

M/S. DELTA ENGINEERS
v.
STATE OF GOA & ORS.
(Civil Appeal No. 5510 of 2001)

APRIL 22, 2009

[R.V. RAVEENDRAN AND LOKESHWAR SINGH
PANTA, JJ.]

Goa, Daman and Diu Port Rules, 1983 – rr.2(ff) and 54A; First Schedule, Entry 21(4)(A-iv) – Goa, Daman and Diu Ports (Amendment) Rules, 1992 – Goa, Daman and Diu Ports (Amendment) Rules, 1994 – Amendments in 1992 and 1994 relating to levy of rental charges for use of government riverine land – Challenge to – Power and authority of Port Authorities to demand and recover rental charges for use of government riverine land, even before the amendment i.e. with retrospective effect – Held: The concerned amendment of Entry 21(4)(A-iv) in the First Schedule, and insertion of rules 54A and 2(ff) by the Amendment Rules, 1992 and the Amendment Rules, 1994 respectively, are valid – Respondents however could not demand or recover any amount for use and occupation of government riverine land for the period prior to 3.3.1994 when the 1994 amendment to the Rules came into force – Indian Ports Act, 1908.

Appellant, which was running a barge repair workshop on private land on the banks of river Zuari within jurisdiction of Panaji Port, was called upon by the port authorities to pay rental charges for use of river area adjoining the workshop. In response, appellant stated that it was not using any government land to repair barges, and all its activities were carried on within its own plot and therefore the demand was illegal.

Subsequently, the appellant filed writ petition

A contending that it was not liable to pay any rental charges
and the demand was illegal and challenged the validity
of the amendments to Goa, Daman & Diu Port Rules,
1983, providing for payment of rental charges.
Alternatively, it contended that even if the said
B Amendment Rules were valid and there was any liability
under the said Rules, the rental charges would be
payable only from 3.3.1994 when the 1994 amendment to
the said rules came into force. It therefore inter alia prayed
for a declaration that the Goa Ports (Amendment) Rules,
C 1992 and Rule 54A of the Goa Ports (Amendment) Rules,
1994 were ultra vires the Indian Ports Act, 1908 and for
quashing the demand for rental charges.

The High Court held that the challenge was only to
the 1992 and 1994 amendments and not to the
D unamended Goa, Daman and Diu Port Rules, 1983; that
the Port Authorities were entitled to levy rental charges
on 'open land' from the date when the said Rules came
into force (on 5.4.1984), under Rule 64 read with Entry
21(4)(A-iv) in the First Schedule of the said Rules; that the
E term 'open land' included riverine land and the
amendments to the rules in 1992 and 1994 merely clarified
the said pre-existing position; and that as the power to
levy rental charges was not created for the first time
under the 1992 or 1994 amendment to the rules, but
F existed even under the unamended rules which were not
challenged, the appellant could not avoid liability to pay
the rental charges demanded and accordingly dismissed
the writ petition filed by the appellant.

G In appeals to this Court, the questions which arose
for consideration were whether the appellant, whose
workshop is situated on the banks of river Zuari, used
government riverine land; whether the amendments to
the Goa, Daman and Diu Port Rules, 1983, by the
H Amendment Rules, 1992 and 1994, relating to levy of

rental charges for the use of government riverine land is ultra vires the provisions of the Indian Ports Act, 1908; whether the Goa, Daman and Diu Ports Rules, 1983 confers authority on the Port Authorities to demand and recover rental charges for the use of government riverine land, even before the amendment by the Amendment Rules of 1992 and 1994 and whether the Port Authorities have the power and authority to claim rental charges for the use of government riverine land, retrospectively for the period 5.4.1984 to 3.3.1994.

Partly allowing the appeals, the Court

HELD:1.1. The Indian Ports Act,1908 applies to Panaji Port. The workshop of appellant falls within the port limits of Panaji Port, in view of the extended definition of the word 'port' in Ports Act and the notification dated 29.11.1967 defining the areas falling within Panaji Port. The barge/boat repair workshop of appellant, situated on the bank of river Zuari used exclusively, portion of the river adjoining the workshop for berthing/beaching/mooring the barges/boats which came for repairs. The barges/boats that were repaired in appellant's workshop were moored (that is made fast by attaching a cable or rope to a fixed object on the shore or the bank of the river) along side the workshop during high tides. The barges/boats would settle down on riverbed during low tide. The barges/boats remained moored for periods extending from few hours to even a few weeks, depending upon the extent and nature of repairs to be carried out. Consequently, that portion of the river surface (during high tides) and riverine land (during low tides) alongside the workshop could not be used by anyone else for berthing, mooring, anchoring, or navigating. Thus, a portion of the river and the riverbed below, belonging to the government, alongside the appellant's workshop was regularly and exclusively used

A by the appellant for the mooring of barges/boats which come for repairs. If several such areas of the river adjoining the banks were demarcated and put to exclusive use by private workshops and Boat operators without any regulation, it will affect the river traffic, navigation and mooring of vessels in the river. The port authorities have to ensure that no structures are erected in the river, that rivernine land is not encroached, that siltation does not occur, and that there is no pollution by workshops or industries situated on the banks of the river. All these are incidental to the permission given by the port authorities to operate a workshop by berthing barges and other vessels in the river, alongside the workshop and carry out and undertake repairs. [Para 15] [22-B-H; 23-A]

