

(1992) 11 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 475 of 1990

Gujarat Ambuja Cements Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Contract Act, 1872 — Section 72
Evidence Act, 1872 — Section 115
Railways Act, 1890 — Section 27A, 27A(1), 27A(2), 28(1)

Citation : AIR 1994 Guj 104 : (1993) 2 GLR 1460

Hon'ble Judges : K.G. Shah, J

Bench : Single Bench

Advocate : S.K. Ghosh and Kiran K. Shah, for the Appellant; J.C. Sheth, for the Respondent

Judgement

K.G. Shah, J.—This petition under Article 226 of the Constitution of India is filed by Gujarat Ambuja Cements Ltd., a Company incorporated under the Indian Companies Act, against Union of India, the Railway Board and the various Officers of the Western Railway. In paragraph 95 of the petition, the petitioner has prayed for the following main relief:

"a writ in the nature of mandamus or any appropriate writ/ order/directions commanding the respondents to act and proceed in accordance with law and directing the respondents to rescind, recall, cancel and/or withdraw the rationalisation scheme being General Order No. 1 of 1987 and General Order No. 1 of 1989 and General Order No. 2 of 989 and General order No. 1 of 1990 dated 10-5-1990 and any further similar notification and/ or rationalisation order or orders issued during the pendency of this writ petition by the Railway Board, so far it relates to rationalisation of the longer route via Botad-Jetalsar and the refusal to refund under letter dated 23-3-87, 27-4-87 and 6-1-88 issued by the Chief Commercial Superintendent, Western Railway and the restrictions message dated 12-1-87 issued by the Divisional Operating Superintendent of Bhavnagar

Division and the Chief Operating Superintendent, Western Railway, and not to issue any further rationalisation scheme specifying the longer route for carrying the goods traffic and not to charge freight on the basis of the illegal reationalisation scheme and the longer route and to charge freight in accordance with the provision of Rule 125(b) of the Goods Tariff No. 39, Volume I on the basis of the shortest and/or cheapest route and further directing the respondents to refund the excess freight realised from the petitioner from 10th January, 1987, on the basis of the illegal restrictions imposed on 12-1-87 and the illegal rationalisation scheme being General Order No. 1 of 1987, General Order No. 1 of 1989 and General Order No. 2 of 1989 and to forbear from giving any effect and further effect of the General Order No. 2 of 1989 and to declare the said General Orders ultra vires to Section 27A of the Indian Railways Act, Article 14 and 19(1)(d) of the Constitution of India, and General Order No. I of 1990 dated 10-5-90 and any further similar notification and/or ratioalisation order or orders issued during the pendency of the writ petition."

2. M/s. Ambuja Cements (P) Ltd., wanted to establish a cement plant at Mahuva in Saurashtra. it, therefore, applied to the concerned Ministries for the industrial licence. As a part of the process for granting the industrial licence, the "no objection", or the approval of the Ministry of Railways was needed, and the Ministry of Railways granted such "No objection" or the approval. Thereafter, M/s. Ambuja Cements (P) Ltd. was converted into a Public Limited Company, and the site of the proposed cement plant was changed from Mahuva to Kodinar in Saurashtra. Necessary applications were, therefore, made to the concerned Ministries for effecting the change, both as regards the name of the licensee as also as regards the place where the cement plant was to be established. Those applications were granted, and once again, as a part of the process for granting the industrial licence to the petitioner, the Ministry of Railways granted the necessary "No Objection" or the approval. The petitioner established a cement factory at Kodinar, at a huge cost, and went into production sometime in 1986. For manufacturing cement, the petitioner needs huge quantities of coal, which it purchases from Bilaspur Collieries and other Collieries. The coal is transhipped by railway wagons to the site of the factory of the petitioner at Kodinar. The manufactured product of the petitioner, i.e. the cement is despatched to the various destinations by railway wagons.

3. Both, the inward traffic of coal, and the outward traffic of cement, usually passes through Sabarmati Railway Station. En route Sabarmati Kodinar, there is Khijadiya Railway Station. Between Sabarmati and Khijadiya, there is single route. However, from Khijadiya onwards, for going to Kodinar, there are three routes;

(i) Khijadiya-Jetalsar-Junagadh-Veraval-Talala-Prachi Road-Kodinar. This is the longest distance route (for short to be referred to as "the longest route").

(ii) Khijadiya-Jetalsar-Junagadh-Visava- dar-Tatalar Prachi, Road-Kodinar. This is the medium distance route (for short to be referred to as "the medium route"),

and

(iii) Khijadiya-Visavadar-Talala-Prachi Road-Kodinar. This is the shortest distance route (for short to be referred to as "the shortest route").

As said in the petition, the distance between Sabarmati and Kodinar on the longest route is 213 Kms., that on the medium route is 196 Kms., and that on the shortest route is 139 Kms. Thus, the difference of distance between the longest route, and the shortest route is 74 Kms. In the affidavit-in-reply, on behalf of the Respondents, at some places the difference between the longest route and the shortest route is said to be 73 Kms. Be that as it may, the difference between the longest route and the shortest route is quite sizeable. Upto January 9, 1987, the Railways charged the petitioner freight on the shortest and the cheapest route basis irrespective of the route on which the goods traffic of the petitioner was moved. This was done in conformity with Rule 125(1)(b) of the Goods Tariff No. 39, Part I, Vol. I. On January 12, 1987, the Station Superintendent, Kodinar Railway Station, passed the order Annexure-E to the petition, which reads as follows :

"As per COPS, CCS Order of 2-1-87, Movement of coal and cement is restricted via TALALA -- VISAVADAR AND KHIJA-DIYA-, hence the same will be moved via VRL-JETALSAR-BOTAD and will be charged as per above Route".

