

(1985) 02 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 504, 518 and 829 of 1983

Darshan Kumar Mahajan and etc.

APPELLANT

Vs

Station Master, Rly. Station and Others

RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Limitation Act, 1995 — Section 14
Railways Act, 1890 — Section 29, 42, 78B

Citation : AIR 1986 J&K 74

Hon'ble Judges : Mazhar Ali Shah, J

Bench : Single Bench

Advocate : R.P. Sethi and Charanjit Kumar, for the Appellant; Avtar Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mazhar Ali Shah, J.—The above said three writ petitions raises identical question and the controversy also relates to the similar facts, which

are heard together and are hereby disposed of by u single judgment.

2. The case in brief of the petitioner is that he is a local merchant, who imports coal within the State of Jammu and Kashmir from various Slates in

the country for the purpose of loading coal from Railway Station Jogi Gopha to North-east Frontier Railways located in Assam. The Wagons were

allotted to the petitioner with the directions to load the same with an area of 42.6 square meter cc 53 tonnes up to the height of 1.35 meter, vide

memo dt. 19-5-1983. The wagon was despatched to Bari Brahmana Railway Station in the State of Jammu and Kashmir for the transhipment of

the above said local under a valid Railway receipt duly executed and signed by the petitioner in token of despatch of consignment. This is an

admitted fact that the railway receipt, which is issued to the petitioners contains overleaf a notice, which forms part of the contract. The petitioner further contends that the respondents vide their letter (Annexure A) to the petition dt. May 31, 1983 demanded the rate of Rs. 615.50 per metric tonne instead of Rs. 296.30 per metric tonne as quoted in the RR, the reason given by the respondents that the coal has been found to be excess in weight and the petitioner is liable to pay a penalty on the excess weight of coal. The said action is attacked on several grounds inter alia that the Wagons were not weighed in presence of the petitioner, no opportunity was provided to the petitioner to rebut the allegations of the respondents, that the action of the respondents is illegal and against the provisions of law, there is no provision in the Railways Act for imposing penalty on the excess weight, Rule 161 of the General Rules for Goods Tariff No. 36-Part-I (Volume I) is illegal, void and inoperative on the ground that the same has been framed without any authority of law, the rule is discriminatory and violative of the Railways Act and the Constitution of India and above all that the principles of natural justice are violated inasmuch as the petitioner was never afforded an opportunity to show cause regarding excess weight in the Wagons.

3. The respondents in their counter contested the claim of the petitioners with preliminary objections also raising the objection regarding entertainability of the present writ petition alleging that the disputes raised in the present petition flow from the contract of consignment of coal handed over to the Railways for transshipment from one Station to the other under the terms of the contract containing conditions overleaf with a specific notice to the consignor by which he is bound, the petitioner has more efficacious and effective remedy of filing a civil suit and also that the present writ petition involves disputed question of facts and law arising out of the private contract as distinguished from the statutory contract, hence the writ petition is liable to be dismissed on the above said grounds. In their counter, it is further submitted that under the Railway Receipt, the Railway weight found en route or on the destination and the rate prescribed under Rule 161 of the General Rules contains Goods Tariff No. 36 Part-I (Volume 1), which forms part of the contract, thus the respondents were within their right to reweigh the Wagons en route which were in

fact reweighed at Ludhiana by the Railways Staff, which consists of responsible high Railway Officials within the four corners of their right. It is also

submitted that if there was any doubt to the petitioner, he could have got the same reweighed at the destination at his own cost, which was never

done by the petitioners. No fundamental right under Article 19 of the Constitution of India is infringed, hence the petition is liable to be dismissed.

4. Heard the learned counsel for the respective parties. Learned counsel for the petitioner vehemently argued that in the present case, the

respondents cannot rely back on the rules in face of the allotment of Wagons to the petitioner without weighment at the starting station, since the

reweighment took place en route in the absence of the petitioner, it was incumbent on the respondents to show the excess weight clearly

distinguishing from the permissible weight and then only the respondents were entitled only to the excess amount of payment according to the

agreed rate, which was quoted in the present case as Rs. 296.30 paise per metric tonne and not the penal rate of Rs. 615.50 paise per metric

tonne demanded by them. Such an action runs contrary to the letter of the respondent dt. 19-5-1983 (Annexure-B) with the petition, wherein only

the area is specified and the permissible height, which was fully complied with by the petitioner and hence in imposing the penalty the respondents

acted in violation of their own contractual obligation as well as the action of reweighment being arbitrary, the principles of natural justice are also

violated and consequentially affected the right of the petitioner with respect to freedom of trade guaranteed under Article 19 of the Constitution of

India. He further submits that in view of the fact that wherever the goods are booked in bulk, the rules referred to by the respondents are not

applicable in the case of the petitioners as provided in Sub-rule (3) of Rule 121 of the Goods Tariff No. 36 Part-I (Volume I) quoted above,

which is in the following words : --

Goods in bulk. -- These rules do not apply to goods in bulk.

Thus the action of the respondents being violative of the contractual obligation as well as of the rules, the notice issued vide (Annexure A)

demanding penal charges under Rule 161 of the abovequoted rules is illegal and ultra vires the powers conferred on the respondents. In so far as

the preliminary objection is concerned, learned counsel relying on the authority

of the Delhi High Court reported in Marwar Tent Factory Vs.

Union of India and Another, , submitted that the bar of alternative remedy specially after the admission of the petition cannot be claimed in the case

of infringement to fundamental rights.