D 1.2. The term 'landing place' is not defined in the Indian Ports Act, 1908 or the Goa, Daman & Diu Port Rules, 1983. 'Landing place' refers to a place on a river or other navigable water for loading and unloading of goods, or for receiving and delivering of passengers. The term 'landing place' is used in this sense in Rules 34, 38, 40, 41, 42, 54 and 55 of the Port Rules. But the term 'landing place' would refer not only to places earmarked or designated or specified as 'landing places', but to any and every place which is used as a landing place. Berthing of barges and other vessels in the river, alongside the workshop, for repairs would mean that there will be regular movement of men and material from the berthed vessel to the workshop and vice versa. Any area with a prepared berth in which craft can lie, can properly be described as a landing place. In effect, therefore, the river side of every warehouse or workshop on the banks of a river, which has a prepared berth in which vessels/craft can lie, with facilities for unloading or loading of men and material, will be a landing space, though not a designated landing place. The river surface

(during high water period) and river bed (during low water period) alongside the workshop, belonging to the government will also be a part of such landing place/workshop. A boat/barge repairing workshop situated on the river bank, can therefore, be said to be using the government riverine land. [Para 16] [23-B-F]

Black's Law Dictionary and Stroud's Judicial Dictionary, referred to.

2.1. Section 6 of the Act enables the Government to make rules in respect of the several matters enumerated therein. This includes regulation of the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or move in any port; regulation of the berths, stations and anchorages to be occupied by vessels in any such port; regulation of vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port; regulation of the manner in which oil or water mixed with oil can be discharged in any such port; regulation of traffic and maintaining free passages of such width as may be deemed necessary within any such port and along or near to the piers, jetties, landing places, wharves, quays, dock moorings and other works in or adjoining to the same; regulation of anchoring, fastening, mooring and un-mooring of vessels in the port; regulation of the moving and warping of all vessels within any such port and the use of warps therein; regulation of the use of the mooring buoys, chains and other moorings in the port; regulation of the use of piers, jetties, landing places, wharves, quays, warehouses and sheds belonging to the Government and fixation of the rates to be paid for the use of any port facility or any part of the port. It is thus clear that the scope and ambit of supervision and control of the port authorities under the

A Ports Act in regard to areas declared as ports, is very
wide. Section 6(jj) of the Act, in particular, enables the
State Government to make rules for regulating the use
of landing places, piers, jetties, wharves, quays,
B warehouses and sheds belonging to the Government
and fixing the rates to be paid for the use of the same.
[Para 17] [23-G-H; 24-A-E]

2.2.It is no doubt true that the landing place in the
usual sense refers to the river bank alongside the river
used for loading/unloading or embarking/ disembarking
C and not any portion of the river itself. But where the bank
of the river used for the workshop is a private land, and
the area of river adjoining such workshop (or riverine
land alongside the workshop) where the vessel is moored
and remains floating during high water period or settles
D on the riverbed during low water period, is also a part of
the landing place. When the entire river and the riverbed
belong to the government and is under the control of port
authorities, and when exclusive use of a part of such river
E area/riverine land adjoining the river bank is permitted by
the port authorities, they can demand a fee for such
regular or exclusive use, whether such use is continuous
and intermittent. The right or authority to demand such
charges can also be traced to the right to regulate the
F use of the port area. The port area includes the waters
of the river and the riverine land. The State is therefore
empowered to make rules regulating the use of the river
surface/riverine land alongside the workshop and also
G prescribe a rental charge for such use. [Para 18] [24-F-
H; 25-A-B]

2.3.The 1992 amendment and the 1994 amendment
to the Goa, Daman and Diu Ports Rules, 1983 which
enable the Port Authorities to levy, charge and recover
a fee or charge for using open Government riverine land
from the person who is permitted to use such
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Government riverine land is within the rule making power of the State, and cannot therefore be said to be ultra vires the rules making power under the Act. [Para 19] [25-F-G] A

2.4. In fact, even without specific rules, the port authorities in exercise of domain over riverine land and the river, could object to or prohibit the exclusive mooring by vessels which call at the workshop. The port authorities can also enter into an arrangement of lease/licence with the users of such riverine land/demarcated river surface alongside the workshop or establishment. But in the absence of specific rules and in the absence of stipulation of any special condition when granting permission, the persons permitted to have their establishment on private land on the banks of the river (falling within the port area), could well presume that the permission to have their establishment, included implied permission to use the riverine land/river alongside their establishments. [Para 20] [25-H; 26-A-C] B C D

State of Rajasthan vs. Municipal Board, Allahabad 1992 Supp (3) SCC 91, relied on. E

3.1. The term 'government riverine land' is defined under Rule 2(ff) inserted with effect from 3.3.1994. It refers to any land within fifty yards of high water mark (subject to any right to private property therein) including (a) any land falling within high water mark; (b) any land falling without (or alongside) the high water mark; (c) any portion of a shore or a bank. Even river bed which is covered by water during the high water period, and exposed during the low water period, is therefore riverine land. In fact several enactments have defined land submerged in water as 'land' for the purposes of those enactments. Therefore, there is no reason why land or river bed which is covered by water during only a part of the day and exposed to the sky during the remaining F G

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A hours of the day cannot be treated as land or riverine
land for purposes of the Act. But in the absence of a
special or deeming definition, the term 'open plot' cannot
be read as referring to the river bed which is covered by
water for part of the day and exposed for remaining part
B of the day. 'Open plot' refers to a plot of land which is
open to sky. A land which is covered by any construction
or water, cannot obviously be termed as an open plot.
[Para 21] [26-C-G]