Under this order contained in Annexure-E to the petition, with effect from January 10, 1987, the Railways, started charging the petitioner freight on the basis of the longest route. The Railway Board had, under its Circular letter dated December 27, 1985, communicated to all concerned, General Order No. 1 of 1986 (Rationalisation Scheme) prescribing the rationalised route via which the traffic should be booked and charged. In para No. 1.1 of that General Order No. 1 of 1986, it was provided that so far as traffic from Metre Gauge to Metre Gauge Stations was concerned, it should be booked and routed through the shortest route subject to certain provisions regarding the transshipment of salt, with which I am not concerned to this petition. That Order purports to have been passed u/s 27A of the Indian Railways Act, 1890 (IX of 1890) (for short "the Act"). That General Order No. 1 of 1986, though it was passed by the Railway Board, it is stated that the Central Government had thereby directed as per the directions given in that Order. That General Order No. 1 of 1986 was amended and extended from time to time. The last extension thereof was upto February 28, 1987. The Railway Board then issued, on February 5, 1987, General Order No. 1 of 1987 (Rationalisation Scheme), prescribing the rationalised routes via which the traffic should be booked and charged. It appears that under the order dated January 12, 1987, (Annexure-E), passed by the Station Superintendent, Kodinar Railway Station, the railway authorities charged the petitioner freight for both inward traffic of coal and outward traffic of cement, on the basis of longest route upto February 28, 1987, and with effect from March 1, 1987, they charged the petitioner on the same basis, but this time under General Order No. 1 of 1987, referred to hereinabove. That General Order No. 1 of 1987 is at Annexure-F to

the petition. As indicated just now, it was made effective from March 1, 1987, In that General Order No. 1 of 1987, it was directed that all goods traffic excluding coal from all railways to Metre Gauge Station of Bhavnagar and Rajkot Divisions and vice versa shall be looked and routed via Sabarmati, and shall be carried by metre gauge routes via Botad-Jetalsar, and so far as coal is concerned, it was provided that to Metre Gauge Stations on Bhavnagar Division excluding stations on Jetalsar-Porbandar Section, coal will be booked and routed via Sabarmati.

General Order No. 1 of 1987 was amended from time to time and the operation thereof was also extended from time to time, and lastly its operation was extended upto April 30, 1989. The Railway Board, on April 3, 1989, then issued General Order No. 1 of 1989 (Rationalisation Scheme) prescribing the rationalised routes, via which the traffic should be booked and charged. A copy of that General Order No. 1 of 1989 is at Annexure-G to the petition. That General Order No. 1 of 1989 was made effective from May 1, 1989. That General Order No. 1 of 1989 provided that all goods traffic to stations on Khijadiya Talala Prachi Road Kodinar Section on Bhavnagar division should be booked and routed via Khijadiya Jetalsar Veraval. General Order No. 1 of 1989 remained in force May 1, 1989 upto November 14, 1989.

The Railway Board, then issued General Order No. 2 of 1989 (Rationalisation Scheme) prescribing the rationalised routes via which the traffic should be booked and charged, under its letter dated October 20, 1989. That General Order No. 2 of 1989 became effective from November 15 1989. That General Order No. 2 of 1989, provided that all goods traffic to stations on Khijadiya Talala Prachi Road Kodinar section on Bhavnagar division and vice versa shall be booked and routed via Khijadiya Jetalsar Veraval. Copies of General Orders No. 1 of 1989 and 2 of 1989 have been collectively produced at Annexure-G to the petition.

4. It appears that the petitioner was reluctant to pay the freight on the basis of the longest route for according to it, under the law and the relevant rules, it was entitled to have its goods carried by the railways on the basis of the cheapest and the shortest route, irrespective of the actual routes on which the goods was moved by the railway administration. Disputes therefore, arose between the petitioner on the one hand and the authorities of the railway administration on the other. The petitioner was not mentioning in the forwarding notes, the route by which its goods should be carried. It is the contention of the petitioner that the railway authorities, then compelled them to mention in the forwarding notes, the longest route, as the route on which their goods should be carried or moved, and it was under duress that the petitioner, in some of the forwarding notes, made a mention about the longest route as the route on which its goods should be carried. It is the contention of the petitioner that it was coerced and illegally compelled by the railway authorities to do so, and therefore, the statements made by it in the forwarding notes, about the longest route on which its goods should be carried, would not disentitle it to the benefit of the freight charges on the basis of the shortest route.

5. As the petitioner was, under duress and compulsion, charged freight for its goods, on the basis of the longest route, it made some correspondence with the railway administration, and claimed refund of the difference between the freight on the basis of the longest route and that on the basis of the shortest route. The railway authorities turned down the demand for refund made by the petitioner. It appears that some correspondence in this connection was entered into between the chief Minister of the State of Gujarat on one hand) and the Minister for Railways in the Central Ministry, on the other. If and when necessary, during the course of this judgment, I will refer to the relevant parts of the said correspondence.

6. It is the case of the petitioner, that the shortest route between Khijadiya and Kodinar has not been closed, and is even now an operating route, and therefore, under the law and the relevant rule, the railway authorities are entitled to charge freight from the petitioner only on the basis of the shortest route, irrespective of the actual route on which the petitioner's goods traffic is moved or carried. It is further pleaded by the petitioner in the petition, that just as the Western Railway authorities have illegally started charging freight from it on the outward traffic of cement on the basis of the longest route, the authorities of the South-Eastern Railway also started charging it on the basis of the longest route, in respect of inward traffic of coal. The petitioner, therefore, approached the concerned authorities of the South-Eastern Railways for refund of the excess freight, and it is contended by the petitioner in the petition that the authorities of the South-Eastern Railways refunded to the petitioner, certain amount of the excess freight charged by it from the petitioner. It is further the case of the petitioner that it has invoked the writ jurisdiction of the Calcutta High Court, in the matter of excess freight levied from it by the South-Eastern Railways, and certain orders have been passed by the Calcutta High Court in that regard.

7. As its demand for the refund of the excess freight came to be turned down by the authorities of the Western Railways, the petitioner has moved this High Court under Article 226 of the Constitution, for the relief which I have reproduced hereinabove.

8. The Respondents have tried to support their action of charging freight from the petitioner on the basis of the longest route, on the strength of certain General Orders which are popularly known as Rationalisation Orders. During the course of this judgment, I will refer to those orders.