5. Learned counsel for the respondents in reply reiterating the points raised in their counter submitted that while the goods were booked from the

starting station, the wagons were provided to the petitioner under the specific conditions contained in the Railway Receipt on the back of which a

notice is printed, whereby the Goods Tarrif is made a part of the contract and also the right of the Railways with respect to which weighment en

route or at the destination is reserved, therefore, there is no force in the contention of the petitioner that Rule 161 is not applicable in the case of the

petitioner. The contract entered into by the petitioner being binding on him, the rules become part and parcel of the private contract, which is not a

statutory contract so as to attract the provisions of Article 226 of the Constitution of India or Section 103 of the Constitution of Jammu and

Kashmir. In support of his contention, learned counsel relies on an authority of their Lordships of the Supreme Court reported in Divisional Forest

Officer Vs. Bishwanath Tea Co. Ltd., , wherein it has been held by their Lordships of the Supreme Court, that if a statutory provision, if

incorporated in a contract, it will become a part of the terms of the contract and the corporated provision will lose its statutory character. Thus the

petitioner in the facts and circumstances of the present case was bound in case of infringement to comply with the directions issued vide (Annexure

A) demanding the higher rate than prescribed at the starting station due to his own fault. Reliance is also placed on AIR 1971 Ass 92 (Woodcrafts

Assam v. The Chief Conservator of Forests, Assam, Shillong).

6. Having heard the learned counsel for the parties, I find force in the arguments advanced by the learned counsel for the respondents that the

controversy raised in the present petition flows from the private contract and not a statutory contract and even going through the documents

produced before me and referred in the arguments, it is manifest that the terms of the rules having been incorporated in the contract of consignment

as well as in the Railway receipt, it was incumbent duty of the petitioner, who is an experienced businessman to utilize the Wagons within the

permissible limits and not beyond that. He can only enforce the rate prescribed in the Railway Receipt or by (Annexure B) with the petition, when

he fulfils the requisite conditions. Under Rule 161 quoted above, it is specifically provided in the following terms : --

161. Penalty for loading beyond carrying capacity. -

Consignors, in loading, are required not to exceed the permissible carrying capacity of the wagon used or any reduced carrying capacity that may

be required in the circumstances referred to in Rule"" 163. Should overweight be discovered, en route or at the destination, charges therefore will

be levied as under : --

(1) If the overweight above the permissible carrying capacity of the wagon is one tonne or less in a 4-wheeled/6 wheeled wagon and two tonnes

less in a S(sic)-wheeled wagon, such overweight will be charged at the ""Smalls"" rate applicable to the same commodity for the distance such

overweight is carried.

(2) If the overweight exceeds the limit mentioned in (1) above, entire overweight will be charged at double the highest class rate (Viz. Class 150)

for the distance such overweight is carried.

It leaves no doubt that it is a warning to the consignor, who cannot escape his liability to pay the penal rate if en route, it is found on re-weighment

that the Wagon contains overweight. Under Sub-rule (2) above, it is further provided that if the overweight exceeds the limit entire overweight will

be charged at double the highest class whereas in the present petition notice (Annexure A) contains a demand as per small rate applicable to the

commodity, but the fact remains that it becomes all the more duty of the Railways to specify and mention the overweight which they demand. Thus

under the circumstances it is pertinent that the present controversy involves complicated questions of fact for which an enquiry is necessary, which

can be done only by going through the evidence and it can only be determined after the respective parties prove their respective contentions in a

civil suit that the grievance can be redressed.

7. The contention of the learned counsel for the petitioner that the rules are not applicable in the present case is not well founded. That Sub-rule (3)

referred above is restricted to Rule 121 only and not in general. The authority cited by the learned counsel for the petitioner of the Delhi High

Court Marwar Tent Factory Vs. Union of India and Another, is distinguishable on the facts. In the present case, I do not find that any fundamental right of the petitioner is involved, it is a simple case of discharge of contractual obligation, which is a private contract and cannot be termed as a statutory contract for which the proper remedy for the petitioner lies in a regular civil suit, which he may choose to file u/s 78-B of the Railways Act. However, since the petitioner diligently prosecuted the present petition bar of limitation provided therein shall not come in his way in filing the civil suit as may be advised. It is no doubt true that availability of the alternative remedy is not an absolute bar in granting relief to the petitioner, but in the facts and circumstances of the present case, I do not find any ground to give relief to the petitioner in the present petition. I have already held a similar view in Writ Petns. Nos. 216 and 218 of 1984 (R.D. Brothers v. Chief Commercial Superintendent) decided on Nov. 21, 1984, thus the petition is liable to be dismissed on this ground alone, as the matters relating to overweight and the right of the petitioner to know the actual weight as well as the right of the respondents to weigh the commodity en route are all the questions based on disputed facts flowing from the contract of consignment. It is expected from the Railways also that while the re weighment is done in the absence of the consignor, he should be informed of the actual weight and the overweight so as to avoid confusion and to make the petitioner liable for the payment as demanded on over weight. It is equally the duty of the experienced businessman to abide by the rules and the contractual obligations not to overweight the Wagons, which is always expected from a reasonable citizen. The contention of the learned counsel for the petitioner challenging the validity of the rules referred to above loses its force on the very ground that the parties may bind themselves under a private contract to follow the Goods Tariff thereby it becomes part and parcel of the contract, hence the question of going into the vires of the provisions does not arise and thus the argument of the violation of principles of natural justice also fails.

8. For the foregoing reasons and with the observations made above with respect to the duty of the Railways to inform the petitioner about the actual weight and overweight done by them and also to avail the period of limitation, all the three petitions stand dismissed. However, in the

circumstances of the case, parties are directed to bear their own costs. Accordingly C.M.Ps. connected therewith also stand disposed of. Copy of the order be placed in all the three files.