
(2003) 01 JH CK 0084
In the Jharkhand High Court
Case No : CWJC No. 3191 of 2000 (R)

Jyoti Enterprises

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-01-2003

Acts Referred:

Railways Act, 1989 — Section 65(2), 78, 83

Citation : AIR 2003 Jhar 48 : (2003) 2 JCR 303

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : P.K. Bhowmick, H.P. Singh and Md. Hatim, for the Appellant; Pradip Modi, for the Respondent

Judgement

Vikramaditya Prasad, J.—This writ application has been filed for quashing (i) Annexure-3, by which "N" Box wagons loaded with iodised salt en route to Tatanagar were weighed behind the back of the petitioner, (ii) Annexure -4 by which payment of penal freight and detention charges was demanded from the petitioner against 19 "N" Box wagons, (iii) Annexure -7 by which payment was demanded as stated above with the threat to stop delivery of the next consignment, (iv) Annexure - 10 by which payment of railway dues was demanded and in default the seized consignments of iodised salt containing in two wagons to be put on public auction, (v) Annexure-11, the sale letter dated 2.9.2000, by which 1478 bags of iodised salt were to be sold by public auction and (vi) Annexure - 14, a letter of the Senior Divisional Manager Commercial, South Eastern Railways, Chakradharpur Division, by which the petitioner was directed to pay the penal freight, detention charge and wharfage charges and to command upon the respondents to deliver 1478 bags of iodised salt which were withheld/seized containing two wagons - load.

2. The questions to be determined in this writ petition are (i) whether the re-weighment en route of the consigned goods behind the back of the consignee/endorsed consignee is violative of the principles of natural justice and (ii)

whether the lien provided u/s 83 of the Indian Railways Act can be exercised by the respondents without compliance of the statutory provisions.

3. The aforesaid questions arose out of the facts that petitioner is an endorsed consignee of M/s Rani Salt Refinery Pvt. Limited and Bajaj Salt Industries. From Chirai Railway Station, Gujrat, a consignment of iodised salt was sent to Tatanagar destination station, vide R.R. Nos. 975001 to 975005. That consignment reached Tatanagar on 17.2.2000 and was delivered to the petitioner without any dispute and without any re-weighment before delivery. At that time of delivery, no claim was made from the petitioner of any penal freight for overloading and the petitioner was not informed at that time that the consignment has been re-weighed en route by the Railway and overloading was detected and consequently, the petitioner was liable to pay the penal charges for that overloading. This fact is an admitted one by the respondents, vide paragraph No. 7 of the counter affidavit. Thereafter, many other consignments were dispatched to the petitioner from the different parts of the country and were received at Tatanagar by the petitioner, but subsequently when another consignment of iodised salts, vide R.R. No. 873201 to 873204, were booked from Vivaniya railway station on 20.8.2000, to be delivered to the petitioner in 40 BCX wagons, out of those 40 wagons, one wagon became sick and the Railways got this sick wagon in its custody. Consequently, 39 wagons arrived at the destination station, out of those 39 wagons, articles loaded in 37 wagons were allowed to be removed by the petitioner and 1478 bags, each contained 75 kgs. of iodised salt, were not unloaded from the two remaining wagons and not delivered to the petitioner on the ground that the penal freight and detention charges against the first consignment (supra) received by the petitioner on 17.2.2000 against overloading had not been realized. Thereafter the dispute arose. The petitioner doubted the reweightment of the first consignment and by filing representation, disputed the claim of the respondent-railways with regard to the payment of penal freight, wharfage, detention charge etc. and also the contemplation of the respondents to realize those charges by selling the detained consignments by them. Hence this, writ petition.

On summarization, the petitioner's case is that (i) the re- weighment en route is a concoction and therefore, any re-weighment in absence of the petitioner is violative of the principles of natural justice, (ii) excess loading or overloading, if any, detected is due to the residuals of lime stone, coal etc., which were not removed from the types of the wagons in which salt was loaded and therefore, these have been added to the weights of the loaded salt, showing excess weight and (iii) the weight of salt was not excess and If at all it was, it was due to the fact that the salt might have absorbed moisture or there might be rain during transit, which might have contributed to increase its weight, if at all detected.

