
(2014) 05 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 317/1990

J.K. Lakshmi Cement Ltd.

APPELLANT

Vs

The General Manager and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80 — Limitation Act, 1963 - Section 17

Citation : (2014) 05 RAJ CK 0061

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : S.R. Joshi, for the Appellant; S.S. Hasan, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This civil misc. appeal has been filed against the order dated 15.05.1990 whereby the Railway Claims Tribunal Jaipur Bench (hereinafter "the Tribunal") has dismissed a petition filed by the appellant-Company on the ground that the claim as laid before it was in the cross hairs of Section 78B of the Indian Railways Act 1890 (hereinafter "the Act of 1890") and therefore not maintainable.

2. For facility of reference Section 78B of the Act of 1890 relevant for the determination of this appeal is reproduced hereinunder:

"78B-Notification of claims to refunds of overcharges and to compensation for losses.-A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf-

(a) to the railway administration to which the animals or goods were delivered to be carried by railway; or

(b) to the railway administration on whose railway the destination station lies, or

the loss, destruction, damage or deterioration occurred;

within six months from the date of the delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation."

3. FACTS : The facts of the case are that the appellant-Company dispatched 5 racks of 4100 M.T. levy cement from its Banas siding to be carried and delivered at Thiyat Hamira Railway Station. The distance between two stations is stated to be only 511 KMs and the Railways alleged to have charged freight for distance of 946 KMs calculating the distance via Rewari. It was stated that because of this mistake in the calculation of the distance from the appellant-Company's Banas siding to Thiyat Hamira Railway Station, railway freight was charged in excess @ Rs. 21.44 per qtl. instead of the applicable rate of Rs. 13.11 per qtl. and paid under mistake. Consequently Rs. 3,69,775/- was overpaid. This excess realisation was according to the appellant-Company on the face of it arbitrary, unauthorized and illegal and thus refundable by the Railways with interest.

4. On service of notice of the appellant-Company's claim petition, the Railway administration contested the claim primarily on the ground that the petition was not maintainable under Section 78B of the Act of 1890 because the appellant-Company did not prefer any claim within six months from the date of the booking of the consignment or delivery or even payment in respect of the freight charged. It was stated that various railway receipts for the consignment in issue had been booked between 07.12.1985 and 11.02.1986 and delivery made soon thereafter. A notice for alleged realisation of excess freight was however sent on 17.02.1988 much beyond the six months prescribed limitation/bar under Section 78B of the Act of 1980 for a valid claim against the Railways.

5. In view of the defence of the Railway particularly with regard to the non-maintainability of the claim as laid first before the District Judge, Sirohi and thereafter transferred to the Railway Claims Tribunal at Jaipur Bench pursuant to the coming into force of the Railway Claims Tribunal Act, 1987 effective 08.11.1989, the Tribunal framed various issues, but focused its attention in the first instance to determine issue No. 3 as a preliminary issue which reads as under:

"Whether the notice under Section 78B of the Indian Railways Act given by the applicant is valid? If not, what is the effect?"

6. On consideration of the matter, the Tribunal found that the claim before it

pertained effectively to an overcharge of freight and the contention of the appellant-Company that the manner of excess charge of freight could not be construed as an overcharge was negatived. The learned Tribunal has held that an overcharge is a situation where excess money for transportation of goods by the Railways is realised even if such realisation be arbitrary as long as it relates to a charge for the movement of goods from one station to another.