C 3.2. When the Rules were brought into force on
5.4.1984, there was no provision for levy of any fee or
charge for use of riverine land. The Rules only provided
for a fee for the occupation of open plots. Only by the 1992
amendment, the words 'open riverine land' was added
under Entry 21(4) (A-iv) of the First Schedule so as to
D subject the occupation of open riverine land to payment
of fees. Prior to the 1992 amendment, the First Schedule
to the Rules did not provide for levy of any fees for
occupation of riverine land. However, it was only by the
1994 amendment, with effect from 3.3.1994, the Rules
E were amended by inserting clause(ff) in Rule 2 containing
the definition of 'government riverine land' and by
inserting Rule 54A specifically providing that no
government riverine land shall be used, without prior
written permission of the Captain of Ports and without
F making advance payment of rental charges at the
prescribed rate. Therefore, prior to the said amendment to
the Rules in 1994, neither the Act nor the Rules authorized
or enabled the Government to levy any fee/charge for use
of government riverine land. It is true that ever since 1989,
G Port Authorities were making sporadic demands from the
workshops and other units situated on the banks of the
river and making use of the river/riverbed for payment of
some fee. Some users also paid the amounts demanded.
But several users did not pay the amount and refused to

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pay the amount on the ground that the Port Authorities had no right to demand the same. Some of course, paid the amount without prejudice or under protest, when threatened with cancellation or withdrawal of NOC for running the workshop. Therefore, the fact that the Port Authorities were demanding a fee for use of riverine land even prior to 1992/1994 or that some workshop owners were paying such amount, did not mean that the demand was lawfully made in pursuance of authority vested in them to make such demand, or that the persons on whom the demands were made, were bound to pay the same. [Para 22] [26-G-H; 27-A-G]

3.3. When various workshop owners on whom demand was made for such payment refused, pointing out the absence of authority for demand thereof, the State thought it fit to amend the Rules. Initially, it amended the Rules by adding the words "and/or open riverine land" in Entry 21(4)(A-iv) with effect from 13.7.1992. The addition of the words "and/or open riverine land" to "open plots" clearly implies that open plots did not include open riverine land. At all events, any riverine land which is covered by water for nearly half the day, cannot obviously be referred to as an open plot. Therefore, it is evident that before the 1992 amendment, there was no provision in the rules for demanding any fee/charge for use of the riverine land. Even after the 1992 amendment, it was found that there was some confusion as 'open riverine land' had not been defined. The normal meaning of 'riverine land' is riparian land, that is, land adjacent to along the banks of the river. Whether the riverbed itself which was not covered by water during a part of each day, could be considered as riverine land, was obviously still an issue. Therefore, the Rules were again amended in 1994 inserting the definition of 'government riverine land' which included not only the portion of the bank within fifty yards of high-water-mark but also the land

A falling within the high-water-mark. The 1994 amendment also made a special provision under section 54A for use of government riverine land. [Para 23] [27-G-H; 28-A-D]

B 4. The amendment rules do not provide that they are retrospective in operation. Nor do the circumstances warrant such an inference. The amendment rules of 1992 and 1994 are not clarificatory, but are provisions investing the port authorities with the power to levy and collect charges for occupation of government riverine land. Therefore, the demand for charges for use of government riverine land is valid only from 3.3.1994. Therefore the Port Authorities could not demand or recover any amount for the period prior to 3.3.1994. The Port Authorities are therefore liable to refund any amount recovered within three years prior to the date of the writ petition. Obviously, any amount paid during a period beyond three years from the date of the writ petition, is not recoverable as barred by delay and laches. [Para 24] [29-A-E]

E *Zile Singh vs. State of Haryana*, 2004 (8) SCC 1, relied on.

F 5.1. The amendment of Entry 21(4)(A-iv) in the First Schedule, and insertion of Rule 54A and clause 2(ff) by the Goa, Daman and Diu Ports (Amendment) Rules, 1992 and Goa, Daman and Diu Ports (Amendment) Rules, 1994, are upheld. [Para 25] [29-E-F]

G 5.2. It is declared that the respondents could not demand or recover any amount for the use and occupation of government riverine land for the period prior to 3.3.1994. [Para 25] [29-F-G]

H 5.3. Any charge recovered by the respondents from the appellant, towards occupation of government riverine land for the period prior to 3.3.1994, shall be refunded to

the appellant, if such amount has been received by the Port Authorities within three years before the date of filing of the writ petition. The amount, if any, so due shall be refunded with six per cent interest from the date of receipt till date of repayment. Alternatively, the amount paid by the appellant for the period prior to 3.3.1994 in entirety (even amounts paid prior to three years from the date of petition) may be adjusted at the option of the port authorities towards future dues, without any obligation to pay interest. [Para 25] [29-G-H; 30-A-B]

Case Law Reference:

1992 Supp (3) SCC 91 relied on Para 19

2004 (8) SCC 1 relied on Para 25

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5510 of 2001.

From the Judgment & Order dated 11.04.2001 of the High Court of Bombay at Panaji Bench, Goa in Writ Petition No. 131 of 1996.

WITH

C.A. Nos. 5511, 5512, 5513 & 5515 of 2001.

Dhruv Mehta, Yashraj Singh Deora, Harshvardhan Jha and T.S. Sabrish (for K.L. Mehta & Co.) for the Appellants.