4. The Railways appeared and filed counter-affidavit. As stated earlier, they admitted that the re-weighment was done of the first consignment at Viramgam Railway Station but the information thereof did not reach the destination station

before delivery of the goods to the petitioner. The Railways heavily relied on and defended their claim u/s 83 of the Railways Act, which provides for a lien on the goods in favour of the respondent- railways.

5. Whether the re-weighment by the Railways in absence of consignor/consignee etc. at an intermediate station is violative of the principles of natural justice?

(a) Section 78 of the Railways Act (hereinafter called as the Act) read as follows--

"78. Power to measure, weigh etc.--Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to-

(i) re-measure, re-weigh or re-classify any consignment,

(ii) re-calculate the freight and other charges; and

(iii) correct any other error or collect any amount that may have been omitted to be charged."

Rule 1437 of the Indian Railway Commercial Manual, Volume II, provides as follows-

"1437. Surprise checks for detection of under-weighments.--The instructions for conducting surprise checks for detecting under-weighment of goods consignments are the same as laid down in para 952 for parcels traffic."

Rule 952 of the Parcel Traffic reads as follows -

"952. Surprise checks for detection of under weighment of parcels.--Commercial Officers and Inspectors of the Accounts and Commercial Departments should carry out surprise checks at Important stations with a view to detecting under weighments. The weight recorded on the parcel waybill/luggage ticket should be verified by actual weighment of the packages and in the case of discrepancy the undercharges, if due should be recovered before delivery. A record should be maintained of all cases of under-weighments notices during the course of these inspections. If systematically prepared and tabulated, such a record should be helpful in revealing and Indicating stations or particular traffic movements in respect of which under weighments are being habitually practiced and to decide upon the steps to be taken against this malpractice."

Thus, Rule 1737 reads as follows-

"1737. Reweighment of goods at receiving station.--In order to guard against weighments, the receiving stations should exercise a check on the weighed on invoices. This check should be made by reweighing at least ten per cent of all smalls consignments immediately after unloading."

On perusal of Annexure - 2 series, which are the Railway Receipts, it is found that the wagons were loaded by the consignor. The following endorsements are there-- "Consignor"s weight accepted.-So en route weighment and advise to

weigh before delivery."

Another endorsement is "loading not supervised, nor counted by Railway Staff." The provisions of the Act and Rule do provide that before delivery, the weighment has to be made and charges have to be recovered for under-weighment. Section 65(2) of the Act reads as follows-

"65(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein: Provided that In the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such, railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee."

(b) From the aforesaid provisions, it is clear that the Railway has got a right of re-weighments en route in order to check under-weighment. The question is whether this checking should be done in presence of the consignee/consignor/endorsee or their representative. On the plain reading of the aforesaid provisions, it is found that there is no specific provision either in the Act or Rules that at the time of this surprise re-weighment, the endorsee, consignor/consignee or even their representative should be present or informed. So, if the re-weighment is done in their absence, it is not violative of any of the statutory provisions.

The learned counsel appearing for the petitioner, relying upon a decision reported in *Salt Marketing Centre Guwahati Vs. Union of India (UOI) and Others*, has argued that reweighment in absence of the consignor, endorsee etc. is violative of the principles of natural justice. In that case, learned Judge held that the Railways being an Instrumentality of the State have to Act fairly and therefore, any weighment in absence of consignor etc. is violative of the principles of natural justice.

(c) Before I give my own view, I wish to state here some facts, which have occurred in this case and these are as follows--(i) Admittedly, weighment was made en-route in absence of the petitioner etc., (ii) the consignment loaded in the wagons were not off-loaded at the station where re-weighment was done, (iii) the consignments reached the destination station and were delivered to the petitioner without any re-weighment at the destination station or without any claim of freight etc. in respect of that over-loading, at that time.

Now, there can be three situations which I propose to elucidate by following examples-

(i) Sender's weight is 100 MT en-route re-weighment in absence of consignor etc. finds it 120 MT and detects an under-weighment of 20 MT. This excess 20 MT is not off-loaded but is sent to the destination station (DS) and there before delivery, freight for excess weight is claimed. Now consignee disputes it.

Railway says get it re-weighed. Re-weighment before delivery is done, either of the claim is physically verified. Dispute is resolved, here even though enroute weighment was done in absence, but the transparency has been lost: the suspicion though cropped readily cleared; no prejudice to party. No violation of natural justice.

