

(2000) 03 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 8913 of 2000

Durgesh Coal and others

APPELLANT

Vs

Northern Railway, New Delhi and others

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Conference Association Tariff Rules — Rule 702
Railways (Punitive Charges for Overloading of Wagon) Rules, 1990 — Rule 3
Railways Act, 1989 — Section 2, 2(37), 27, 64, 65(2)
Constitution of India, 1950 — Article 226
Railway Conference Association Tariff Rules — Rule 702
Railways (Punitive Charges for Overloading of Wagon) Rules, 1990 — Rule 3
Railways Act, 1989 — Section 2, 2(37), 27, 64, 65(2)
Constitution of India, 1950 — Article 226
Railway Conference Association Tariff Rules — Rule 702
Railways (Punitive Charges for Overloading of Wagon) Rules, 1990 — Rule 3
Railways Act, 1989 — Section 2, 2(37), 27, 64, 65(2)

Citation : (2000) 2 AWC 1682 : (2001) 3 CivCC 137

Hon'ble Judges : O.P. Garg, J; M.C. Jain, J

Bench : Division Bench

Advocate : C.L. Pandey, for the Appellant; S.C., Anand Kumar and Lalji Sinha, for the Respondent

Judgement

M.C. Jain, J.—The petitioners have prayed for issuance of a writ of mandamus commanding the respondents (Railways) to allow reweighment of the entire coal consignment in question of 41 wagons and not to realise penal freight from them in respect of alleged excess weight of 1,000 M. T. (Metric Ton), demurrage and wharfage. It is also prayed that the respondents be directed to realise from them only the normal freight of the excess weight to be found on remeasurement/reweighment of the entire consignment.

2. The case of the petitioners is that coal consignment of 41 wagons had been loaded at Joglghopa Railway Station of N.F. Railway and forwarded for being delivered at the destination station-Meerut City Mandi siding of Northern Railway.

A sum of Rs. 26.28.562 had been paid as freight charges. The loading had been done upto the marked height and the same had been properly checked by the railway authorities whereafter the wagons had been sealed. The loading was only upto the marked carrying capacity and in accordance with Rule 702 of Goods Tariff Rules. The total quantity of coal loaded was 2396.4 M.T. rounded off to 2397 M.T. Railway receipts were issued by the railways (Annexure-2 to the writ petition). After reaching of the consignment at the destination station, the placement was not given by the railway authorities to the petitioners for delivering the goods and they were orally told that the said rakes had been weighed at weigh-bridge Laksar of Northern Railway and 1.000 M.T. coal had been found excess in weight wherefore a penal freight of Rs. 55 lacs had been imposed by the railways. For this reason, the goods were not delivered to the petitioners and they were asked by the railway authorities to deposit the penal freight amounting to Rs. 55 lacs before the delivery of goods to them. The coal unloaded from the said rakes was lying on the ground of Meerut City Mandi siding and everyday heavy wharfage was continuing against the petitioners as only ten hours' time is allowed as per the rules to clear the ground. The loading at Jogighopa railway station had been done under the supervision of the railway authorities and it was so certified on the railway receipts by means of a rubber stamp to the following effect :

"The loading height has been properly marked and that loading has been done only upto the marked height".

3. The weighment at en-route station at Laksar has been challenged to be faulty and incorrect and it has also been alleged that the Laksar weighbridge of Northern Railway was defective. The railways, according to the petitioners, could not demand penal freight amounting to Rs. 55 lacs as they have not complied with Section 73 of Indian Railways Act. Support has also been sought to be derived from a judgment dated 20.9.1994 in Civil Misc. Writ Petition No. 30629 of 1994 wherein railway authorities were directed to reweigh the consignment of coal at the destination station-Kashi by delivering the consignment to the parties in truck loads to be reweighed at Dharamkanto. Such delivery was directed to be made without any payment to the railways and the issue relating to overloading, demurrage and wharfage was directed to be determined by the railway authorities in " accordance with law after reweighment.

4. Counter-affidavit has been filed by the respondent Nos. 1, 2, 3. and 6. The contention of the petitioners made in support of their prayers have been refuted. The petitioners have filed rejoinder-affidavit.

5. We have heard at length Sri C. L. Pandey learned counsel for the petitioners. Sri Govind Saran learned counsel for respondent Nos. 1, 2, 3 and 6 (Northern Railway) and Sri Lal Ji Sinha for respondent Nos. 4 and 5 (N. F. Railway).