7. Mr. S.R. Joshi, appearing for the appellant-Company, submitted that the Tribunal had misdirected itself in holding that the wrong realisation of money for the movement of goods consigned through Railway between 07.12.1985 and 11.02.1986 was an overcharge covered within Section 78B of the Act of 1890 or that the failure of the appellant-Company to issue notice within six months of the delivery of the goods consigned with reference to Section 78B of the Act of 1890 was fatal. It was submitted that in the facts of the case, excess realisation of the freight from the appellant-Company was an aberration owing to an obvious mistake and could not be construed as an overcharge deliberately made and therefore the learned Tribunal erred in law in so holding. It was submitted that as the preliminary issue with regard to the maintainability of the claim before the Tribunal was wrongly decided, the order of the Tribunal passed on 15.05.1990 should be set aside and the matter remanded to the Railway Claims Tribunal Jaipur Bench for re-adjudication of the whole claim on merits. Mr. Joshi has relied upon the judgment of the Hon''ble Gujarat High Court in the case of Union of India Vs. Mansukhlal Jethalal, to submit that where a charge towards freight is illegally, arbitrarily and unreasonably made, it cannot be construed an overcharge within the meaning of Section 78B of the Act of 1890. He further submitted that the same position has been reiterated by the Hon''ble Supreme Court in the case of Union of India & Ors. v. West Coast Paper Mills Ltd. & Anr., Civil Appeal Nos. 1061-1062/1998, decided on 25.02.2004. Emphasis has been placed to para 18 of the aforesaid judgment which for facility of reference is reproduced as under:

"The term overcharge is not defined in the Act. In its dictionary meaning "overcharge" means "a charge of a sum more than as permitted by law" (see The Law Lexicon, P. Ramanatha Aiyar, 1997 Edition, Page 1389]. The term came up for the consideration of the High Court of Gujarat in Shah Raichand Amulakh (Dead.) by his heir Vs. Union of India (UOI) and Others, . Chief Justice P.N. Bhagwati (as His Lordship then was) interpreted the term by holding that "overcharge" is not a term of art. It is an ordinary word of the English language which according to its plain natural sense means any charge in excess of that prescribed or permitted by law. To be an overcharge, a sum of money must partake of the same character as the charge itself or must be of the same genus or class as a charge. It cannot be any other kind of money such as money recovered where nothing is due. Overcharge is simply a charge in excess of that which is due according to law."

8. Counsel further submitted that in any event the claim as first laid before the

Civil Court and thereafter transferred to the Tribunal was within limitation with reference to Section 17 of the Limitation Act 1963 (hereinafter "the Limitation Act"). He submitted that the factum of the realisation of excess charge in an arbitrary and unauthorized manner by the Railway came to the notice of the appellant-Company only on or about 30.12.1987 when in the course of Government of India audit of the accounts of the appellant-Company with regard to supply of rakes of levy cement from its factory, it transpired that the excess freight had been unauthorizedly realized by the Railway in miscalculating the distance between Banas siding of the appellant-Company and place of delivery at Thiyat Hamira Railway station by wrongly measuring the distance as 946 KMs as against the actual distance of 511 KMs between the two stations. Counsel submitted that no sooner the letter dated 30.12.1987 was received by the appellant-Company requisite notice were issued to the respondent-Railway on 17.02.1988. It was submitted that the appellant-Company having taken corrective measure for recovery of excess freight realized from it by the Railway within 60 days of the mistake coming to its notice pursuant to the letter dated 30.12.1988, the precondition under Section 78B of the Act of 1989 for laying a claim for recovery should be taken to be satisfied and the claim ought to have been held maintainable. The Tribunal having failed to do, it should be corrected in this appeal.

9. Mr. S.S. Hasan, appearing for the respondent-Railway, has obviously supported the impugned judgment passed by the Railway Claims Tribunal on 15.05.1990.

