

(1937) 04 AHC CK 0015
In the Allahabad High Court

Firm Ganga Prasad - Ratan

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 30-04-1937

Acts Referred:

Citation : (1937) 04 AHC CK 0015

Hon'ble Judges : Collister, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Collister, J.—The plaintiff-applicant sued the Secretary of State for India in Council through the Agent of the East Indian Railway for recovery of a sum of money. On 2nd February 1932 the applicant sent a consignment of 552 bundles of jaggery from Haidernagar Station to Agra Fort at the rate of 9 annas 4 pies per maund. This rate was entered in the railway receipt which was handed over to the applicant and the freight was calculated accordingly, but when the applicant went to take delivery at Agra Fort station, freight was demanded at the rate of 15 as 8 pies per maund. The applicant had to pay a sum of Rs. 122-7-0 before he could take delivery of this consignment of jaggery. The applicant claimed recovery of Rs. 122-7-0 plus Rs. 34-9-0 as interest by way of damages, plus Rs. 3 as costs of a notice, total Rs. 160. The case for the plaintiff-applicant was inter alia that since the railway company had entered into a contract with him through the booking clerk, who was an agent on their behalf authorized to enter into such contract, and since the rate according to this contract between the applicant and the agent of the company was 9 as. 4 pies per maund, the company had no title to repudiate the contract and demand payment at a higher rate. The suit was contested on various grounds including pleas of jurisdiction, limitation and want of proper notice, and it was also pleaded that the railway company was protected by clause 6 of the conditions printed on the railway receipt, which reads as follows:

That the railway administration have the right of remeasurement, reweighment,

reclassification and recalculation of rates, terminals and other charges at the place of destination and of collecting, before the goods are delivered, any amount, that may have been omitted or undercharged.

2. The Small Gauge Court at Agra had dismissed the suit and the plaintiff has come to this Court in revision. Learned Counsel for the applicant pleads that the basis of the contract has been illegally altered by the railway company without notice to the public of Haidernagar in general and to the applicant in particular. Admittedly the goods were sent at what are known as C.L. schedule rates. In Rule 61 of the Indian Railways General Classification of Goods, rates are divided into three divisions, viz. "class rates", "schedule rates", and "station to station rates". In the "class rates" division there are 10 classes. A Foreign Bate Circular No. 6 of 1931 was issued on 1st December 1931, and under Article 38 it was provided that jaggery should be charged at "rates equal to first class O.R." with effect from 1st January 1932. There is no evidence on behalf of the company to show that this circular was sent to Haidernagar and the booking clerk of Haidernagar was not put in the witness box. The munim of the applicant swears that the booking clerk told him that the rate was 9 annas 4 pies, and as I have already shown, this is the rate which was entered in the railway receipt. My attention has been drawn to Railway Conference Regulations, Part 2, Clause 28(j), which lays down that "no enhancement of rates payable by the public should be made until after one month's previous notice has been given". It is contended on behalf of the applicant that no such notice was published, that the defendant company have failed to show that the aforementioned circular was ever sent to Haidernagar and that the booking clerk had no knowledge of any change in the rates, and this being so, the railway company is bound by the contract into which their agent entered with the applicant.

3. The learned Government Advocate pleads that there was in fact no enhancement of rates and no change in the basis of the contract, but merely a reclassification and a consequent and necessary recalculation of rates following on the reclassification. In *Chunni Lal v. Nizam's Guaranteed State Railway Co. Ltd.* (1907) 29 All. two waggon loads of chillies were received at Bezwada on the Nizam's Guaranteed State Railway for carriage to Agra on the G.I.P. Railway at a rate of Bs. 270 per waggon. On arrival at Agra the station master demanded payment at a higher rate calculated per maund and not per waggon and refused delivery until such rates were paid. The consignees paid under protest and sued for a refund of the excess charges. It was held by a Full Bench of this Court that a bye-law of the G.I.P. Railway which reserved to the railway the right of remeasurement, reweighment, recalculation and reclassification of rates at the place of destination and of collecting before the goods were delivered any amount that might have been omitted or under-charged, did not authorize the G.I.P. Railway Company to alter the contract between the parties, and charge at the place of destination maund rates instead of waggon rates. The facts of that case are manifestly distinguishable from the facts of the case which I am now considering.