6. So far as this contention of the petitioners is concerned that the loading had been done upto the marked height only under the supervision of the railway

authorities as per the stamp affixed on the railway receipts, the respondents, through their counter-affidavit, have asserted that there is no rule to put such stamp on such receipts of the Indian Railways and such stamping is not done in any Division of N. F. Railway including the railway station of Jogighopa where the consignment in question was booked and loaded. An enquiry is said to be afoot to find out as to under what circumstances the aforesaid stamp had been put on the railway receipts in question. It is also the case of the respondents that 41 wagons in question were covered wagons which are known as B.C.N./ B.C.N.-A wagon and there is no rule for marketing for loading purposes in B.C.N./B.C.N.-A wagons. Normally, covered wagons are not used for coal loading. The carrying capacity of a wagon is written on each wagon outside the wagon according to rules. The carrying capacity written on the wagon is as a guideline for the consignor/consignee as well as the railway staff to load the consignment according to the carrying capacity.

7. In writ jurisdiction under Article 226 of the Constitution of India, this Court does not ordinarily sift factual controversies but even if it is taken for the sake of argument that the said stamping had been done by the railways, it does not help the petitioners at all. The reason is that the sender's weight was accepted. Section 64 of the Railways Act provides that every person entrusting any goods to a railway administration for carriage shall execute a forwarding note and he shall be responsible for the correctness of the particulars furnished by him in the forwarding note. Section 65(2) of the said Act says that a railway receipt shall be prima facie evidence of the weight and the number of packages stated therein. However, the proviso to sub-section (2) of Section 65 of the said Act reads as under :

"Provided that in the case of a consignment in wagon-load or train-load and the weight or number of packages is not checked by a railway servant authorised in this behalf and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or as the case may be the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee".

8. There is clear endorsement on the railway receipts in question that the weight disclosed by the sender had been accepted and further that the railway administration was empowered to weigh the consignment at any weighbridge station en-route or at destination station. Such a right is vested in the railway as per Section 78 of Railways Act before the delivery ^ of the consignment, aside from the" endorsement made in this behalf on the railway receipts in question. Therefore, the railway administration had a right to reweigh the consignment at the en-route railway station-Laksar.

9. We may also point out with advantage that as per Section 2(37) of the Railways Act, "rolling stock" includes locomotives, tenders, carriages, wagons, rail-cars, containers, trucks, trolleys and vehicles of all kinds moving on rails. Section 27 of the said Act relates to the use of rolling stock.

10. In any view of the matter, the contention of the petitioners that each wagon had been loaded upto the carrying capacity cannot preclude the railways from charging penal freight for the excessive load detected consequent upon the weighing at Laksar railway station. Section 73 of the Railways Act gives power to the railways to levy and collect penal charges from the consignor, consignee or the endorsee, as the case may be. Such penal charges are leviable only for exceeding the "permissible carrying capacity". What design or type of rolling stock is to be used is to be decided by the Central Government. Ministry of Railways (Railway Board) In consultation with its Research and Design Organisation. The maximum gross weight bearing on the axles is determined by the Commissioner of Railway Safety while granting permission u/s 27 of the Railway Act. 1989. The railways submits to the Commissioner the complete design particulars indicating the "gross weight" and the "gross weight bearing on each axle". The "gross weight" for which sanction is given by the Commissioner of Railways Safety on behalf of the Central Government is the maximum and in no case be exceeded by any executive order of the Railway Board, without reference to the Commissioner. On the other hand, the "normal" or "marked" carrying capacity determined by the railway administration u/s 72(2) is subject to the maximum referred to in Section 72(1). The words "permissible carrying capacity" which occur in Section 73 of the Act obviously refer to the "average carrying capacity" mentioned in Section 72(2) of the Act or such enhanced permissible limits of carrying capacity as may be fixed u/s 72(4) of the Act. This view is clearly strengthened by the definition of "permissible carrying capacity" in Rule 2 (d) of the Railways (Punitive Charges for Overloading of Wagon) Rules. 1990. This "permissible carrying capacity" cannot exceed the upper limits prescribed u/s 72(1) of the Act. The levy of penal charges u/s 73 of the Act is intended for dual purposes. One is to see that the gross weight at the axles is not unduly heavy so that accidents on account of the axles breaking down could be prevented. The other reason behind the collection is that, inasmuch as the wagon has carried such excess load upto the destination point at the other end, the replacement cost of coaches, engines or rails or of repairs to the bridges be covered. The extra rate is higher rate, i.e.. something like a surcharge for the excess load, to meet the said expenses. No principle of "delinquency" is engrained in this levy. Obviously, the railway board has kept these aspects in mind while collecting these charges. Further the question of the reasonableness of the quantum of any such extra rate cannot be challenged under Article 226 of the Constitution of India and the appropriate forum therefore is the Railway Rates Tribunal. What we have stated in this paragraph is fortified by a decision of the Apex Court in the case of Jagjit Cotton Textile Mills Vs. Chief Commercial Superintendent N.R. and Others, .

