

(1955) 04 MP CK 0003

In the Madhya Pradesh High Court

Case No : Small Cause Revision No. 40 of 1953

Firm Balmukund Harikishan

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 07-04-1955

Acts Referred:

Railways Act, 1890 — Section 60

Citation : AIR 1955 MP 181

Hon'ble Judges : Nevaskar, J

Bench : Single Bench

Advocate : D.M. Kutumbale and R.K. Zamidar, for the Appellant; V.R. Dhodapkar, for the Respondent

Final Decision : Dismissed

Judgement

Nevaskar, J.—This Small Cause Revision involves an important question of law of general interest and is likely to affect persons who have occasion to deal with the Railways for the purpose of sending goods through their agency.

2. A consignment of 200 bags of sugar was hooked at Rampura Station situated on the E. I. Railway at owner's risk (O.R.) at reduced rate of Rs. 1-4-0 per maund. A railway receipt evidencing the acceptance of the goods for carriage to Indore Station was issued and bore No. 634713 dated 4-10-1948. The total amount payable to Railways was Rs. 698-8-0 which was duly paid. The receipt was endorsed by the consignee to the plaintiff who in due course presented to the Railway authorities at Indore on the arrival of the goods there.

The authorities at Indore refused to deliver the goods unless the plaintiff was prepared to pay what they contended to be the undercharge. This was Rs. 274-1-0. The plaintiff having no other option paid the same charge under compulsion and obtained delivery of goods. He then filed this suit for refund of the aforesaid sum which, according to him, was wrongly recovered from him. In this suit he impleaded Union of India through General Managers of both E. I.

Railway and B. B. & C. I. Railway.

3. The main ground on which the suit was based was that the railway administration having accepted to carry the goods at owner's risk on payment of reduced rate could not alter the basis of contract by demanding and recovering ordinary third Class rate at Railway risk. The collection of the under-charge on this latter basis was, according to the plaintiff, illegal and unduly deprived the plaintiff of a sum of money which in law he was not bound to pay.

4. On the other hand, it was contended in defence on behalf of the defendant that there was only one rate in respect of this commodity between Rampura and Indore and that was the third Class rate as given in the Railway Tariff at railway risk and the alternative reduced rate at owner's risk was not provided for by the Tariff Regulations prevailing then. The charge collected by the goods-clerk at the despatching Station at that rate was clearly unauthorised and constituted an underpayment and that by Term No. 6 printed on the back of the railway receipt and also by Rule No. 15 Goods Tariff Part I Chapter I the Railway Administration were entitled to recalculate and reclassify the rates already charged and claim to recover the deficit amount under-paid before permitting delivery.

5. The action of the railway authorities at Indore in collecting the under-charge was therefore perfectly justified and the suit ought to be dismissed.

6. It was also contended that the plaintiff not being the consignor of the goods was not a party to the contract and he could not sue to recover payment made in pursuance of the contract.

7. Both these points raised on behalf of the defendants found favour with the learned Small Cause Judge who dismissed the suit.

8. This is a revision petition filed on behalf of the plaintiff against this dismissal and the correctness of the view taken by the lower court on both these points is challenged before me.

9. As regards the second point Mr. Dhodapkar frankly conceded that in view of the decision of this Court in -- "Erachshaw Desabhai Kerawalla v. Dominion of India", (S) AIR 1955 MP 70 (A), it is not possible for him to contend that the plaintiff cannot sue. It was held in that case that an endorsee of a railway receipt has a sufficient interest to enable him to sue on its basis. This Court in that case did not follow the case reported in -- AIR 1947 169 (Bom.) relied upon by the lower court but followed an earlier Bombay case reported in -- "Dolat Ram Dwarkadas v. B.B. & C.I. Railway", AIR 1914 Bom 178 (C), and also the case reported in -- "Jalan and Sons Ltd., v. Governor General in Council", AIR 1949 E. P. 190 (D). Kerawala's case (A) is a Division-Bench case and I am bound to follow the same.

10. I therefore hold that the plaintiff as an endorsee of the railway receipt had a right to file a suit in respect of the alleged over payment made by him concerning the goods covered by that receipt.

11. Coming to the other question we have to see whether the railway authorities were entitled to recover what they contended to be the appropriate charges recoverable under the provisions of Goods Tariff. The authorities in other High Courts on this point are divided.

12. On behalf of the petitioner great reliance is placed upon the decision reported in -- AIR 1926 631 (Lahore) , which is practically on all fours with the present case and also upon the Full Bench decision of Allahabad High Court reported in -- "Chunnilal v. Nizam"s Guaranteed State Railway Company, Ltd." 29 All 228 (F), and Joint Family Business of Ramchandra Srinavas v. Shahdara Sharanpur Light Railway", AIR 1953 Hyd 274 (C).