Shyam Devan, A. Subhashini and D.M. Nargolkar for the Respondents.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. The appellant runs a barge repair workshop on a private land at Oudossim, Cortalim on the banks of river Zuari within the jurisdiction of Panaji Port.

A According to the appellant, there are two types of barge workshops: one is dry dock workshop, and the second is where the barges anchored in the river along side the workshop are repaired. Appellant's workshop falls under the second category as it undertakes repair of barges only when the barge is floating above the waterline. About 1300 sq. mtrs. of the river area adjoining the workshop is used by the anchored barge under repair. The Zuari being a tidal river, the water level therein recedes during low tide and rises back during high tide. Consequently, the barge under repair moored alongside the river bank, would settle on the riverbed during low tide and rise with the water during high tide.

2. Appellant opened its workshop in the year 1983, after securing a NOC dated 25.7.1983 from the Captain of Ports, Government of Goa. The said NOC was renewed every year. On 29.8.1989, the appellant sought an amendment to NOC seeking permission to manufacture fishing trawlers etc. The Captain of Ports sent a reply dated 15.11.1989 calling upon the appellant to settle the outstanding dues (rental charges for use of river area adjoining the workshop) before considering the request for issue of a modified NOC. Appellant replied on 27.11.1989 stating that it was not using any government land to repair barges, and all its activities were carried on within its own plot and therefore the question of any dues did not arise. Some years later, the Captain of Ports issued a show cause notice dated 15.5.1992 alleging that the appellant was using government riverine land for the workshop without paying the prescribed rental charges, in spite of demand letter dated 15.11.1989, and therefore, the appellant should show cause why the NOC issued to it on 25.7.1983 for setting up the workshop, which was being renewed every year, should not be revoked or withdrawn for non-payment of the outstanding rental charges for use of the government riverine land from 1983. The demand was reiterated on 13.7.1992. By letter dated 1.11.1993, the Captain of Ports informed the appellant that unless there was compliance with the demand, action will be

taken to revoke the NOC and evict the appellant. In view of the said threat, the appellant, without prejudice to its rights and under protest, sent a payment of Rs.145000/- on 25.9.1995 stating that the amount paid was calculated with reference to the use of 1000 sq.m. of river area. A

3. The appellant filed W.P. No.131/1996 contending that it was not liable to pay any rent and the demand was illegal. It challenges the validity of the amendments to Goa, Daman & Diu Port Rules, 1983, providing for payment of rental charges. Alternatively, it contended that even if the said Amendment Rules were valid and there was any liability under the said Rules, the rental charges would be payable only from 3.3.1994 when the 1994 amendment to the said rules came into force. It therefore prayed (a) for a declaration that the Goa Ports (Amendment) Rules, 1992 and Rule 54A of the Goa Ports (Amendment) Rules, 1994 were ultra vires the Indian Ports Act, 1908; (b) for quashing the demand for rental charges by letter dated 1.11.1993; and (c) for a direction to the respondents to refund the amounts paid by appellant towards rental dues. B C D

4. The High Court by a common order dated 11.4.2001, dismissed the appellant's writ petition and other similar petitions. It found that the challenge was only to the 1992 and 1994 amendments and not to the unamended Goa, Daman and Diu Port Rules, 1983; that the Port Authorities were entitled to levy rental charges on 'open land' from the date when the said Rules came into force (on 15.4.1984), under Rule 64 read with Entry 21 (4)(A-iv) in the First Schedule of the said Rules; that the term 'open land' included riverine land and the amendments to the rules in 1992 and 1994 merely clarified the said pre-existing position; and that as the power to levy rental charges was not created for the first time under the 1992 or 1994 amendment to the rules, but existed even under the unamended rules which were not challenged, the appellant could not avoid liability to pay the rental charges demanded. The said judgment is challenged in this appeal by special leave. E F G H

A Relevant Legal Provisions

5. Before adverting to the contentions of the parties, it will be useful to refer to the relevant provisions of law.

- B (5.1.) The Indian Ports Act 1908 ('Act' for short) extends (i) to the ports mentioned in the First Schedule to the Act; (ii) to the ports/navigable rivers/channels covered by previous enactments relating to ports; and (iii) to other ports or parts of navigable rivers and channels to which the Act is extended by the Government in exercise of the power conferred under the Act (vide section 1(2) of the Act). Section 3 contains the definitions and clause (4) thereof defines 'port' as including also any part of a river or channel in which the said Act, for the time being, is in force. Section 4 relates to power of the Government to extend or withdraw the Act or certain provisions thereof. It reads as under :

"4. Power to extend or withdraw the Act or certain portions thereof : (1) Government may, by notification in the Official Gazette, -

- E (a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force;

- F (b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

- G (2) A notification under clause (a) or clause (b) or sub-section (1) shall define the limits of the area to which it refers.

- H (3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and

other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark. A
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(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year."

Section 5 enabled the Government to alter the limits of any port in which the Act is in force. C

5.2. By notification dated 29.11.1967, issued in exercise of the power conferred under section 4 of the Act, the government extended the Act to several ports in Goa, Daman, Diu, including the Port of Panaji and also specified the areas comprised in the said port and limits thereof. As per the notification, the Panaji Port would include not only the port, but all the waters of rivers Mandovi, Mapusa and Naroa as also the waters of river Zuari eastward of the Agassaim – Cortalim ferry. D
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5.3. Section 6 enabled the Government to make such rules, consistent with the Act, as it thinks necessary, for any of the following purposes :

"(a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act; F
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(b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port;

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A (e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged;

B (ee) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same;

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C (f) for keeping free passages of such width as may be deemed necessary within any such port and along or near to the piers, jetties, landing-places, wharves, quays, docks moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free;

D (g) for regulating the anchoring, fastening, mooring and un-mooring of vessels in any such port;

(h) for regulating the moving and warping of all vessels within such port and the use of warps therein;

E (i) for relating the use of the mooring buoys, chains and other moorings in any such port;

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F (jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses, and sheds, when belonging to the government and for fixing the rates to be paid for the use of the same.