11. The resultant effect is that the insistence of the petitioners that the loading had been done only upto the marked height under the supervision of the railway authorities could not prevent the railways from reweighing the consignment at the en-route railway station - Laksar.

12. It has been urged from the side of the petitioners that the capacity of the weigh-bridge of Laksar station of Northern Railway is only 100 M, T whereas it is alleged by the railways that on weighment the quantity in each wagon was more than 120 M. T. it has been reasoned that it was incomprehensible as to how could a wagon carrying 120 M. T. be weighed at a weigh-bridge which had the weighing capacity of 100 M. T. only. The railway authorities at Laksar weighed each four wheeled wagon in parts. Two axles of the wagon had been weighed partly and remaining two axles of the same wagon had been weighed separately on the same weigh-bridge. It has been submitted that the results obtained through such faulty method of weighment could not be correct.

13. On the other hand, the case of the respondents is that weighment on weigh-bridge on two wheels system is based on scientific principle whereby actual weight of a wagon is correctly weighed.

14. We are of the view that the raised second contention of the learned counsel for the petitioners that the weigh-bridge of Laksar was defective is not capable of being accepted. The contention is sought to be supported by Annexure-7 to the writ petition which is said to be a summary statement of a clerk of Sonipat which allegedly contains an endorsement of a clerk of Laksar weigh-bridge that the said weighbridge was defective. We find that the said annexure is not even clearly readable. Moreover, (here is clear assertion from the side of the respondent in their counter-affidavit that the weigh-bridge of Laksar is in perfect order and has been so certified by weights and measurement department. There is no material to accept the contentions of the petitioners that the weigh-bridge of the Laksar Railway Station was defective, producing faulty results.

15. The judgment of this Court dated 20.9.1994 in Civil Misc. Writ Petition No. 30629 of 1994 is clearly distinguishable and it would not render any support to the petitioners. In that case the contention was that the weigh-bridge at Kusunda Railway Station Dhanbad was defective and there was no denial of this contention from the side of railways. Rather the submission from the side of railways was that the petitioners could get the consignment reweighed and then could take the issue with the railway administration as to whether the rakes had been over-loaded or not as also the consequential issue of payment of demurrage and wharfage. The weighment facility was not available at the destination stall on-Kashl and it was suggested by the railways that the petitioners could apply to have the consignment weighed at their initiative. Thus, the facts and circumstances of that case were different that decision has to be read in conjunction with the facts and circumstances of that case. It did not lay down any principle based on the interpretation of the relevant provisions of the Railways Act and concerned rules. In the present case, there is no material to accept the contention of the petitioners that the weigh-bridge at Laksar railway station was defective. Rather the assertion from the side of the railways is that it was in perfect condition and had been so certified by the weights and measurement department and that reweighment had correctly been done

producing correct result that 1050.4 M. T. coal had been found to be excessively loaded.

16. It has been asserted by the respondents in the counter-affidavit that 41 wagons of coal in question were weighed at Laksar railway station on the weigh-bridge of the railways in the presence of Chief Vigilance Inspector along with three other inspectors, Deputy Chief Yard Master, Senior Trains Clerk Laksar, Senior Goods Clerk, Laksar and Head Constable of R. P. F. Laksar on 11.2.2000.

17. It is also relevant to point out that the petitioners have not shown as to from whom and how much quantity of coal had been purchased which had been loaded in 41 wagons in question for carriage from Jogighopa to Meerut" City Mandl siding. Needless to say. furnishing of such details by the petitioners could give some indication as to how much quantity of coal had been loaded in the boxes (wagons) in question. Without making such disclosure, the petitioners have simply chosen to challenge excess load detected by the railway administration at en-route station of Laksar.

18. Learned counsel for the petitioners has also argued that as per Rule 702 of Indian Railways Conference Association Tariff Rules, the freight had been charged by the railways as per volume as shown in the railway receipts. It may be stated that it simply relates to the method of charging the freight. it cannot eclipse, overshadow or override the provision contained in Section 73 of the Indian Railways Act relating to punitive charge for overloading Rule 161 of the rules aforesaid also provides that consignors are required not to exceed the permissible carrying capacity of the wagon while loading. Should overweight be discovered, en-route or at the destination, the charges therefore would be levied. Railways (Punitive Charges for Overloading of Wagon) Rules, 1990 also provide in Rule 3 that where goods are loaded in a wagon or truck beyond its permissible carrying capacity, the railway administration may, in addition to normal freight and other charges recover for the distances between the forwarding station and the destination station, charges by way of penalty from the consignor, consignee or the endorsee, as specified in Part I of the Schedule in case of goods loaded in loose condition and Part II of the Schedule in the case of goods other than those loaded in loose condition.

