(2017) 05 MP CK 0056

In the Madhya Pradesh High Court

Case No : 2346 of 2016

Chamandas and Ors.	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision : 08-05-2017

Acts Referred:

Limitation Act, 1963, Section 17(1)(c) - Effect of fraud or mistake
Railways Act, 1989, Section 106, Section 106(3) - Notice of claim for compensati

Citation : (2017) 05 MP CK 0056

Hon'ble Judges : Anjuli Palo

Bench : Single Bench

Advocate : K.N. Fakhruddin, Amrit Ruprah

Judgement

1. This miscellaneous appeal has been filed under Section 23 of the Railway Claims Tribunal Act 1987, by the claimant being aggrieved by the judgment/ order dated 8th July 2016, passed by the Railway Claims Tribunal, Bhopal Bench in Miscellaneous Case No.1R/106/2007, whereby the claim for refund and application for condonation of delay was rejected.

2. It is not disputed that, the appellant is a regular supplier of limestone/ dolomite to M/s. Bokaro Steel Plant. During the course of the business, the appellant had dispatched box rakes of Dolamite/limestone to Bokaro Steel Plant during March/April-2003 covering a distance of 826 kms.

3. In brief, the appellant''s case before the learned Tribunal was that the appellant is regular supplier of limestone/dolamite to M/s. Bokaro Steel Plant. During the course of its business, the appellant had dispatched box rakes of Dolamite Limestone to Bokaro Steel Plant covering a distance of 826 kms. For the first time, the appellant requested to verify new route distance as the traffic was diverted via Chhiwaky w.e.f. 01.04.2003 reducing distance approx. 10 kms. between the booking and the destination station. This was followed by a

reminder dated 25.11.2003, to certify the actual distance freight and to refund the difference freight, which has been paid. As per new distance table of West Central Railway and North Central Railway, approx. 10 kms. distance has been reduced by carrying goods by a new route. Therefore, the appellant has requested to refund the amount, which has been paid in excess between the period 01.04.2003 to 31.08.2003.

4. It is claimed that the respondent instead of refunding the amount of Rs.92,38,147.51 rejected the same on the grounds that, notice has not been served under Section 106 of the Railways Act. The railway administration by way of letter dated 31.10.2005 has admitted the actual distance from Nanwara to Bokaro Steel Plant is 818.19 kms. instead of 826 kms. Therefore, the railway administration has committed gross negligence and misconduct on their part by charging freight from the longer distance covering 826 kms. and actually carrying the consignment from a shorter distance 819.19 kms. In such type of claims, the compliance of Section 106(3) of the Railways Act is not necessary.

5. The appellant filed an application under Section 17(2) of the Railway Claims Tribunal Act, 1987 for refund of Rs.92,38,147.51. By the impugned judgment dated 08.07.2016, after interpreting Section 106 of the Railways Act, 1989 and Section 17(2) of the Railway Claims Tribunal Act 1987, the Railway Claims Tribunal rejected the applications. The appellant also contended that he had shown sufficient cause for condoning the delay. The matter was decided by the Railway Chief Commercial Manager West Central Railway on 1.8.2006.

6. The appellant challenged the order impugned on the grounds that learned Tribunal did not properly considered the reasons and sufficient cause shown for condoning the delay. The limitation before the Tribunal is three years as per Section 17(1) (a) of the Railways Claims Tribunal Act, 1987. The matter was pending before the Chief Commercial Manager, West Central Railway and it was decided on 1.8.2006. Within the limitation period of three years under Section 17(1) (a) of the Railways Claims Tribunal 1987, a claim petition was moved by the appellant after long time. Further the documents annexed with the appeal show the regular correspondence between the parties i.e. from 2003 to 2008. The merits of the case have not been properly considered by the learned Tribunal. Section 106 of the Railways Act is not applicable in the appellant''s case. Therefore, the appellant prayed to set aside/quash the impugned judgment/ order dated 8.7.2016 passed by the Tribunal and allow the application.