G (m) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port;

(n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port;

H (o) for regulating the employment of persons engaged in

cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port.”

[*Note : By Amendment Act 15/1997, clause (jj) was substituted by clauses (jj) and (jja) which read as follows:*

(jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the government;

(jja) for fixing the rates to be paid for the use of piers, jetties, landing places, wharves, quays, warehouses and sheds of any port, other than a major port, when belonging to the government;

5.4. In exercise of the powers conferred under section 6 read with sections 33, 35, 46 and 47 of the Indian Ports Act, 1908, the Lieutenant Governor of Goa, Daman and Diu made the Goa, Daman and Diu Ports Rules, 1983 ('Rules' for short). Rule 64 relates to levy of port dues and other fees and provides : 'Port dues and other fees shall be levied at all the ports at the rates specified in the Schedule.' The First Schedule to the said rules prescribes the schedule of fees and dues chargeable under the said rules. Entry (21) relates to fees chargeable for occupation of godowns, sheds, platforms and open plots. Item (A-iv) prescribed a fee of Rs.10 per sq.m. for occupation of "open plots". Note F thereto provided that the occupation of open space shall be subject to the conditions imposed by the Port Authority under the Rules. The Rules were amended by the Amendment Rules, 1992, whereby item (4) (A-iv) of Entry 21 of the First Schedule relating to open plots, was amended to include the words "and/or open riverine land" after the words "open plots".

5.5. The Rules were next amended by the Amendment Rules, 1994 whereby the following Rule 54A was inserted :

"54.A *Use of Government riverine land* – (1) No

A Government riverine land shall be used for any purpose by any person without prior written permission of the Captain of Ports and without making advance payment of rental charges at the rate of Re.1/- per sq. metre per month.

B (2) Whoever uses the Government riverine land in contravention of the provision of sub-rule (1) shall be punishable with fine which may extend to Rs.1500/- or imprisonment of one year or both.

C (3) Whoever continues to use Government riverine land as aforesaid and fails to restore it to its pristine condition after receipt of a written order to that effect from the Port Authority, shall, in addition to the fine specified in sub-rule (2), be liable to pay an amount of Rs. 150/- per day till such use stopped and such land restored to its pristine condition."

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Simultaneously, clause (ff) was inserted in Rule 2 containing definitions, by the Amendment Rules 1994, whereby the term 'Government riverine land' was defined as meaning "*any land falling within or without high-water mark and, subject to any rights of private property therein, any portion of a shore or bank, within 50 yards of high water mark.*"

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F 5.6. The Goa Barge Tax Act, 1973 was enacted to impose a tax on barges in Goa, Daman and Diu. Section 3 of the said Act provides that a tax at the rates fixed by the government shall be levied and collected on all barges used or kept for use in Goa, Daman and Diu.

Contentions of the respondents

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6. The demand for rental charges was authorized, legal and justified. Rule 64 of the Rules read with Entry 21(4)(A-iv) of the First Schedule thereto enabled and authorized the port authorities to levy and collect charges for occupation of any open land at all ports. The term 'open land' includes 'riverine land' also. The amendment to the Rules in 1992 and 1994,

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expressly providing for levy of charges for use of open riverine land, were merely clarificatory. The appellant having voluntarily paid the rental charges demanded, is estopped from challenging the validity of the levy of rental charges. A

7. The term 'port' extends to the part of river Zuari as notified and the riverbed of such part of the river when exposed for whatever period during a day, on account of low tide, becomes 'open land' under the control of the port and therefore, anyone using such land for whatsoever purpose, is liable to pay the charges as prescribed under Entry 21(4)(A-iv) of the First Schedule to the Rules. B C

8. When 'Government riverine land' forms part of any 'landing place' mentioned in clause (jj) of section 6 of the Act, the government has the power to regulate the use of government riverine land and levy fees/charges for use of such government riverine land. D

9. Under the Act, the port authority has very wide powers of supervising and regulating the affairs of the port and all activities in the areas falling within the jurisdiction of the port including movement of crafts, licencing of crafts, loading and wharfage and other related matters. Clause (jj) of section 6 of the Act enabled the government to make rules for the use of and fixing the rates to be paid for the use of piers, jetties, landing places, wharves, quays, warehouses and sheds. In view of it, the government could make rules regulating the use of government riverine land and also fix and recover the charges for use of such government riverine land. E F

10. The amount sought to be recovered is neither a tax nor a fee, but a charge levied for use of government property. The source of authority for levy of such a charge is derived in part from the ownership and partly with reference to the statutory rules. While levy of tax and fee would require express authority or sanction of law, claiming rental charges for permitting user does not require such express authority as it is incidental to the G H

A right of ownership and supervision. Therefore, even without reference to the Rules, the port authority was entitled to demand and recover rental charges for use of government property.