10. Heard. Considered.

11. I find no force in the contention of Mr. S.R. Joshi, counsel for the appellant-Company that the limitation under Section 78B of the Act of 1890 should be construed with reference to Section 17 of the Limitation Act and the period of 60 days provided for therein computed from the date of knowledge of the mistake in payment of excess freight realized unauthorizedly and arbitrarily by the respondent-Railway. Section 17 of the Limitation Act relates to suits or applications for which a period of limitation has been prescribed "under this Act" - i.e. the Act of 1963. Situations thereafter detailed in Clause (a), (b) & (c) of Section 17 of the Act of 1963 then determine the commencement of the limitation and the periods provided for under the Limitation Act. However the limitation under Section 78B of the Act of 1890 for recovery of freight overcharged by the Railways i.e. 60 day from the date of delivery of goods where excess freight has been realised does not relate to the Limitation Act. Consequently, the provision of Section 17 of the Limitation Act for postponement of the cause of action contrary to the cause of action as provided for under Section 78B of the Act of 1890 does not obtain in the present case. Further a bare look at the judgment of the Hon''ble Gujarat High Court in Mansukhlal Jethalal (Supra) as also the judgment of the Hon''ble Supreme Court in West Coast Paper Mills Ltd. (Supra) makes it clear that an overcharge of freight would

mean "a charge of sum more than permitted in law". Overcharge of a sum of money for a purpose partakes the same character as the underlying charge and belongs the same genus or class as the basic charge. Any other kind of levy of money unrelated to the basic charge would, as held by the Gujarat High Court and the Hon'ble Supreme Court, indeed would not take the character of an overcharge. In the Gujarat High Court case the overcharge related to a charge relating to the use of sidings of the Railways and it did not entail an excess charge on the freight as in the instant case. So to in the case before the Hon'ble Supreme Court. In my considered opinion, from the very enunciation of law by the Hon'ble Gujarat High Court in Mansukhlal Jethalal (Supra) and the Hon'ble Supreme Court in West Coast Paper Mills Ltd. (Supra) it is evident that the charge levied over the appellant-Company was qua the freight and movement of goods and nothing more excessive though it is alleged to be. It did not have a character different from the basic charge. In fact the appellant-Company itself averred of realisation of an excess freight and specifically in para 6 of the plaint had itself averred that due to "mistake" in calculating of distance excess freight was realised at the rate of Rs. 21.44 per qtl. instead of Rs. 13.11 per qtl.. Further in the notice under Section 78B of the Act of 1890 R/w Section 80 CPC issued by the appellant-Company prior to the filing of the suit for recovery of money before the District Judge, Sirohi, it was submitted that "due to mistake on the part of the booking staff of the Railways incorrect distance was computed from Banas siding to Thiyat Hamira railway station against the correct chargeable distance of 511 KMs and the distance was worked out to 946 KMs. which was the chargeable via Rewari. In para 4 of the suit it was stated that on the part of the Railway "enhanced rate (emphasis mine) @ Rs. 21.44 per qtl. was charged". In my considered opinion as also held by the learned Tribunal the case set up by the appellant-Company makes it evidently clear that the refund was sought of the excess freight realized-allegedly illegally and unauthorizedly. The excess freight without doubt related to freight otherwise payable for the movement/transportation of goods by the Railways and therefore was obviously an overcharge. Consequently, Section 78B of the Act of 1890 attracted to the claim petition filed. Admittedly notice with regard to the freight paid between 07.12.1985 and 11.02.1986 was issued on 17.02.1988 quite clearly beyond the period of six months as statutorily mandated. The Tribunal was right in so holding.

12. Mr. S.R. Joshi has finally submitted that in the event this Court were to uphold the impugned order dated 15.05.1990, passed by the Tribunal, it would entail unjust enrichment of the Railway as admittedly the distance over which its goods were transported was 511 KMs and not 946 KMs (between Banas siding and Thiyat Hamira railway station) and further that rate charged was Rs. 21.44 per qtl. instead of Rs. 13.11 per qtl. Limitation under Section 78B of the Act of 1989 has been statutorily provided for. A misplaced argument of unjust enrichment cannot be misapplied, removed from the context it has been developed by courts of equity and turned on its head and be agitated to

circumvent the provisions of statutory limitation and for the matter, the Limitation Act. Were it to be so, the provisions of the law limitation under the Act of 1963 or otherwise would be rendered otiose and redundant. Equity to defeat public policy encapsulated in the statutes of limitation cannot be visualised.

13. In view of the aforesaid discussion, I find no force in the appeal. The same is dismissed.