(ii) The detected excess weight is off-loaded at en-route weighing station and claim for extra freight for that is made at the time of delivery; but as the off-loaded extra weight is already preserved, this can be re-weighed even with some inconvenience and the matter ends. No violation of principles of natural Justice.

(iii) In third case that excess weight of 20 MT is not off-loaded and is sent to DS.

At DS delivery is made without re- weighment and without information of detection of excess weight to the endorsee and no claim is made at that time for extra freight etc. After some time the claim is raised. The endorsee can stick to his claim of the correctness of sender's weight even though dishonestly, the physical verification of actual delivered has become impossible. Excepting on some paper which are in exclusive custody of respondent, there is no other way left to railway to prove what its weight was. There is no reason to disbelieve the claim of endorsee. Matter becomes disputed and suspicious, re-weighment was not made in presence of endorsee etc. Transparency is wanting. In such a situation, claim bases on the re-weighment en-route in absence of the endorsee causes prejudice to endorsee and, therefore, It is violation of principles of natural Justice.

The third situation has occurred in the instance case and this situation is a creation of railway employees. Whenever such situation occurs, it is violative of principles of natural justice. This question is answered accordingly.

6. Now I come to the second question whether u/s 83 of the Act, Railways can exercise lien and withhold the subsequent consignments for realization of the penal charges etc. against the overweight of the earlier consignments. In order to answer this question, some facts are important to be stated and these are-

(i) the first consignment (for which penalty has been claimed for overloading, which is impugned in this case), the delivery was made without any knowledge to the petitioner that the goods were re-weighed en-route and over-loading was detected, (ii) at the time of delivery of that consignment, no controversy was there with regard to the over-weight and (iii) It was clear from the Railway Receipts that the loading was done by the consignor and it was not supervised by the railway staff and so re- weighment was advised in the railway receipt itself. Despite this type of endorsement on the railway receipts, the consignment was delivered to the petitioner without any re-weighment at the time of delivery.

Annexure-3 is a letter addressed to the Station Superintendent, CGSR of Tatanagar (Destination Station), giving statement, "en-route weighment and advise for realization of the penal freight, detention charge". Shortly it read as

follow-

"Above excess weight allowed in the same wagons without offloading at Viramgam and rake dispatched to its destination. Details of the charges to be recovered from consignee before effecting Book Delivery at yours are as under"-

This letter was issued on 9.2.2000, though the re-weighment had been done on 7.2.2000 and this letter was sent as it appear from the endorsement on the top of the letter by post to the destination station. Thus, from perusal of this letter, it is clear that on the date of re-weighment itself enroute, the information was not sent on the same day to the destination station. Annexure-12 is another letter and it is found on perusal of this that it was dispatched from Viramgram weigh-Bridge on 7.2.2000 to the Station Superintendent/CSR, Tatanagar. It read as follows-

"Weighed at VG weighbridge on 07.2.2000. Excess weight found as per weighment sheet/Advice is sent with guard of the same train for recovery of under charge due at yours as per extant rules and excess weight allowed In the same wagons without offloading at VG and rake dispatched to destination.

However detailed statement showing excess weight found in wagons and under charges due to be collected at your from the consignee before effecting book delivery and advise recovery particulars to this office in all concerned at an earliest."

Its letter number is SGS/VG/WB/17/ 2/2000. If the letter was handed over to the Guard of the same train, then in all probabilities, it must have reached the destination station along with the Guard and should have been delivered to the Station master/ C.G.S.R. of Tatanagar and if it was a fact, then in that circumstances, before delivery, the claim would have been made for the penal charges from the petitioner and if he would have objected to that, then re-weighment could have been done. As per Railway's own admission, this information had not received the D.S. prior to delivery of goods. In this circumstance, the right of the petitioner to claim re-weighment before delivery at the destination station became not only frustrated but also became in exercisable in future. In such a situation, when the delivery had been made and at the time of delivery, no information was given of the excess weight detected and the verification of the excess weight became impossible then every thing becomes suspicious. Rule 1740 of the Rules read as follows-

"1740. The result of weighment or re-weighment, whether found at the station or communicated to, it should be recorded in the connected invoices, unloading tally book, goods delivery book and machine prepared abstracts. In case of weighment at intermediate station, the result should also be advised telegraphically to the destination station and the Traffic Accounts Office if it entails recovery of the undercharge."