Contentions of the appellant

B 11. Open land does not refer to river, riverbed or river surface. Nor is it a 'riverine land'. Therefore, under the Rules as originally made and brought into effect on 5.4.1984, there was no power to levy any rental charges in regard to riverine land. Section 6 is specific about the matters in regard to which

C rules could be made by the government. Clause (jj) of section 6 specifically authorizes the government to make rules regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds of any port, when belonging to the government and for fixing the rates for the use thereof.

D Riverine land which is part of riverbed which gets exposed during low tide, is neither a pier, nor a jetty, landing-place, wharf, quay, warehouse or shed. Therefore, the Government has no power to make rules either for regulating the use of Government riverine land or for fixing the rates to be paid for the use of such

E Government riverine land. The amendment to the Rules in 1992 and 1994, providing for levy of a charge or fee for the use of riverine land is therefore ultra vires the provisions of the Act.

12. All barges using the river pay a barge tax. Therefore, no separate fee or charge can be levied for use of any river

F space for anchoring or mooring any barge in any part of the river. 'Landing place' refers to a land abutting the river or other navigable water, used for loading and unloading of goods or for embarking or disembarking of passengers or the terminus of a road on a river or other navigable water for the purpose of

G loading, unloading, embarking or disembarking. In short, 'landing place', is a place where people can embark/disembark and/or where goods can be loaded/unloaded, from or into a vessel. The term 'landing place' is used along with the words piers, jetties, wharves, quays, warehouses and sheds which are

H all associated with loading, unloading and storing of goods or

embarking and disembarking of passengers. Clause (jj) of section 6 authorizes the State Government to make rules regulating the piers, jetties, landing places, wharves, quays, warehouses and sheds, and not government riverine land which is a part of the river bed which gets partially exposed for a few hours in a day during the low tide period.

13. Alternatively, even assuming that the amendments to the Rules, made in 1992 and 1994 were valid, and therefore, there was power to levy charges on Government riverine land, such levy could be only be prospective when the rules were specifically amended in 1994 (with effect from 3.3. 1994) authorizing and enabling the Port Authorities to levy charges for use and occupation of such Government riverine land. Therefore, the demands and forcible recovery under threat and coercion, of such charges for the period 1983 to 3.3.1994 was wholly illegal and consequently any amount recovered in respect of such period is liable to be refunded.

Questions for decision

14. On the contentions raised, the following questions arise for our consideration :

- (i) Whether the appellant, whose workshop is situated on the banks of river Zuari, used government riverine land.
- (ii) Whether the amendments to the Goa, Daman and Diu Port Rules, 1983, by the Amendment Rules, 1992 and 1994, relating to levy of rental charges for the use of government riverine land is ultra vires the provisions of the Indian Ports Act, 1908?
- (iii) Whether the Goa, Daman and Diu Ports Rules, 1983 confers authority on the Port Authorities to demand and recover rental charges for the use of government riverine land, even before the amendment by the Amendment Rules of 1992 and

A 1994.

- (iv) Whether the Port Authorities have the power and authority to claim rental charges for the use of government riverine land, retrospectively for the period 5.4.1984 to 3.3.1994?

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Re : Question (i)

15. The Indian Ports Act applies to Panaji Port. It is not disputed that the workshop of appellant falls within the port limits of Panaji Port, in view of the extended definition of the word 'port' in Ports Act and the notification dated 29.11.1967 defining the areas falling within Panaji Port. The barge/boat repair workshop of appellant, situated on the bank of river Zuari used exclusively, portion of the river adjoining the workshop for berthing/beaching/mooring the barges/boats which came for repairs. The barges/boats that were repaired in appellant's workshop were moored (that is made fast by attaching a cable or rope to a fixed object on the shore or the bank of the river) along side the workshop during high tides. The barges/boats would settle down on riverbed during low tide. The barges/boats remained moored for periods extending from few hours to even a few weeks, depending upon the extent and nature of repairs to be carried out. Consequently, that portion of the river surface (during high tides) and riverine land (during low tides) alongside the workshop could not be used by anyone else for berthing, mooring, anchoring, or navigating. Thus, a portion of the river and the riverbed below, belonging to the government, alongside the appellant's workshop was regularly and exclusively used by the appellant for the mooring of barges/boats which come for repairs. If several such areas of the river adjoining the banks were demarcated and put to exclusive use by private workshops and Boat operators without any regulation, it will affect the river traffic, navigation and mooring of vessels in the river. The port authorities have to ensure that no structures are erected in the river, that riverine land is not encroached, that siltation does not occur, and that there is no pollution by workshops or

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[R.V. RAVEENDRAN, J.]

industries situated on the banks of the river. All these are incidental to the permission given by the port authorities to operate a workshop by berthing barges and other vessels in the river, alongside the workshop and carry out and undertake repairs.

16. The term 'landing place' is not defined in the Act or the Rules. 'Landing place' refers to a place on a river or other navigable water for loading and unloading of goods, or for receiving and delivering of passengers. The term 'landing place' is used in this sense in Rules 34, 38, 40, 41, 42, 54 and 55 of the Port Rules. But the term 'landing place' would refer not only to places earmarked or designated or specified as 'landing places', but to any and every place which is used as a landing place. Berthing of barges and other vessels in the river, alongside the workshop, for repairs would mean that there will be regular movement of men and material from the berthed vessel to the workshop and vice versa. Any area with a prepared berth in which craft can lie, can properly be described as a landing place. (See - Black's Law Dictionary, Stroud's Judicial Dictionary). In effect, therefore, the river side of every warehouse or workshop on the banks of a river, which has a prepared berth in which vessels/craft can lie, with facilities for unloading or loading of men and material, will be a landing space, though not a designated landing place. The river surface (during high water period) and river bed (during low water period) alongside the workshop, belonging to the government will also be a part of such landing place/workshop. A boat/barge repairing workshop situated on the river bank, can therefore, be said to be using the government riverine land.