9. It is not at all in dispute that upto January 9, 1987, the Respondents charged the petitioner, freight on the basis of the shortest route, irrespective of whether the petitioner's goods were carried or moved either on the shortest route or on the medium route or on the longest route. It is also not in dispute that with effect from January 10, 1987, the Respondents started charging the petitioner, freight on the basis of the longest route. The action of the Respondents, of charging freight from the petitioner on the basis of the shortest route, irrespective of the actual route on which the goods traffic of the petitioner was

carried, was in conformity with Rule 125(1)(b) of the Goods Tariff No. 39, part I, Vol. I. That Rule reads as follows:

"125. Routing of goods traffic:--

(1)(a) xxxxxxxxxx

(b) In the absence of specific instructions in writing from the sender or his authorized agent to the contrary, goods will be despatched by the shortest route at the charges by the cheapest route, i.e. the route by which the freight charges are at the lowest."

The departure made by the Respondents in the matter of the basis adopted for charging freight from the petitioner with effect from January 10, 1987, is alleged to have been founded on the order passed by the COPS-CCS. That order has been transcribed by the Station Superintendent, Kodinar Railway Station, on January 12, 1987 in Annexure E. I have hereinabove, in Paragraph 3 of this judgment excerpted that order Annexure E. The petitioner very seriously challenged this order Annexure-E, as without any authority of law. Mr. Sheth, L.A. for the Respondents, under instructions from Mr. Man Mohan Singh, Divisional Commercial Superintendent, Western Railway, Admedabad, who was personally present in the Court at the time of hearing, at first tried to trace the authority for Annexure-E to G.O.No. 1/87, Annexure-F to the petition. A bare reading of that order Annexure-F shows that it was made effective from March 1, 1987. The order Annexure-E, dated January 12, 1987, therefore, could never have been founded upon that G.O. No. 1/87, Annexure-F to the petition. The submission of Mr. Sheth to reply upon Annexure-F to the petition for tracing the legal authority for Annexure-E to the petition, has no validity. That submission is required to be rejected.

10. Mr. Sheth submitted that at least with effect from March 1, 1987 the date on which G.O. No. 1/87, (Annexure-F to the petition) came into force the action of the Respondents of charging freight from the petitioner, on the basis of the longest route would become unsailable for it is based on that G.O. No. 1/87 passed u/s 27A of the Act. Mr. Sheth relied upon para 8.4 of that G.O. No. 1/87 for contending that under that paragraph, the Respondents would be entitled to charge freight from the petitioner on the basis of the longest route. The submission cannot be accepted. That paragraph 8.4 of G.O. No. 1/87, makes it cleat that it has no relevance to the transhipment of coal. The second column of that paragraph 8.4 pertains to all goods traffic excluding coal from all railways. Thus, it is clear that paragraph 8.4 cannot be invoked in respect of the traffic of coal. Then what remains is the traffic of cement, which is the outward traffic of the petitioner. So far as outward traffic of cement is concerned, paragraph 8.4 is in relation to the traffic to metre guage stations on Bhavnagar ami Rajkot Divisions. The format of the order clearly shows that in the first column, the paragraph number is shown, and the second and the third columns describe the traffic. The second column is as regards the place from where the traffic is to

move, and the third column is for the place to which the traffic is to move. In the third column of paragraph 8.4, the destination of the traffic is described to be "to Metre Gauge Stations on Bhavnagar and Rajkot Divisions". This entry therefore, pertains to the inward traffic, so far as the petitioner is concerned, and not for the outward traffic. Cement is the outward booking of the petitioner. Paragraph 8.4 of G.O. No. 1/87, therefore can, in no manner, help the railway administration in contending that under that paragraph, they are entitled to charge the petitioner, on the basis of the longest route, for the outward traffic of cement.

11. Even assuming that paragraph 8.4 can help the respondents, the fourth column of that paragraph would clearly negative the respondents' claim for the entitlement to charge Freight on the basis of the longest route. In the fourth column in that paragraph 8.4 the route via which the goods has to be booked is required to be mentioned. In that column, in paragraph 8.4 this is what is slated :

"Via Sabarmati and carried by Metre Gauge route via Botad Jetalsar."

Assuming that this entry in the last column in paragraph 8.4 can render some assistance to the respondents, what is rationalised, in that paragraph would be the route via Botad Jetalsar. As is clear from the three routes indicated by me in paragraph 3 above, except the shortest route, the other two routes, viz. the medium route and the longest route, both pass via Botad Jetalsar. I may mention here that between Sabarmati and Khijadia is the Station Botad. Therefore, both on the longest route as also on the medium route Would fall the Section between Botad and Jetalsaf, Even with the rationalisation of the traffic through Botad-Jetalsar section, the shorter of the two routes, viz. the longest route and the medium route would be, the medium route, and under Rule 125(b) of the Goods Tariff No. 39, part I, Vol. I ("Goods Tariff" for short), the respondents were entitled to charge freight on the basis of the medium route, and not on the basis of the longest route. Therefore, even if the first line of reasoning for negating the respondents' claim for charging freight from the petitioner, on the basis of the longest route, as indicated hereinabove, is found to be faulty, the alternative contention of the petitioner that even with paragraph 8.4 of G.O. No. 1/87, the respondents could not have charged the petitioner freight on the basis of the longest route for, under that paragraph, the maximum the respondents could have charged the petitioner would be, on the basis of the medium route, is quite sound, and deserves acceptance. I may mention here for the sake of clarification that I am inclined to accept the first submission of the petitioner that, as paragraph 8.4 excludes the operation thereof nocoal, and for cement, which is the outward traffic of the petitioner, that paragraph being in relation to the inward traffic, can have no application, and therefore, under that paragraph, the respondents would not be entitled to charge freight from the petitioner, on the basis of the longest route, or even on the basis of the medium route, and therefore, the petitioner would be entitled to the benefit of Rule 125(b) of the Goods Tariff.