19. Now comes the question of reweighment claimed by the petitioners at the destination station where the coal is lying on the ground after unloading. Section 79 of the Indian Railways Act is excerpted below for instant attention.

"79. Weighment of consignment on request of the consignee or endorsee.--A railway administration may, on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any :

Provided that except in cases where a railway servant authorised in this behalf considers it necessary to do so no weighment shall be allowed of goods booked at owner"s risk rate or goods which are perishable and are likely to lose weight

in transit ;

Provided further that no request for weighment of consignment in wagon-load or train-load shall be allowed if the weighment is not feasible due to congestion In the yard or such other circumstances as may be prescribed".

20. It would be clear from the second proviso of the above Section that weighment of the consignment in wagon-load or train-load would not be allowed if it is not feasible due to congestion in the yard or such other circumstances as may be prescribed.

21. In the case at hand, the respondents have asserted in their counter-affidavit that Chief Goods Supervisor at destination station had already received message on 12.2.2000 regarding the excessively loaded coal and also for realising the charges in respect of the same. A notice in this behalf along with particulars was given to Sri Anil Kumar, handling agent of the consignees but he refused to take the notice. The notice was then pasted on the notice board of the Meerut city station. When Sri Anil Kumar refused to take notice along with particulars, the same had been given on 12.2.2000 to Sri J. P. Gupta, handling contractor of the consignees. Annexure-C.A. 3 has been filed in support of the refusal of Sri Anil Kumar and the pasting of the notice on the notice board and Annexure-C.A. 2 in support of the notice given to Sri J. P. Gupta. Admittedly, the unloading of the consignment had also been done by Sri J. P. Gupta as per Annexure C.A.-5. No request was made for weighment before unloading. The status of Sri Anil Kumar and Sri J. P. Gupta as the handling agent and handling contractor respectively has not been denied by the petitioners nor the fact that the notice was served on Sri J. P. Gupta on 12.2.2000 and that unloading had been done by him. Had a request been made for reweighment before unloading, then it could have been possible to carry the rakes of 41 wagons to a mutually agreed weighbridge of the railways for reweighment of the coal in the presence of the parties. After unloading of the wagons, the wagons had been sent back and it was not feasible to reweigh the coal of 41 wagons at the weigh-bridge. There was heavy congestion on the Meerut City Mandi siding railway station and other rakes were waiting for unloading. The reweighment is not possible now as it would require the engagement of 9-10 trucks for each wagon and a number of days for taking the coal on trucks to some dharamkanta under the supervision of railway staff of different branches along with R. P. F. personnel. It appears to us that the petitioners intentionally did not apply for reweighment before unloading and themselves created such conditions which rendered the reweighment unfeasible after unloading. Therefore, the prayer of reweighment made by the petitioners is not capable of being accepted at this stage.

22. However, the fact remains that as per the proviso to Section 73 of the Railways Act, it was lawful for the railway administration to unload the excessively loaded goods at the en-route railway station-Laksar where the excess weight was discovered. The petitioners have complained of non-compliance of this provision by the railways. Though the said provision is only of enabling

nature, but had the excess load been unloaded at en- route railway station Laksar, penal freight would have been lesser. Therefore, to give a fair deal to the petitioners, it would be proper to direct the railway administration to calculate the penal freight in respect of excess load only upto Laksar railway station where the excess load had been detected. In other words, the excess load would not be taken to have been carried from Laksar railway station to destination station- Meerut City Mandl siding. The penal freight/charges would be calculated as if the excess load had been carried from Jogighopa to Laksar railway station. In case the demurrage and wharfage is also calculated on the basis of load, the excess load in question would be excluded in calculation of the demurrage and wharfage also. The petitioners are not entitled to any other relief.

23. In conclusion, we decide this writ petition with a direction to the respondents to recalculate the penal freight/charges on the basis as if the extra load (detected on weighment at en-route Laksar station of Northern Railways) had been carried from Jogighopa only upto Laksar. In case the demurrage and wharfage are also load/quantity based, the same shall also be recalculated by the respondents, excluding the extra load [detected at Laksar). The petitioners shall be allowed to remove the coal in question on making the aforesaid payment to the respondents found to be due on recalculation as directed above and on completing other formalities such as the production of railway receipts, etc.