There is nothing on the record to show that this provision was followed by the

railways and the communication was made to the destination station as per this rule telegraphically. This is yet another negligence which resulted in delivery of the consignment to the petitioner without any information to him at that time that load was excess or penal freight had to be charged.

Rule 1820 read as follows-

"1820. Recovery of railway dues before delivery of goods.--Before delivery of goods, it should be seen that all railway dues and other charges have been paid. Wharfage and demurrage charges should be levied under tariff rules and recovered, from the consignee/endorsee before the removal of goods from railway premises. Similarly, all under charges notices as a result of check of invoices, weighment of goods, etc. should be recovered from consignees/endorsee before delivery of goods. As regards, overcharges claimed at the time of delivery, the procedure indicated in Chapter XXI should be followed."

Rule 1737 read as follows-

"1737. Re-weighment of goods at receiving station.--In order to guard against weighments, the receiving stations should exercise a check on the weighed on invoices. This check should be made by reweighing at least ten percent of all small consignments immediately after unloading." Section 65(2) of the Act read as follows--"65(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein : Provided that in the case of a consignment in wagon-load or brain-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recovered in such railway receipt by him, the burden of proving the weight or, as the case may be the number of packages stated therein, shall be on the consignor, the consignee or the endorsee."

But this section will become applicable only when the goods remains in the custody of railways so that the consignor discharges his burden of proving the correctness by reweighing it.

Section 83 of the Act read as follows-

"83 (1) If the consignor, the consignee or the endorsee falls to pay on demand any freight or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain the other consignment of such person which is or thereafter comes into its possession."

Sub-section (1) is divisible In two parts. As this provision is separated by the word, "or", the first part is not applicable in this case because the first consignment had been delivered; the second part, according to the railway-respondent, is applicable. The question is whether this lien gives unfettered right to the railways to recover the dues by detaining the subsequent consignments. Relying on a decision reported in AIR 1998 SC 1959, the learned counsel appearing for the Railways argued that this lien is wide and unrestricted. The lien

arises out of same legal obligation to pay penalty by the consignee etc. Therefore, in order to find answer to this, it has to be examined whether a legal right had accrued to the Railways to realize the freight.

7. By now, we have noticed that number of safeguards in the form of Rules 1740, 1820, 1737 and of Section 65(2), instructions on the railway receipts giving a clear advice for re-weighment before delivery etc. have not at all been followed by the respondents in the spirit in which they should have been followed. We have also found that how due to the lapses on the part of the respondents at every stage, right at the station of re-weighment till the point of delivery of the goods, the negligence in complying those provisions have been glaring. We have also found that in the aforesaid circumstances, the verification of the claim of overloading became impossible and thus the claim is merely based on paper in the hands of the railways itself and thus became suspect and amounted to violation of the principles of natural justice. The lien as created u/s 83 of the Railway Act (supra) is a statutory lien, "Statutory liens, however, have been looked upon with jealousy, and generally will only be extended to cases expressly provided for by the statute, and then only where there has been a strict compliance with all the statutory requisites essential to their creation and existence (25 Anecyc 662". quoted from Law Lexicon by P.Ramanatha Aiyer, 1997 Edition, page 734)".

8. I have already noticed that all the statutory requisites, (Rules 1740 etc. supra) which are for safeguarding the interest of the railways and also for maintaining the transparency has been most carelessly not complied with. Consequently, it has to be held that in absence of compliance/observance of the statutory requisites, a lien is not created in favour of the respondents.

Even though the lien is wide, but it can only be exercised if the requisites as provided under the Act and the Rules have been strictly complied with. The answer of this question is thus given accordingly and against the respondents.

9. Consequently, the writ is allowed and the Annexure- 3,4,7,10,11 and 14 are quashed and the respondents are directed to re-deliver the detained bags of iodised salts and. if those have been sold, then to refund the sale proceeds thereof to the petitioner.

10. Before I part with, I wish to direct that if the railways are convinced of their claims, which could be realized, then they should realize that such loss has occurred due to the lapses on the part of the railway officials/employees. In such a situation, the respondent Nos. 2 and 3 shall initiate departmental enquiries and fix responsibility on the officials/employees due to whose negligence, the railway suffered this loss and thereafter, will recover the loss from their respective salaries.