

(1998) 05 DEL CK 0061

In the Delhi High Court

Case No : 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 924 of 1998, CM 1332, 1338, 1344, 1346, 1547/98

Darshan Pal and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-05-1998

Acts Referred:

Railways Act, 1989 — Section 73

Citation : (1998) 74 DLT 806 : (1998) 46 DRJ 274 : (1998) 120 PLR 24 : (1998) 4 RCR(Civil) 402

Hon'ble Judges : R.C. Lahoti, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Ashok K. Bhardwaj, Adv Shankar Divate, for the Appellant;

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.—This petition filed by a consignee of a consignment of coal seeks to lay challenge to the recovery of freight and penal charges levied and sought to be recovered by reference to Rule 161-A of the IRCA and Rule 3 of Railways (Punitive Charges for Overloading of Wagons) Rule 1990. Challenge is laid to the virus of the Rule also. A number of petitions were filed raising similar issues. One of such petitions was transferred by the Supreme Court of India to itself and registered as TC No. 47/97 thereat. It was heard Along with several other matters. The challenge laid to such demand has been turned down by the Supreme Court in the case of Jagjit Cotton Textile Mills Vs. Chief Commercial Superintendent N.R. and Others, . Their Lordships have held that the railway is legally empowered to levy such charges and recover the same even from the consignee. The rule has been held to be intravires. In view of the decision of the Supreme Court, the present petition does not survive for decision on merits.

2. Still the learned counsel for the petitioner submitted that Section 73 of the Railways Act, 1989 empowers the Railway to make recovery of the freight and

other charges including penalty "before delivery of the goods" and once the goods have been delivered, the charges cannot be recovered. The goods (i.e. the Coal) in this case was delivered and after the delivery the demand has been raised. The learned counsel further submitted that this plea was neither raised before the Supreme Court of India nor decided by their Lordships in the case of Jagjit Cotton Textile Mills (supra) and hence this plea needs to be dealt with by this Court inspire of the above said judgment of the Supreme Court.

3. Section 73 reads as under :-

73. Punitive charge for over-loading a wagon.--Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under Subsection (2) or Sub-section (3), or notified under Sub-section (4), of Section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods :

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account."

4. Support is also drawn from para 1427 of Commercial Manual of Railways which reads as under :-

"1427. The freight charges, in the cases referred to in the preceding para, should be invoiced on the sender's declared weight. It will be the duty of the destination station to weigh all such consignments and recover under charges, if due, before delivery of goods."

5. From a perusal of the above said two provisions, we are of the opinion that the phrase - "before the delivery of the goods" as occurring therein is permissive in nature. It empowers the railways to effect such recovery by refusing to deliver the goods unless and until the charges have been paid. In other, words, the provisions create a right in the nature of lien in the railways. The provisions cannot be read to mean that the recovery of freight charges and penalty cannot be made once the goods have been delivered.

6. For the foregoing reasons, the petition is dismissed though without any order as to the costs.

7. The interim order passed on 11.3.98 also stands vacated.

8. CWP stands dismissed.