The line of reasoning adopted in these cases is that where a clerk at the despatching Station issues a railway receipt incorporating a condition that the goods would be carried at owner"s risk thereby charging lower rates, it will not be open to charge at higher rates on the basis that the goods were chargeable on railway risk as that is the only rate according to Goods Tariff and that Condition No. 6 of the Railway Receipt and the terms of Rule No. 15 of Goods Tariff Part I Chapter I which entitle the Railway Company to reclassify, remeasure and recalculate the rates cannot have the effect of altering the basis of the contract.

The argument in some cases is sought to be placed on the ground of estoppel viz. that where the sender was offered to carry the goods at certain rate at his risk cannot later be charged as if the goods were carried at railway risk. Had the sender been informed of this probability he might not have carried the goods at all.

13. On the other hand, there are cases which are relied upon by Mr. Dhodapkar for the opponent which take a contrary view notably amongst them are -- M. Sheik Dawood Rowther Vs. South Indian Railway Co. Ltd. and Another, and -- Dominion of India Vs. Virjee Doya and Co.,

14. The reasoning adopted in these cases is that the contract of carriage entered into on behalf of the railway by the clerk of the Railway is subject to Goods Tariff Rules and he has no authority to contract outside the terms of the tariff. Term No. 6 moreover printed at the back of railway receipt clearly is a notice to the consignor that the railway authority has reserved the right of remeasuring, reclassifying and recalculating rates and therefore where there is under-charge owing to mistake on the part of the clerk at the dispatching Station it can always be got made good at the destination.

In Dominion of India Vs. Virjee Doya and Co., , it is further held that the charges demanded in a case such as this can be included within the phrase "other charges" as vided in Rule No. 15 of the Rules aforesaid. This case expressly referred to the cases of 29 All 228 (FB) (F) and AIR 1928 Lah 631 (E) and refused to follow them.

15. In face of this conflict I shall venture to consider the matter keeping in view the reasoning employed in both these sets of cases.

16. The clerk at the despatching Station when he accepts the goods and issues Railway Receipt certainly acts as an agent of the Company and any specific representation made by him will be assumed to have been made on behalf of the Company. But to this there is this qualification that he has got power to charge only in accordance with the conditions laid down in the Goods Tariff. He cannot charge more or less. It is also anticipated that in the hurry and hubbub, of the kind of business which the clerk is required to transact, mistakes are bound to occur and in order to guard against the possible risk of losses to the railway administration Rule No. 15 is made which reserves a right to the administration to remeasure, reweigh and reclassify the goods and recalculate the rates, terminals and other charges and to correct any other error at the place of destination and to collect any amount that might have been omitted or under-charged.

The Rule is comprehensive and is designed to cover practically all cases of inadvertent mistakes it, of course, does not cover these cases where the Railway authority having power to do so gives special terms of contract and the sender agrees to send the goods specifically on that representation. It cannot be said that where owner's risk rate did not prevail the clerk by offering owner's risk rate has made any special representation and that the sender acted on that representation and thereby altering his position to his detriment.

If Rule No. 15 governs the contract it is difficult to say that the basis of contract is altered by securing payment as if the goods had been carried at railway risk when it was agreed that it should be carried at owner's risk.

17. Section 60 of the Railways Act entitles a sender to demand from the clerk concerned current rate books and other documents in which the rates are authorised by the administrations concerned and to get himself informed about what is the rate chargeable.

18. It cannot then be said that merely because he omits to take that precaution to inform himself he is placed in a position which should enable him to avoid the correct rate payable, when he can inform himself about the true position by reason of the legal obligation placed upon the clerk of the Railway administration in charge of that work and when Rule No. 15 is a general notice to him that mistakes in charging less than what is proper would be corrected at the destination.

It cannot be said that the sender's basic contract is altered by charging more or that he is misled by erroneous representation of the clerk. In fact as I view the matter it would not be permissible even for the Railway administration in such cases to say that the goods were carried at owner's risk and thus seek to reduce its liability. The insertion of the term "owner's risk" in such cases by reason of mutual mistake, either party not caring to inform himself as to what the correct

rate is, cannot put either party in a better position than what the rules permit. Such a mistake is permitted by the rules to be corrected.

19. In this view of the matter in my opinion the cases adopting the view taken in Dominion of India Vs. Virjee Doya and Co., lay down the correct law. The view taken in AIR 1926 631 (Lahore) does not appeal to me.

20. For this reason the order of dismissal passed by the lower court does not deserve to be interfered with.

21. The application is therefore dismissed with costs.