
(1995) 03 MP CK 0058
In the Madhya Pradesh High Court
Case No : M.P. No. 2440 of 1989

Grasim Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-03-1995

Acts Referred:

General Rules — Rule 161A, 161B
Railways Act, 1890 — Section 27A, 27A(1), 53

Citation : (1995) JLI 365

Hon'ble Judges : U.L. Bhatt, C.J.;Rajeev Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.—Petitioner is a company having, among many other things, a cement factory at Khor in Mandsaur district. Petitioner requires coal for the manufacture of cement and purchases the same from 11th Respondent Coal India Limited or one of its subsidiaries, namely, Respondents 6 to 10. Petitioner has filed this writ petition seeking to declare clause 161-B of the Goods Tariff No. 39 Part-I, Volume-I as ultra vires and unconstitutional and for direction for refund of penal freight charges collected by the railway administration from the Petitioner.

2. Coal is purchased by the Petitioner from Coal India Limited or one of its subsidiaries. The coal is conveyed from the pit-heads to the Petitioner's factory by the railway administration. Railway administration allots wagons to the consignor and places the wagons at the disposal of the consignor at the respective rail head or loading point within the jurisdiction of the colliery concerned. The consignor loads the wagons. Loading is done either manually or by mechanical means such as conveyor belt or the like. Section 53 of the Indian Railways Act, 1890 which was then in force (for short "the Act") requires the Central Government to prescribe the maximum carrying capacity for every wagon and states that the gross weight of every wagon when loaded to the

maximum carrying capacity shall not exceed the limit so prescribed. Wagons so loaded by the consignor are taken to the weigh-bridges and the weight of the coal loaded is worked out. The freight is paid only after the weighment is made. Section 27-A empowers the Central Government to give directions in regard to transport of goods by railway administration. Freight charges are fixed by the Central Government. Rule 161-A reflects the provision in Section 53 of the Act relating to carrying capacity of wagons. It says that the consignor in loading is required not to exceed the maximum carrying capacity of the wagon used. It also prescribes charge to be levied in case of overweight. The scheme of the charges is as follows:

(i) If the overweight above the permissible cc is one ton or less such overweight should be charged at normal train load/wagon load rate as the case may be applicable to the commodity.

(ii) If the overweight beyond the permissible cc of the wagon exceeds one tonne but does not exceed 2 tonnes per wagon, the overweight beyond the permissible cc plus one tonne should be charged at the smalls rate applicable to the commodity.

(iii) If the overweight beyond the permissible cc of the wagon exceeds two tonnes, the entire overweight in excess of the permissible cc should be charged at double the smalls rate applicable to the commodity.

Thus, it is seen that an allowance is given in regard to minor overweight or marginal excess loading and where the overweight exceeds the prescribed margin higher freight is required to be paid. Only when the entire freight due is paid that the wagons are moved to destination. The freight is paid by the consignor to the railways, but it is said, under the contract between the consignor and the Petitioner-consignee the Petitioner reimburses the colliery or consignor the amount paid towards freight, ordinary or penal. Thus the burden of the excess freight contemplated in Clause 161 of the General Rules though paid initially by the consignor, it is ultimately borne by the consignee. It is on this basis that the Petitioner projects its grievance about the freight charges prescribed by Clause 161 of the Rules.

3. Learned Counsel for the Petitioner has urged only two contentions before us. They are -

(1) since the Petitioner has no control over the loading which is done entirely by the consignor, it is arbitrary to mulct the hapless consignee or the Petitioner with the charges under clause 161; and

(2) the provision for penal freight contained in Clause 161-A of the General Rules is beyond the scope of Sections 27-A and 53 of the Act and, therefore, ultra vires.

4. Return has been filed on behalf of Respondents Nos. 1 to 5. The return seeks to justify the impugned provision. Return makes it clear that loading is not made by the railways but the consignor-collieries. Coal is booked under "L" condition as

specified in Rule 701(7) (XIII) of IRCA Goods Tariff No. 39 Part-I (Vol. I). The railway only supplies wagons according to the demand and realises freight on the basis of weight subject to carrying capacity. Load-line, for coal is marked on the body of wagons on the basis of test loading and test weightment. The purpose of loading is to ensure that the consignor while loading the commodity does not exceed the permissible carrying capacity of the wagon which would otherwise involve safety hazards. Overloading may cause hazards to safety of the movement which is against public interest. Permissible carrying capacity is fixed on the basis of various technical factors and principles like design of wagon, gross axle-load limitation, etc. irrespective of individual consignor or consignee as it is purely an internal matter of the railways. According to tariff rule, it is further contended, freight charges are levied on the actual weight of the consignment subject to the notified minimum weight in accordance with the type of wagon used. What is referred in the writ petition as Section 161-B is actually Section 161-A. There is no obligation on the railways to unload the excess coal from the wagon or require the colliery to do so. The track capacity and wagon capacity are also taken into consideration while determining the carrying capacity.