7. Learned counsel for the respondent vehemently opposed the prayer of the appellant.

8. Learned counsel for the appellant has placed reliance in the case of "Maihar Cement Vs. Union of India and othes, AIR 2012 MP 104" in which after detailed discussion on the provision of Section 106(3) of the Railways Act 1989, it was held that in case where refund of excess amount paid towards the freight, the same would be refunded of overcharge and is governed by the provisions under

Section 106 of the Railways Act 1989. Sub-section (3) clearly stipulates that a person shall not be entitled to a refund of an overcharge in respect of goods carried by railway, unless a notice therefore has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

9. By circular dated 11.1.1995 issued by the Railway Board in purported exercise of its powers under Section 3 of "1905 Act" which empowered the General Manager to take into consideration the time barred claim for refund of overcharge as per the circular in exercise.

10. Learned counsel for the appellant has further placed reliance in the case of "Dimond Cements (M/s) Vs. Union of India, I.L.R. (2013) M.P. 2417", wherein it is held as under:- "11. The term ''over charge'' has not been defined in the Railways Act. It is well-settled in law that if a particular word is defined in that particular Act its meaning is to be derived from the definition clause. However, if the definition clause is silent on the said word then only the dictionary meaning is to be seen. The Supreme Court in West Coast Paper Mills Ltd. (supra) has thrown sufficient light upon the controversy that what is the meaning of term ''over charge''. It would be condign to quote relevant para 18 from the said decision wherein this controversy has been resolved by His Lordship by placing reliance upon the decision of Gujarat High Court in M/s Shah Raichand Amulakh (D) by his heir vs. Union of India and others, 1971 (12) GLR 93, which reads as under:-

"18. The term overcharge is not defined in the Act. In its dictionary meaning "overcharge" means "a charge of a sum more than as permitted by law" (see the Law Lexicon, P. Ramanatha Aiyar, 1997 Edition, Page 1389). The term came up for the consideration of the High Court of Gujrat in M/s Shah Raichand Amulakh (D) by his heir vs. Union of India and others, 1971 (12) GLR 93. Chief Justice P.N. Bhagwati (as his Lordship then was) interpreted the term by holding that "overcharge"is not a term of art. It is an ordinary word of the English language which according to its plain natural sense means any charge in excess of that prescribed or permitted by law. To be an over charge, a sum of money must partake of the same character as the charge itself or must be of the same genus or class as a charge it cannot be any other kind of money such as money recovered where nothing is due. Overcharge is simply a charge in excess of that which is due according to law."

12. Earlier to this decision, learned single Bench of this Court in "Associated Cement Co. Ltd. Durg Vs. Union of India, 1998 (1) MPLJ 33" in para-8 has thrown sufficient light over the term ''over charge'' and it would be fruitful to quote para-8 which reads, thus:-

"8. It is obvious that this section is mandatory in nature and, therefore, the claims of the appellant must fail if claim is for overcharge of freight. The service of notice under Section 78-B of ''the Act of 1890'' is a must, before person can claim refund of "over charge" or compensation for loss, destruction or deterioration or non-delivery of animals or goods. Now, the word "overcharge"has not been defined in ''the Act of 1890''. Therefore, ordinary dictionary meaning of the word has to be applied. Overcharge means charge more than what is actual value of anything. Strictly speaking, overcharge means to charge more than what is due to a thing or a transaction. the appellant in this case says the value of freight should be measured by distance to which the goods were in fact, carried and not on the hypothetical basis that goods were to be carried in accordance with the supposed rationalization scheme. The longer rationalized route was different than the actual shorter route as chalk is different from cheese. The longer route was costly to the appellant. The shorter was cheaper. The appellant was not charged more for the same thing. It was charged more than the due charge for 1294 kilometers. It was charged for 1315 kilometers on a supposition that it was due. The extra charge was some thing undue, for this reason, the refund cannot be said for an ''overcharge''."

11. In the light of above principles, the present case would come under the ambit and scope of differential freight and is not the case of over charge. Section 106 of the Act is not applicable in the present case. The Railway Authorities have committed mistake in charging excess freight on wrong calculation of distance.

12. The limitation starts running from the date of discovering of mistake, therefore, stands excluded by operation of Section 17(1)(c) of the Limitation Act. Section 78(B) has no application on this law. The Tribunal has committed error of law in rejecting the claim for refund.

13. Appeal is thus liable to be allowed. The impugned judgment is hereby set aside. The case be sent back to the learned Tribunal with direction to pay the damages or refund the due amount to the appellant in accordance with law.

14. The parties are hereby directed to bear their own costs.