4. The next case to which I will refer is that in *Secy. of State v. Makundi Lal Hoti Lal* (1926) 24 A.L.J. 393 which has been relied upon by the Court below. Certain goods were despatched from Manzurgarhi to Howrah and the station master at Manzurgarhi by mistake quoted the rate of 10 annas 6 pies per maund instead of Re. 1-5-0 per maund and the railway receipt was prepared accordingly. On arrival at the station of destination the mistake was discovered and the difference between the amount paid and the correct charge was recovered from the consignors. This was done under a condition in the railway receipt which permitted the railway to remeasure, reweigh or reclassify the goods or recalculate the rates and other charges at destination. It was held by a learned Judge of this Court that the railway was entitled to realize from the consignor the difference between the amount paid and the amount which was the proper charge. A similar point came before a Bench of this Court in *Secy. of State Vs. B. Harbans Prasad Vaish*, . In that case a consignment of jaggery was sent from Belharghat on the O.R. section of the Rule I. Railway to Karvi on the G.I.P. Railway. Over the O.R. section of the E.I. Railway a certain rate known as the. C/ F rate was charged whereas first class rates should have been charged. It was held that the railway delivering the goods was entitled to charge the excess freight according to the conditions printed on the receipt. At p. 207 Mukerji, J. who delivered the judgment observed:

Now the question is whether the railway can make a fresh calculation on the basis of fresh classification. As we have said, para. 6 of the conditions provided on the back of the railway receipt does give the railway a right to reclassify and recalculate the rates. The reclassification will place the goods under class 1 and the recalculation of rates (fixed for first class) will give the additional sum of Rs. 29-6-0.

5. The above two authorities are clearly against the applicant and support the opposite party. Then, there is an unreported case of *Thorn, J.* in Civil Revn. No. 296 of 1935, dated 2nd January 1936. A consignment of old rails was sent on 24th April 1931 from Cawnpore to Agra. The rate charged in the railway receipt was 2 annas 2 pies per maund, but the rate for this class of goods had been enhanced on 1st April 1931 to 3 annas 2 pies per maund and the company claimed the difference. The booking clerk gave evidence and stated that he had entered 2 annas 2 pies in the railway receipt by mistake. It was held that the applicant was entitled to stand on the terms of his contract, but in the course of his judgment the learned Judge remarked:

Learned Counsel for the railway company...contended that the mistake which was made was a mistake in classification and that the railway company were entitled to recover from the applicant the amount found to be undercharged upon reclassification which the railway company had a right to make before delivering the goods to the applicant. There is nothing in the evidence, however, or in the findings of the learned Judge of the Small Cause Court to show whether there had been in fact any mistake in classification. The booking clerk was

produced by the railway company and in the course of his deposition he simply stated that the entry of 2 annas 2 pies was a mistake. No question was put to him to elicit whether the mistake had resulted from wrong classification or not.

6. Thus it is clear that in the above case the Court was unable to hold on the evidence that there had been a mere reclassification. In *Firm Ram Lal-Bhikam Chand Vs. Secretary of State* a certain quantity of condemned "foreign railway materials" was consigned from one railway station to another. The booking clerk under a mistaken belief that the materials which were being consigned were "home railway materials" charged them at the lower freight rate applicable to such materials. A condition printed on the back of the railway receipt provided that the railway was entitled to "reclassify" the goods at the place of destination and to collect, before the goods were delivered, any amount that might have been omitted or undercharged. It was held by a Bench of this Court that the railway company was entitled to charge freight at the higher rate applicable to foreign railway materials and to collect the excess charge at the place of destination.

7. There can be no doubt that where a condition exists, such as condition 6 in the railway receipt in the case now before me, the railway company is entitled to reclassify the goods and to realize the excess freight after re-calculating the rates. This has been consistently held in all cases where such a condition finds place in the railway receipt. It is contended, however, by learned counsel for the applicant that reclassification merely means applying the rates of one of the ten classes under the heading "class rates" for another class under that heading in R. 61 of the Indian Railways General Classification of Goods. I am unable to accept this narrow interpretation of the word "class". In the present case rates were charged for the goods as though they pertained to the division described as "schedule rates", but with effect from 1st January 1932 this class of goods had been taken out of that division and placed in the division described as "class rates" and the first class rates under this division had become applicable. This was in my opinion a clear reclassification of goods. There is no magic in the word "class" or in the word "division". This was not a case of enhancement of rates as such, for which notice ought to be given, and it was not a case in which the booking clerk charged rates lower than the proper rates within the same class. This particular commodity had been reclassified under the Foreign Rate Circular No. 6 of 1931, and this being so, the railway authorities were entitled under condition 6 to rectify at the place of destination the classification which had been wrongly made by the booking clerk at Haidernagar and to recalculate the rates in accordance with the correct classification. This application fails and is dismissed with costs.