Re : Questions (ii) & (iii)

17. Section 6 of the Act enables the Government to make rules in respect of the several matters enumerated therein. This includes regulation of the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the

A rules, may enter, leave or move in any port; regulation of the berths, stations and anchorages to be occupied by vessels in any such port; regulation of vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port; regulation of the manner in which oil or water mixed with oil can be discharged in any such port; regulation of traffic and maintaining free passages of such width as may be deemed necessary within any such port and along or near to the piers, jetties, landing places, wharves, quays, dock moorings and other works in or adjoining to the same; regulation of anchoring, fastening, mooring and un-mooring of vessels in the port; regulation of the moving and warping of all vessels within any such port and the use of warps therein; regulation of the use of the mooring buoys, chains and other moorings in the port; regulation of the use of piers, jetties, landing places, wharves, quays, warehouses and sheds belonging to the Government and fixation of the rates to be paid for the use of any port facility or any part of the port. It is thus clear that the scope and ambit of supervision and control of the port authorities under the Ports Act in regard to areas declared as ports, is very wide. As noticed above, section 6(jj) of the Act, in particular, enables the State Government to make rules for regulating the use of landing places, piers, jetties, wharves, quays, warehouses and sheds belonging to the Government and fixing the rates to be paid for the use of the same.

F 18. It is no doubt true that the landing place in the usual sense refers to the river bank alongside the river used for loading/unloading or embarking/ disembarking and not any portion of the river itself. But where the bank of the river used for the workshop is a private land, and the area of river adjoining such workshop (or riverine land alongside the workshop) where the vessel is moored and remains floating during high water period or settles on the riverbed during low water period, is also a part of the landing place. When the entire river and the riverbed belong to the government and is under the control of port authorities, and when exclusive use of a part of such river

area/riverine land adjoining the river bank is permitted by the port authorities, they can demand a fee for such regular or exclusive use, whether such use is continuous and intermittent. The right or authority to demand such charges can also be traced to the right to regulate the use of the port area. The port area as noticed above includes the waters of the river and the riverine land. The state is therefore empowered to make rules regulating the use of the river surface/riverine land alongside the workshop and also prescribe a rental charge for such use.

19. We may in this context refer to the decision of this Court in *State of Rajasthan vs. Municipal Board, Allahabad* [1992 Supp (3) SCC 91] where the question whether a Municipality which had a right to regulate user of public street, had the right to realize Tehbazari or ground rent from hawkers, shopkeepers and other squatters on the patri on the public street, was considered. Section 220 of the UP Municipalities Act, 1916 which governed the issue provided that no itinerant, vendor or other persons shall be entitled to use or occupy any public street or place for the sale of articles or for exercise of any calling or for setting up any booth or stall without the permission of the Municipal Board given in accordance with the bye-laws, notwithstanding any right or privilege previously acquired, or accrued or enjoyed. This Court held that the non obstante clause superimposed the right of the municipality to regulate the user of public street by vendors and other persons and consequently, the municipality has the right to realize ground rent from them.

We therefore hold that the 1992 amendment and the 1994 amendment to the Goa, Daman and Diu Ports Rules, 1983 which enable the Port Authorities to levy, charge and recover a fee or charge for using open Government riverine land from the person who is permitted to use such Government riverine land is within the rule making power of the State, and cannot therefore be said to be ultra vires the rules making power under the Act.

20. In fact, even without specific rules, the port authorities

- A in exercise of domain over riverine land and the river, could object to or prohibit the exclusive mooring by vessels which call at the workshop. The port authorities can also enter into an arrangement of lease/licence with the users of such riverine land/ demarcated river surface alongside the workshop or
- B establishment. But in the absence of specific rules and in the absence of stipulation of any special condition when granting permission, the persons permitted to have their establishment on private land on the banks of the river (falling within the port area), could well presume that the permission to have their
- C establishment, included implied permission to use the riverine land/river alongside their establishments. Be that as it may.

Re : Question (iv)

- D 21. The term 'government riverine land' is defined under Rule 2(ff) inserted with effect from 3.3.1994. It refers to any land within fifty yards of high water mark (subject to any right to private property therein) including (a) any land falling within high water mark; (b) any land falling without (or alongside) the high water mark; (c) any portion of a shore or a bank. Even river bed
- E which is covered by water during the high water period, and exposed during the low water period, is therefore riverine land. In fact several enactments have defined land submerged in water as 'land' for the purposes of those enactments. Therefore, we do not see why land or river bed which is covered by water
- F during only a part of the day and exposed to the sky during the remaining hours of the day cannot be treated as land or riverine land for purposes of the Act. But in the absence of a special or deeming definition, the term 'open plot' cannot be read as referring to the river bed which is covered by water for part of the day and exposed for remaining part of the day. 'Open plot'
- G refers to a plot of land which is open to sky. A land which is covered by any construction or water, cannot obviously be termed as an open plot.