5. The Petitioner-consignee has no contention that the responsibility for loading or the transport rests on it or that the Petitioner has anything to do with wagon or allotment of wagon. Wagons are allotted to consignor. It is the responsibility of the consignor to load the wagons and obtain receipt from the railway administration. Freight charges are ordinarily to be paid by the consignor unless otherwise agreed upon. Therefore, ordinarily, the freight charges are not directly paid by the consignee. By a separate contract between the consignor and the consignee, the consignee may have to bear the freight charges as between them, but so far as the railway administration is concerned, it need only look to the consignor for payment of freight charges. Therefore, the contention that the consignee who has nothing to do with the loading operation and need not even to be represented at the time of loading and it is mulcted with the consequences of overloading over which it had no control does not appeal to us. The levy of higher freight is a matter between the railway administration and the consignor and not a matter between the railway administration and the consignee. It is for the consignee to ensure that in the contract between the consignor and the consignee, appropriate provision is made to relieve the consignee from reimbursing the consignor of the higher freight paid by the consignor to the railway administration.

6. The wagons are to run on track laid by the railway administration. The track has to be carefully maintained by the railway administration after taking into consideration all relevant factors. Some of the relevant factors are the track capacity, the volume and density of traffic, etc. If traffic goes beyond the reasonable limit, it may adversely affect the track itself. It is in this background that provision is made in Section 53 for prescribing the maximum carrying capacity for wagons. The gross weight of the wagon shall not exceed the prescribed limit for the class of axle under the wagon. It is not sufficient to

merely prescribe the maximum carrying capacity of the wagon or wagons; it is necessary to devise means for ensuring that the limit is respected. One of the ways of ensuring respect for the limit is to provide for physically removing excess load. Another method is to discourage the consignee from loading excess by imposing special or penal freight in regard to the excess weight. There may be practical difficulty in adopting the first strategy in case of huge volume of coal consignments. Therefore, the second strategy indicated above has been adopted in Clause 161-A of the General Rules. We find nothing arbitrary in the provision.

7. It is true that Section 53 merely enables the Central Government to prescribe maximum carrying capacity for the wagons and does not contain a specific provision enabling a higher freight from being levied on excess load. Where a statutory provision enables an authority to prescribe maximum carrying capacity of wagons, power so conferred must necessarily include the power to make all incidental and consequential provisions for ensuring that the maximum limit is adhered to and to ensure that breach of the limit is discouraged. The submission that the provision contained in Clause 161-A is outside the framework of Section 53 is not correct.

8. Section 27-A deals with the power of the Central Government to give directions in regard to transport of goods by railway administration. The provision reads thus:

(1) The Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, direct any railway administration:

(a) to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods, as may be specified in the order;

(b) to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order.

(2) Any order made under Sub-section (1) shall cease to have effect after the expiry of six months from the date thereof, but it may be renewed from time to time.

(3) Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any direction given under Sub-section (1), and any action taken by a railway administration in pursuance of any such direction shall not be deemed to be a contravention of Section 28.

The provision empowers the Central Government, inter alia, to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order. It is not the requirement of the provision that only uniform rates can be prescribed for all routes, all distances and under all circumstances. It will be open to the Central Government to prescribe different rates to meet different situations. The Central Government has prescribed the ordinary rate. In case of

breach of the maximum loading capacity provided by Section 53 of the Act, it would be open to the Central Government to prescribe a higher rate in regard to the excess. This power is part of the power conferred on the Central Government u/s 27-A(1)(b). We, therefore, do not agree that Clause 161-A is outside the framework of Section 27-A.

9. We find that the High Court of Calcutta has also taken a similar view in Civil Rule No. 19171 (W) of 1984 disposed of on 2.12.1988.

10. The Petitioner is not entitled to any relief. The petition is dismissed with costs. Advocate's fee Rs. 500/-. It is open to the consignor to enforce the bank guarantee which the Petitioner may have furnished in pursuance of the interim order of this Court, to the extent of liability. Refund security, if any deposited.