12. It was not disputed by the respondents that, but for the rationalisation orders validly passed u/s 27A of the Act, the petitioner would be entitled to the benefit of Rule 125(b) of the Goods Tariff. The respondents charged the petitioner freight on the basis of the longest route, on the strength of G.O. No. 1/87. That G.O. No. 1/87 remained effective up to April 30, 1989. With effect from May 1, 1989, by G.O. No. 1/89. Annexure-G to the petition, G.O. No. 1/87 came to be superseded. As indicated hereinabove, G.O. No. 1/87 does not help the Respondents in contending that under that order they were entitled to charge the petitioner freight on the basis of the longest route. To put it differently, the action of the respondents of charging the petitioner, freight on the basis of the longest route up to April, 30, 1989 was, therefore, not backed by any legal authority. That action was in other words, illegal.

13. That G.O. No. 1/87 as originally issued did not cover the longest route as a rationalised route, would also be clear from what is stated by Mr. Manmohan Singh, Divisional Commercial Superintendent, Western Railways, Ahmedabad, in his affidavit sworn on June 18, 1990, which has been filed in this case. Mr. Manmohan Singh, in that affidavit, inter alia, has stated as follows :

"The first rationalisation notification was issued on 5-2-87, and it was effective from 1-3-87 to 30-4-89. This Notification did not cover the rationalised route in question. Therefore, separate order was passed on 17- 11-87 covering the rationalised route."

The aforesaid statement made by Mr. Manmohan Singh, in his affidavit, clearly shows that G.O. No. 1 / 87 as originally issued did not cover the rationalised route in question. In other words, it did not make the longest route as the rationalised route. That being the position, the railway administration was certainly not entitled to charge the petitioner, freight on the basis of longest route, in view of G.O. No. 1/87 as originally issued.

14. In order to get out of this difficulty, the respondents relied upon the Amendment Order dated November 17, 1987, Annexure-I to the Affidavit-in-reply, dated June 18, 1990, filed by Mr. Man Mohan Singh, Divisional Commercial Superintendent, Western Railway, Ahmedabad. That Annexure-I, dated November 17, 1987, ("Amendment Order" for short), is a communication addressed by Mr. D. C. Chakravarty, Dy. Director, Traffic Transport, Railway Board, to the various Railway authorities. At the top of that Amendment Order, this is what is written :

"Government of India (Bharat Sarkar) Ministry of Railways (Rail Mantralaya) (Railway Board)

The text of that Amendment Order reads as follows :

"No. 87/TT. III/27/1. Due to stoppage of running of trains during night time over Khijadia-Dhari-Talala-Prachi Road-Kodin-ar MG section of Bhavnagar division at the instance of State Govt. in the interest of conservation of wild life in Gir forest

through which the line passes, it has been decided that traffic to and from Kodinar-Prachi Road-Talal-Khijadiya (excl.) should be routed via Veraval-Jetalsar. Add the following as para 8.10 in General Order No. 1/1987 (Rationalisation Scheme), as it is necessary so to do in the public interest.

Para 8.10 : Traffic to stations on Kodinar-Prachi Road-Talala-Khijadia (excl.) section of Bhavnagar Division of Western Railway and vice versa be routed via Khijadia-Jetal-sar-Veraval."

15. Mr. Ghosh, the learned Counsel for the petitioner submitted that this Amendment Order dated November 17, 1987, is of no help to the Respondents for charging freight from the petitioner, on the basis of the longest route. According to Mr. Ghosh, this amendment order is signed by Mr. D. C. Chakravarty as the deputy Director, Traffic Transport, Railway Board, and that order, on the face of it, does not show that the signatory thereof passed the order, for and on behalf of the Central Government. According to Mr. Ghosh, the rationalisation order contemplated by Section 27A of the Act is required to be passed by the Central Government and not by the Railway Board or the Deputy Director of the Railway Board (Mr. D. C. Chakravearty). Mr. Ghosh contended that as the amendment order dated November 17, 1987, has not been passed by the Central Government, it cannot be considered to be a rationalisation order passed u/s 27A of the Act.

16. Section 27 A of the Act, in so far as it is material, reads as follows :

"27-A. Power of Central Government to give directions in regard to transport of goods by railway administration.-

(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) xxxxxxxxxx

(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 contravention of section 28."

A bare reading of Section 27-A of the Act shows that the power thereunder has been given to the Central Government to issue directions to the railway administration, if in its opinion, it is necessary in the public interest so to do. The opening words of Section 27-A of the Act, therefore, clearly specify that the powers thereunder have been vested only in the Central government, and they

are therefore, required to be exercised by the Central Government. Section 27A of the Act does not say that the Central Government can delegate that power to any other authority. Therefore, the amendment order dated November 17, 1987 (passed by Mr. D. C. Chakravarty) not having been passed by the Central Government, cannot be considered to be an order under Section 27A of the Act. Of course, that amendment order does refer to the rationalisation of the longest route. But as stated hereinabove just now, that order not having been made by the Central Government, cannot be said to be a valid rationalisation order. Therefore, even with effect from November 17, 1987 onwards, the railway authorities had no legal basis for charging the petitioner freight on the basis of the longest route. To put it differently, even with effect from November 17, 1987, the longest route cannot be said to have been legally rationalised, u/s 27A of the Act. The submission of Mr. Ghosh on this line is therefore, very well-founded and deserves acceptance. It would, therefore, be clear that neither under G. O. No. 1/87 as originally issued, nor as it stood after the so called amendment under the Amendment Order passed by Mr. D. C. Chakravarty on November 17, 1987, the longest route was ever legally rationalised. Therefore, the railway administration could not have charged the petitioner, freight on the basis of the longest route on the basis of that G. O. No. 1/87.

17. In support of the submission that when the statutory provision requires certain order being passed by the Central Government, it could not have been passed by the Deputy Director of the Railway Board, Mr. Ghosh relied upon the decision in the case of *Ghaio Mall and Sons Vs. The State of Delhi and Others*, . In that case, the order in question was required to be passed by the Chief Commissioner. In order to contend that the Chief Commissioner had passed the order in question, reliance was placed on a letter of Mr. M.L. Batra, Undersecretary, Government of Delhi State. Their Lordships of the Supreme Court, after perusing that letter said that in the first place, the letter was an interdepartmental communication, and in the second, it was written with reference to an earlier communication made by the Excise Commissioner, and that it purported to be a reply to the Excise Commissioner's letter dated August 31, 1954. In the third place, as indicated by the Supreme Court, the writer of that letter quite candidly stated that he had been "directed to say" something -- by whom, it was not stated. Their Lordships said that, that made it quite clear that the document in question was not an order of the Chief Commissioner, but it only purported to be a communication at the direction of some unknown person of the order which the Chief Commissioner had made.

