411 U.S. 1 at page 41; *G.K. Krishnan* v. *The State of Tamil Nadu* D *& Anr.*, [1975] 2 SCR 715 at p. 730. Here we find that, according to the Board, one of the factors contributing to the continuous drain on the finances of the Board is the increased off-take of iron ore since 1979 by vessels fitted with grab cranes because such off-take results in loss of opportunity of employment for the registered dock workers and consequent increase in the burden on the Board for the minimum guaranteed E wages and other amounts payable under the scheme. The Board has made efforts to reduce the strength of registered Dock Workers on its roll from 2314 in 1148 in June 1983. A substantial number, i.e., 864, of those 1148 workers are gang workers who are denied opportunity of employment on account of take of iron ore by vessels fitted with grab cranes. Annexure 'A' F to the Rejoinder Affidavit filed on behalf of the petitioners in the High Court would show that prior to the enhancement of the general levy and welfare levy under the impugned circular the charges came to about Rs. 1.48 per wet M/ton and as a result of enhancement of the general levy and welfare levy by the impugned circular the said charges have been increased to about Rs. 2.55 per wet M/Ton, i.e., by about Re. 1 per wet M/Ton. On G the other hand, the cost of manual loading was in the range of Rs. 8.11 to Rs. 11.91 (Annexure 2 to the Affidavit in reply of A. Onkarappa filed on behalf of the Board in the High Court). The expenses for loading through transhipper (as per para 8 of the affidavit in reply filed on behalf of the Board in the High Court which was not disputed by the petitioners in their H rejoinder affidavit) come to Rs. 27 to Rs. 33 per tonne. By enhancing the

general levy and welfare levy under the impugned circular the Board, keeping in view the economics of the cost of loading under the various modes, has sought to balance its financial deficit caused on account of increased off take of ore through ocean going vessels fitted with grab cranes by enhancing the levies which has led to increase in the cost of loading through vessels fitted with grab cranes. In doing so the Board cannot be said to have acted arbitrarily or unreasonably or having subjected the petitioners to hostile or invidious discrimination. The impugned circular cannot, therefore, be held to be violative of the right guaranteed under Article 14 of the Constitution. C.A. No. 258 of 1985 filed by the petitioners must, therefore, fail and has to be dismissed.

C.A. No. 541 of 1985 filed by the Board is confined to the question whether the enhancement of the levies under the impugned circulars could be operative from October 30, 1982 the date of the passing of the resolution by the Board. The High Court has held that the circular dated March 19, 1983 regarding increase in the general levy and welfare levy from 200% to 400% and 30% to 60% respectively could only operate from the date of such circular and could not be made operative with effect from October 30, 1982, the date of passing of the resolution, for the reason that prior approval of the Central Government was required in view of clause 54(3) of the Scheme and the proposal made by the Board in its resolution dated October 30, 1982 was approved by the Central Government only on March 11, 1983. We do not find any infirmity in this approach of the High Court. Similarly as regards circular dated March 19, 1983 for imposition of special levy the High Court has rightly held that the said circular could not have retrospective effect. The said appeal must also, therefore, be dismissed.

In the result, both the appeals (C.A.No. 258/85 and 541/85) are dismissed but in the circumstances there will be no order as to costs.

R.P. Appeals dismissed.