- H 22. When the Rules were brought into force on 5.4.1984, there was no provision for levy of any fee or charge for use of

riverine land. The Rules only provided for a fee for the occupation of open plots. Only by the 1992 amendment, the words 'open riverine land' was added under Entry 21(4) (A-iv) of the First Schedule so as to subject the occupation of open riverine land to payment of fees. Prior to the 1992 amendment, the First Schedule to the Rules did not provide for levy of any fees for occupation of riverine land. However, it was only by the 1994 amendment, with effect from 3.3.1994, the Rules were amended by inserting clause (ff) in Rule 2 containing the definition of 'government riverine land' and by inserting Rule 54A specifically providing that no government riverine land shall be used, without prior written permission of the Captain of Ports and without making advance payment of rental charges at the prescribed rate. Therefore, prior to the said amendment to the Rules in 1994, neither the Act nor the Rules authorized or enabled the Government to levy any fee/charge for use of government riverine land. It is true that ever since 1989, Port Authorities were making sporadic demands from the workshops and other units situated on the banks of the river and making use of the river/riverbed for payment of some fee. Some users also paid the amounts demanded. But several users did not pay the amount and refused to pay the amount on the ground that the Port Authorities had no right to demand the same. Some of course, paid the amount without prejudice or under protest, when threatened with cancellation or withdrawal of NOC for running the workshop. Therefore, the fact that the Port Authorities were demanding a fee for use of riverine land even prior to 1992/1994 or that some workshop owners were paying such amount, did not mean that the demand was lawfully made in pursuance of authority vested in them to make such demand, or that the persons on whom the demands were made, were bound to pay the same.

23. It is clear that when various workshop owners on whom demand was made for such payment refused, pointing out the absence of authority for demand thereof, the State thought it fit to amend the Rules. Initially, it amended the Rules by adding

A the words "and/or open riverine land" in Entry 21(4)(A-iv) with
effect from 13.7.1992. The addition of the words "and/or open
riverine land" to "open plots" clearly implies that open plots did
not include open riverine land. At all events, any riverine land
which is covered by water for nearly half the day, cannot
B obviously be referred to as an open plot. Therefore, it is evident
that before the 1992 amendment, there was no provision in the
rules for demanding any fee/charge for use of the riverine land.
Even after the 1992 amendment, it was found that there was
some confusion as 'open riverine land' had not been defined.
C The normal meaning of 'riverine land' is riparian land, that is,
land adjacent to along the banks of the river. Whether the
riverbed itself which was not covered by water during a part of
each day, could be considered as riverine land, was obviously
still an issue. Therefore, the Rules were again amended in 1994
D inserting the definition of 'government riverine land' which
included not only the portion of the bank within fifty yards of high-
water-mark but also the land falling within the high-water-mark.
The 1994 amendment also made a special provision under
section 54A for use of government riverine land.

E 24. We may next consider whether the 1992 and 1994
amendments to the rules were retrospective in operation. In *Zile
Singh vs. State of Haryana* – [2004 (8) SCC 1], this Court held

F "It is a cardinal principle of construction that every statute
is *prima facie* prospective unless it is expressly or by
necessary implication made to have a retrospective
operation. But the rule in general is applicable where the
object of the statute is to affect vested rights or to impose
new burdens or to impair existing obligations. Unless
G there are words in the statute sufficient to show the
intention of the legislature to affect existing rights, it is
deemed to be prospective only."

[emphasis supplied]

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The amendment rules do not provide that they are retrospective in operation. Nor do the circumstances warrant such an inference. In fact, the contention of the respondents is not that power to levy fees/charges for use of riverine land was created/ vested in the port authorities, by virtue of the amendment rules and that such power was given to levy fees/charges retrospectively. The contention has been that the power to levy fees/charges existed ever since the Rules came into force on 5.4.1984 and that position was merely clarified by the amendment rules in 1992 and 1994. We have already held that the amendment rules of 1992 and 1994 are not clarificatory, but are provisions investing the port authorities with the power to levy and collect charges for occupation of government riverine land. Therefore, the demand for charges for use of government riverine land is valid only from 3.3.1994. Therefore the Port Authorities could not demand or recover any amount for the period prior to 3.3.1994. The Port Authorities are therefore liable to refund any amount recovered within three years prior to the date of the writ petition. Obviously, any amount paid during a period beyond three years from the date of the writ petition, is not recoverable as barred by delay and laches.

25. We therefore allow these appeals in part as follows:

(a) The amendment of Entry 21(4)(A-iv) in the First Schedule, and insertion of Rule 54A and clause 2(ff) by the Goa, Daman and Diu Ports (Amendment) Rules, 1992 and Goa, Daman and Diu Ports (Amendment) Rules, 1994, are upheld.

(b) It is declared that the respondents could not demand or recover any amount for the use and occupation of government riverine land for the period prior to 3.3.1994.

(c) Any charge recovered by the respondents from the appellant, towards occupation of government riverine land for the period prior to 3.3.1994, shall be refunded to the appellant, if such amount has been received by the Port

- A Authorities within three years before the date of filing of the writ petition. The amount, if any, so due shall be refunded with six per cent interest from the date of receipt till date of repayment within three months from today. Alternatively, the amount paid by the appellant for the period prior to 3.3.1994 in entirety (even amounts paid prior to three years from the date of petition) may be adjusted at the option of the port authorities towards future dues, without any obligation to pay interest.
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C CA Nos. 5511, 5512, 5513 & 5515 of 2001

26. These appeals are allowed in part in terms of the judgment in CA No. 5510/2001.

B.B.B.

Appeals partly allowed.