After having read this judgment in *Ghaio Mal's* case, I think it lends a great deal of support to the submission of Mr. Ghosh that the amendment order dated November 17, 1987, can, by no stretch of reasoning, be said to be an order passed by the Central Government u/s 27A of the Act. As I read that amendment order, it is only an inter-departmental communication addressed by Mr. D. C. Chakravarty, Deputy Director, Traffic Transport, Railway Board, to the various railway authorities to whom the copy thereof has been endorsed. "The text of

that amendment order", which I have reproduced hereinabove, in so far as it is relevant for the present purpose says,--

"It has been decided that traffic to and from kodinar-Prachi Road-Talala-Khijadia (excl.) should be routed, via Veraval -- Jetalsar."

The important words are "It has been decided". By whom it has been" so decided is"riht at all stated in this amendment order. The amendment order does not say that it has been so decided by the Central Government. Though the amendment order says that the decision as referred to therein has been taken "as it is necessary sp to do in public interest", the order nowhere says as to who formed the opinion that it was necessary so to do in public interest. The order does not say that the Central Government formed an opinion that it was necessary so to do in public interest, and, therefore, the order as contained in the amendment order was issued. Considering the matter from this angle, the amendment order cannot be said to be the order, passed by the Central Government as required u/s 27A of the Act. There fore, though by the amendment order, G.O. No: 1/87 is ought t6 be amended in para 8.10 to include the longest route as the rationalised route, "that ameridment order Can have no legal effect for it has not been passed by the Central Government.

18. Mr. Ghosh also challenged this amendment order on the ground, that Mr. Chakravarty has not been empowered either to issue, orders in the name of the Central Government, or to authenticate orders issued by, the Central Government. He also referred to certain provisions of the Railway Board Act, and certain delegation orders issued as early as 1906, 1907 and 1908, and contended that since 1"908 onwards there has not been any delegation of powers under the provisions of the Railway Board Act. He also submitted that Section 27A of the Act was enacted in 1950, and since the enactment of Section 27A of the Act, there has never been any delegation of powers of the Central Government to issue orders u/s 27A of the Act, upon anyone, and therefore also, the amendment order signed by Mr. D. C. Chakravarty cannot be considered to be a rationalisation order u/s 27A. of the Act. He also submitted that the order u/s 27A of the Act has only a limited life of six months and that section itself contemplates that such an order may be renewed from time to time. But, in the submission of Mr. Ghosh, the Section does not contemplate any amendment of the order passed u/s 27 A of the Act. According to Mr. Ghosh", if the powers those be, wanted to effect any change in G.O. No. 1/87, they should have issued"a fresh order, and not the amendment order such as the one issued by Mr. Chakravarty, on November 17, 1987.

Thus Mr. Ghosh assailed this amendment order on various grounds. I do not think, it is necessary for me to consider the validity of all these submissions of Mr. Ghosh just now catalogued by me, for the reason that I am convinced that the amendment order passed by Mr. D. C. Chakravarty can, by no stretch of reasoning, be said to be the order by the Central Government, and u/s 27A, of the Act, it is only the Central Government, which can pass the order. It is not the

case of the railway authorities, in any of the affidavits-in-reply nor was any such case sought to be made out before me that Mr. D. C. Chakravarty has been, by any legal order, authorised to issue any orders on behalf of the Central Government. Therefore also, it is not necessary for me to consider the validity of the various submissions made by Mr. Ghosh before me, just now referred to by me.

19. The respondents, in order to substantiate their action of charging the petitioner freight on the basis of the longest route, heavily relied upon General Orders such as G.O. No. 1/87, G.O. No. 1/89, G.O. No. 2/89, etc. I have hereinabove dealt with some of the contentions raised by the petitioner challenging these General Orders. One more contention raised by the petitioner against the General Orders is that they have been issued by the Railway Board and not by the Central Government. According to Mr. Ghosh, the learned Counsel for the petitioner, Railway Board is not equivalent to Central Government and when Section 27 A of the Act confers power upon the Central Government to give directions, that power can be exercised only by the Central Government, and it cannot be delegated by the Central Government to the Railway Board, or to any other authority, and as submitted by Mr. Ghosh, in the present case, there is no delegation of powers on the Railway Board to issue the rationalisation orders u/s 27A of the Act. This submission is common to all the General Orders relied upon by the respondents. I think the submission is well founded. I have hereinabove analysed the relevant parts of Section 27 A of the Act, and have pointed out that under that Section, it is the Central Government which has been empowered to issue either general or special directions to the railway administration to carry any goods or class of goods on any such route or routes at such rates as may be specified in the order. Now, when u/s 27A of the Act, the power has been granted to the Central Government to issue, by general or special order, directions to carry any goods or class of goods by such route or routes at such rates as may be specified in the order, such power shall have to be exercised by the Central Government, and it cannot be exercised by the Railway Board. Mr. Sheth, the learned Advocate for the respondents was not in a position to point me out as to under what provision, the railway board received the power or authority to issue the rationalisation orders or general orders, such as General Orders Nos. 1/87, 1/89 and 2/89.

20. Then comes G.O. No. 1/89 and G.O. No. 2/ 89. Both of them have been collectively produced as Annexure-G to the petition. Both of them have been issued by the Railway Board. Therefore, in that respect they stand on the same footing as G.O. No. 1/87. In other words, they have not been issued by the Central Government. They, therefore, cannot be said to be the orders issued by the Central Government u/s 27A of the Act. Consequently, they cannot form the basis for entitling the respondents to charge the petitioner freight on the basis of the longest route. Of course, in both, these orders, i.e. G.O. No. 1/89 and G.O. No. 2/89, the longest route has been rationalised. G.O. No. 1/89 became effective from May 1, 1989 and remained in force up to November 14, 1989. In

supersession thereof, G.O. No. 2/89 came into force with effect from November 15, 1989. At the time the present petition was filed on January 19, 1990, G.O. No. 2/89 was in force. In the present petition, as is clear, the petitioner has challenged all these General Orders being G.Os. Nos. 1/87, 1/89 and 2/89. The challenge, as indicated hereinabove, is well founded.

