Legal Decision

Notification of Readiness/Commencement of Laytime – Entry Procedures at Indian Ports – "Prior Entry" versus "Final Entry"

Members are referred to the summaries of the *Albion* and *Nestor* judgements which appeared on page 8858 of *BIMCO Bulletin 4/87* and page 8976 of *BIMCO Bulletin 6/87* and in both of which it was held that the phrase "entered at customs house" should be construed to imply "final entry" at Indian ports where the entry procedure is a two-stage operation, the vessel being granted "prior entry" and subequently "final entry". Consequently, at least according to English law, the waiting time from granting of "prior entry" and until "final entry" is obtained must be absorbed by owners in case the charter party makes it a pre-condition for giving notice of readiness that vessel is "entered at customs house".

However, in a recent judgement rendered by the High Court of Bombay, the judge reached a different conclusion than that of his English colleagues. We reproduce below the summary of this judgement which appeared in *Lloyd's Maritime Law Newsletter No. 242* of 11 February, 1989 and which is reproduced by kind permission of the publishers, Lloyd's of London Press Limited.

The vessel *Jag Leela* was chartered for the carriage of wheat from USA to India. Clause 36 of the charter party provided:

> ". . . time to count from 24 hours after receipt of Master's written notice of readiness to discharge . . . vessel also having been entered at Custom House and in free Pratique, whether in berth or not."

The procedure in respect of unloading ship's cargo at Indian ports was that ship's agents filed an application for "inward entry" with import general manifest and other relevant documents under section 30(1) of the (Indian) Customs Act 1962, which was known as "prior entry", and the customs officer granted a berthing priority allocation number and "entry inwards" which authorised the master to discharge the cargo and was also known as "final entry".

Under section 31 of the Customs Act, the Master of a ship was prohibited from discharging the cargo until the proper officer had granted "entry inwards" to such vessel.

There was a dispute as to when time counted within the meaning of clause 36 of the charter party.

The charterers argued that the commercial interpretation of the charter party had to be considered as superseded by the general law, and that since section 31 of the Customs Act did not permit the Master to discharge the cargo at an Indian port until "entry inwards" or final entry, laytime commenced 24 hours after final entry was granted and notice of readiness to discharge was served on the charterers. The charterers cited *The Apollon* [1983] 2 Lloyd's Rep 496, and relied on *The Albion* [1987] 2 Lloyd's Rep 365, and *The Nestor* [1987] 2 Lloyd's Rep 649.

The shipowners contended that "entry inwards" or final entry could not be imported into the charter party contract, and that once the conditions of the charter party had been complied with, notice of readiness on the charterers would be sufficient compliance for laytime to commence 24 hours after service of such notice.

The shipowners argued that the charter party should be interpreted uninfluenced by the provisions of the Customs Act, because the terms of the charter party, which was a commercial document, had to be interpreted in accordance with their ordinary commercial connotation. "Entered at Custom House" was a term of art used in any standard charter party but not found in the Customs Act.

Therefore, the words "entry inwards" in section 31 of the Customs Act had to be construed in the sense it was used in the Act, and was nothing to do with the charter party. Accordingly, once the customs authorities had granted "prior entry", that should be considered as "entered at Custom House" as contemplated under the charter party.

Held, that court was concerned with the words "entered at Customs House" as set out in the charter party. Although those exact words were not found in the Customs Act, the phrase which came nearest was to be found in section 30(1), which provided that a ship's agent "shall, within 24 hours after arrival thereof at a customs station, deliver to the proper officer . . . an import manifest . . . in the prescribed form". That was nothing but entering at Customs House. That was the one thing the ship's agent had to do for entering the Customs area. The rest was for the proper officer. The charter party could not provide for what the Customs Officer had to do. It could only provide for what the parties to the agreement had to do. It had, therefore to follow that on a "prior entry" being made, and a notice of readiness being given, 24 hours thereafter laytime should necessarily begin. That was the law. That was the law as understood by commercial men.

It was true that in *The Albion* and *The Nestor* the English courts had taken a contrary view. The Indian court was not bound by those decisions. It had respect for them, but that should not and could not overawe the court's sense of judgement.

For the English judges, the Indian law was essentially a question of fact, but for the Indian court it was otherwise. It was a living instrument, operating within the parameters of actual experience. The English courts had missed the significance of section 30 of the Act, and also the role of the proper officer, and above all the object of the Act. It could not be said, even remotely, that the Customs Act purported to regulate in any manner the jural relations or obligations of the parties rising under the charter party.

Accordingly, the shipowners' submissions would be upheld.

Editor's Note: Despite the outcome of the above case, which will be of use to parties engaged in disputes governed by Indian law, members are nonetheless well advised to beware of stipulations impending giving of notice of readiness and commencement of counting of laytime and hence, observe the warnings which have appeared in BIMCO publications, e.g. page 1/6/5 of *Check before Fixing!*

Recommendation: Should it, however, prove impossible to avoid incorporating terms according to which obtaining of "Customs clearance"/"vessel to be entered at Customs House" or similar provision is a precondition for tendering valid notice of readiness, readers are recommended to ensure that it is to be understood that granting of **prior entry** is tantamount to "Customs clearance" etc. as established in the *Jag Leela* judgement.