21. The result of the foregoing discussion would show that neither G.O. No. 1/87 as originally issued nor even after the issuance of the amendment order dated November 17, 1987, by Mr. D. C. Chakravarty, nor even G.Os. Nos. 1/89 and 2/89, can be said to have validly rationalised the longest route. On the basis of those orders, therefore, the respondents could not have charged the petitioner freight on the basis of the longest route. In other words, charging by the respondents, freight from the petitioner, on the basis of the longest route, was not at all authorised by any legal order. That action of the respondents was wholly illegal.

22. The petitioner has also challenged the various rationalisation orders relied upon by the respondents on many other grounds. In the view of the matter that I have taken hereinabove, I do not think it is necessary for me to dwell at length on all those points. Suffice it would be to say that the petitioner has challenged the rationalisation orders on various grounds as enumerated in the petition as originally filed and as amended from time to time (the last amendment to the petition has been made by the petitioner on September 15, 1992, as per the order passed by the Court on C.A. No. 1770 of 1992), and Mr. Ghosh has pressed into service before me all those grounds at the time of hearing of the petition. However, it would not be out of place to mention a few of the grounds which were pressed into service before me by Mr. Ghosh. It was submitted that even assuming that the General Orders relied upon by the respondents could, by some logic, be said to be the orders passed by the Central Government, they do not conform to the requirements of Section 27 A of the Act inasmuch as before passing the orders under the said section, the Central Government is required to form an opinion that it is necessary in the public interest to issue directions. Mr. Ghosh submitted that when the Central Government is required to form an opinion that it is necessary in the public interest so to do, that opinion of the Central Government is required to be based upon proper facts. Such an opinion cannot be formed by the Central Government merely for the purpose of augmenting the government revenue or the railway revenue. In the present case, up to a certain time, the rationalisation orders in question were sought to be supported on the basis of the so called request of the Government of Gujarat to the powers at the Centre not to run trains during night time on the shortest route for that disturbed the wild-life. Later on the decision to rationalise the longest route was sought to be justified on the ground that the shortest route is an uncontrolled section with primitive signalling arrangement, with the result that the movement of the trains on that section is extremely slow. Mr. Ghosh challenged both these grounds put forward by the respondents as a basis for forming the opinion that it was necessary in public interest to pass the

rationalisation orders in question.

23. It was sought to be contended on behalf of the respondents that the shortest route passed through the Gir Forests, and on account of the night running of the trains on that route, the wild-life is disturbed and, therefore, the Government of Gujarat had requested the Central Government to stop the running of the trains during night time on the shortest route and it was, therefore, that G.O. No. 1/87 was issued. Mr. Ghosh, the learned Counsel for the petitioner challenged this ground put forward by the respondents as a ground on which the powers those be, could be said to have arrived at the requisite opinion that it was in public interest to issue directions to the railway administration to carry the goods or class of goods on the longest route. Mr. Ghosh invited my attention to the affidavit-in-reply filed by Mr. K. L. Dixit, the Divisional Operating Superintendent, Western Railway, sworn on March, 27, 1990, produced on the record of the case, where Mr. Dixit has, while referring to the shortest route, stated as follows :

"The route was prohibited since night running of the train on that section was not permitted as the route passed through Gir forest and one lioness was killed by goods train and it affected the wild life in Gir forest. The Deputy Conservator of Forests (Wild Life), Sasan (Gir), therefore, requested the Divisional Manager, Western Railway, Bhavnagar, to immediately stop running of trains during night time over this route, which was a shorter route, in the interest of conservation of wild life in Gir forest. As the short (it should be shorter) route was required to be stopped, it was decided that traffic to and from Kodinar-Prachi-Talala-Khijadiya should be routed through Veraval-Jetalsar. This notification dated January 1, 1987, came to be extended from time to time for the same reasons."

Relying upon these statements made by Mr. Dixit in his affidavit-in-reply, Mr. Ghosh firstly submitted that the Deputy Conservator of Forests could not be equated with the Government of Gujarat. He nextly submitted that the Divisional Manager, Western Railway, Bhavnagar, also could not be equated with the Central Government. Mr. Ghosh submitted that even if some request was made by the Deputy Conservator of Forests to the Divisional Manager, Western Railway, Bhavnagar, that would not be sufficient to say that there was material before the Central Government on the basis of which the Central Government came to be of the requisite opinion that it was necessary in the public interest to issue directions to carry the goods through the longest route. Mr. Ghosh also submitted that merely because once a lioness might have been killed on a railway track, on that ground alone, it cannot be said that it is in public interest to rationalise the longest route, for the purpose of carrying the traffic of the petitioner and others. Mr. Ghosh invited my attention to the various affidavits filed on behalf of the respondents which go to show that since 1954, except in emergency, night running of trains on the shortest route was never undertaken, and therefore, there was no question of either the inward traffic or the outward traffic of the petitioner being carried on the shortest route. It is an admitted position that the longest route is being operated since the beginning, and as stated by Mr. Dixit in

his affidavit just now referred to, even for the petitioner, the longest route was being operated from January, 1987 for carrying cement and from 1985 for carrying coal. It is again an admitted position that initially even though the goods of the petitioner were carried through the longest route, the freight was charged on the basis of the shortest route. Mr. Dixit, in his further affidavit sworn on April 16, 1990, and filed in this case has, in this connection, in para 7, stated as under :

"I submit that it is true that initially even though the goods were carried through the longer route, the freight charge was of the shorter route. But this was so since there was no rationalisation scheme at the relevant time. On and from the date the rationalisation scheme was introduced, the Railways have charged freight on the basis of the route through which the goods are actually carried."

Thus, the petitioner's case that prior to January 10, 1987, the respondents charged freight from it on the basis of the shortest route even though its goods was carried on any of the three routes is fully corroborated by the admissions made by the Officers of the respondents. In this view of the matter, the request made by the Deputy Conservator of Forests to stop running of the trains during night time on the shortest route, as spoken by Mr. Dixit in para 7 of his first affidavit would hardly be relevant for forming an opinion that it was in public interest to direct the railway administration to carry the goods traffic on the longest route. The submission of Mr. Ghosh on this line, in my opinion, is well founded.

24. Mr. Ghosh submitted that even if on the basis of the request of the Deputy Conservator of Forests, the Central Government could have formed the requisite opinion for issuing the rationalisation orders, the request not to run the trains on the shortest route at night time, came to be withdrawn on April 10, 1989, vide Annexure O, dated April 10, 1989. Annexure O is a letter written by the Chief Minister of Gujarat to the Minister of State for Railways, Government of India, whereby the Chief Minister has, inter alia stated that he had the matter examined again by the appropriate Department, and he has found that there was no more need to continue the restriction on the night running of trains over the shortest route. The Chief Minister wrote that so far as Gujarat Government was concerned, there was no objection to the trains being run in the normal course. According to Mr. Ghosh, therefore, with effect from April 10, 1989, there was no material on the basis of which any rationalisation order could have been sustained. As indicated above, G.O. No. 1 / 87 remained in force up to April 30, 1989. With effect from May 1, 1989, G.O. No. 1/89d came into force. According to Mr. Ghosh, therefore, on May 1, 1989, there was no subsisting request from Government of Gujarat to the Railway Minister, not to run the trains on the shortest route in the interest of wild life and, therefore, no order rationalising the longest route could have been passed or continued after April 10, 1989. The argument of Mr. Ghosh is quite sound. Once the Chief Minister of Gujarat requested the Minister of State for Railways that so far as Government of Gujarat

was concerned, there was no objection to the trains being run in the normal course, and that there was no more need to continue the restriction on the night running of the trains on the shortest route, the whole substratum for saying that as the night running of the trains on the shortest route affected adversely the wild life, the Central Government had come to form an opinion rationalising, the longest route was lost. That substratum getting lost, there was no justification either to impose any rationalisation order or to continue it.

25. The second line on which the rationalisation order was sought to be justified on behalf of the respondents was that the shortest route is an uncontrolled section with primitive signalling arrangement, with the result that the movement of trains on that section is extremely slow. Mr. Ghosh challenged this ground also. According to Mr. Ghosh, this second ground has been put up by the respondents only with a view to defend their illegal action of rationalisation after the Government of Gujarat withdrew its request not to run the trains during night time on the shortest route. Mr. Ghosh also submitted that the principle of promissory estoppel would come in this way of the respondents in advancing this contention. As said in the beginning of this judgment, at all the relevant stages, the Ministry of Railways has granted no objection and approval to the petitioner to set up its cement plant. Letters granting such no objections and approvals have been produced on the record of the petition. The first such letter is Annexure A to the petition. It is dated June 7, 1983. It is in the form of an office memorandum issued by the Railway Board. By that Office Memorandum, it is stated that the Ministry of Railways has no objection to the Ministry of Industry granting an industrial licence as prayed by the petitioner. That Office Memorandum sets out the terms and conditions on which the approval was accorded. Term No. 6 reads as follows :

"The Railways will plan for line capacity and other works, wherever required, after an intimation is received from the party/ Ministry of Industry by the Ministry of Railways and the railway administrations concerned about the receipt/ grant of an Industrial Licence to the extent of the capacity involved."

According to Mr. Ghosh, the aforesaid term in the Memorandum of approval clearly shows that the railway administration has held out a promise to the petitioner to improve its line and line capacity so as to meet the requirement of the petitioner, and upon such promise held out by the respondents, the petitioner, at a huge cost installed a cement, plant. Mr. Ghosh also drew my attention to the letter dated August 15, 1985, Annexure C to the petition, addressed on behalf of the petitioner to the General Manager Western Railway, whereby the petitioner intimated to the General Manager, the petitioner's requirements as regards railway lines. In that letter, the petitioner has indicated the extent of the load, the wagon requirement and the consequential length of the lines, at certain stations. To this letter Annexure C no reply was given on behalf of the respondents, and thereafter, all throughout, up to January 9, 1987, both the inward traffic and the outward traffic of the petitioner was carried by the

railway administration mostly on the longest route, and yet, the freight was charged on the basis of the shortest route, in conformity with Rule 125(1)(b) of the Code Tariff. Adding to Mr. Ghosh, once the railway administration held out a promise to the petitioner to plan for the line capacity and other works, whenever required, and once an intimation to that regard having been given by the petitioner to the railway administration, now the respondents cannot fall back upon the specious plea that the shortest route is an uncontrolled section with primitive signalling arrangement and therefore, the movement of trains would be extremely slow. According to Mr. Ghosh, the condition of the rails and the railway arrangement on the short route from the beginning was as it is available now, and notwithstanding that condition of the rails and the railway arrangements on the shortest route, that route is even now an operating route on which trains are run during day time, and going by what is stated by the Officers of the respondents in their various affidavits, in emergency trains were run on that route during night time, and therefore, now the railway administration cannot say that the longest route is required to be rationalised on the ground that the shortest route is an uncontrolled section with primitive signalling arrangement rendering the movement of trains on that section, extremely slow. Mr. Ghosh submitted that whatever be the condition of the rail tracks on the shortest route, it is not the case of the railway administration that the said route has been completely closed. That route is even now an operating route, therefore, the ground that the shortest route is an uncontrolled section with a primitive signalling arrangement cannot furnish any basis for forming an opinion that it would be in the public interest to rationalise the longest route. Both these arguments of Mr. Ghosh-- (i) based on the principle of promissory estoppel, and (ii) the fact that the shortest route is an uncontrolled section with a primitive signalling arrangement cannot furnish a basis for forming the opinion that it would be in public interest to rationalise the longest route, -- appear to be sound. I am inclined to accept both these arguments of Mr. Ghosh. On the basis of those arguments also, I firstly hold that the respondents are estopped from denying the petitioner, the benefit of Rule 125(1)(b) of the Goods Tariff for they had held out a promise to the petitioner that they would plan the line capacity, etc. to the required extent as and when required; and secondly, the fact that the shortest route is an uncontrolled section with a primitive signalling arrangement cannot furnish any basis for rationalising the longest route.

26. Mr. Ghosh also submitted that Section 27 A of the Act cannot be invoked by the Central Government for the purpose of increasing its revenue. There also Mr. Ghosh is right. Firstly, it is required to be noticed that by virtue of Sub-section (2) of Section 27A of the Act, any order made under Sub-section (1) of Section 27A of the Act would cease to have effect after expiry of six months from the date of the order, though, of course, such an order may be renewed from time to time. Thus Sub-section (2) of Section 27A of the Act makes it abundantly clear that the order under that Section 27A is primarily meant to be a temporary measure to be resorted to in exceptional circumstances and to meet any

emergent situation. No case of any exceptional circumstances or the, requirement for any emergent situation has been made out by the respondents. That being so, the only obvious inference is that the rationalisation orders have been issued only with a view to charge enhanced freight from the parties concerned. That certainly cannot be the ground for passing an order u/s 27A of the Act.

27. Mr. Ghosh also submitted that though in the various affidavits filed on behalf of the respondents, it has repeatedly been stated that the Railway Officers from time to time have formed an opinion that it is in public interest to pass the impugned orders, nowhere it has been stated that the Central Government has formed such an opinion Mr. Ghosh also made a pointed grievance of the fact that though in the affidavits-in-reply filed by the officers of the respondents, it has been stated that the respondents would rely upon the relevant files, no such files have been produced for the perusal of the Court. Be that as it may, in the view of the matter that I have taken, I do not feel called upon to decide these questions raised by Mr. Ghosh.

28. In support of the submission that the Railway Board is not synonymous with the Central Government, Mr. Ghosh relied upon the decision in the case of K.N. Shukla Vs. Navnit Lal Manilal Bhat and Another, . That decision certainly lends support to the contention of Mr. Ghosh made above. I have dealt with that contention earlier also, and I am of the opinion that the Central Government is not the same thing as the Railway Board. When Section 27A of the Act requires the Central Government to issue directions, the Railway Board or its Officers could not have legally done so in absence of any valid authorisation.

29. Having bestowed my anxious attention to the matter, I think the action of the respondents of charging the petitioner freight on the basis of the longest route is absolutely illegal, arid has no legal backing. The petitioner's challenge to the various rationalisation orders should, therefore, succeed.

30. The petitioner has claimed refund of the excess freight illegally charged from it by the respondents. That claim also deserves to be allowed.

31. In State of Madhya Pradesh Vs. Bhailal Bhai and Others, , it has been held :

"Where sales tax, assessed and paid by the dealer, is declared by a competent Court to be invalid in law, the payment of tax already made is one made under a mistake within Section 72 of the Contract Act and so the Government to whom the payment has been made by mistake must in law repay it. In this respect, the High Court has in exercise of its jurisdiction under Article 226 of the Constitution of India, power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without any authority of law."

32. In Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, also, the Sales Tax illegally recovered was ordered to be refunded.

33. In *Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others*, , it has been posited as follows :

"Normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution, the Court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party."

34. On the basis of the aforesaid three judgments, it has got to be said, in the present case that as the respondents have illegally charged the petitioner, excess freight on the basis of the longest route, that excess freight is required to be refunded by the respondents to the petitioner. The record shows that no sooner the respondents started recovering the freight from the petitioner on the basis of the longest route, the petitioner raised objections, made several representations and without wasting any time, approached this Court for the appropriate relief. The record amply bears out that the petitioner was vigilant in asserting that the respondents were not entitled to charge freight from it on the basis of the longest route. Correspondence in this behalf has been produced on the record, and it is not the contention of Mr. Sheth, the learned advocate for the respondents, before me that the petition suffers from the vice of laches or that the claim made in the petition is barred by the law of limitation. In this view of the matter, the excess freight charged from the petitioner by the respondents is required to be refunded, and appropriate order in that behalf is required to be passed by this Court under Article 226 of the Constitution of India.

35. In the final analysis, firstly, I hold that the longest route, i.e. Khijadiya -- Jetalsar -- Junagadh -- Veraval -- Talala -- Prachi Road -- Kodinar, cannot be said to have been legally rationalised under any of the General Orders Nos. 1/87, 1/89 and 2/89, and that route having not been legally rationalised under any legal order passed u/s 27A of the Act, the benefit of Rule 125(1)(b) of the Goods Tariff, available to the petitioner could not be deprived by the respondents.

I further hold that the respondents are only entitled to charge freight from the petitioner on the basis of the shortest and/or cheapest route, meaning thereby, on the basis of the shortest route, i.e. Khijadiya -- Visavadar -- Talala -- Prachi Road -- Kodinar.

The respondents are hereby restrained from charging the petitioner freight on the basis of the longest route, i.e. Khijadiya -- Jetalsar -- Junagadh --- Veraval -- Talala -- Prachi Road -- Kodinar, on the basis of the orders produced and/or relied upon by them in this petition, and they are directed to give to the petitioner, benefit of Rule 125(1)(b) of the Goods Tariff by charging the petitioner freight on the basis of the shortest route, i.e. Khijadiya -- Visavadar -- Talala -- Prachi Road -- Kodinar.

The respondents shall refund to the petitioner within 12 weeks from now, the difference of the freight between the one on the basis of the longest route, and the other on the basis of the shortest route so far charged by them from the petitioner in respect of its bookings. If the amount of this difference is not paid by the Respondents to the petitioner within 12 weeks from now, the Respondents shall also be liable to pay interest at the rate of 12 per cent per annum on the amount of that difference to the petitioner.

The Respondents shall also pay to the petitioner, costs of this petition.

The aforesaid are thus, the terms of the writ of this Court. Rule is made absolute accordingly.