
(2013) 04 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 532 of 2010

KIOCL Limited (Formerly Kudremukh Iron Ore Company Limited)

APPELLANT

Vs

Railway Board and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2014) 2 AKR 330 : (2013) ILR (Kar) 4993

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : D.L.N. Rao for Smt. S.R. Anuradha and Sri Anirudh Anand, for the Appellant; V.K. Narayana Swamy, CSG, for the Respondent

Judgement

S. Abdul Nazeer, J.—In this case, the petitioner has called in question the legality and validity of para 5 of the circular at Annexure "B" bearing No. TCR/1078/2007/3 dated 1.6.2009 issued by the Railway Board, under the Ministry of Railways, Government of India and for certain other reliefs. The petitioner is a Government of India Enterprise. It is a company incorporated under the provisions of the Companies Act, 1956. It has a pelletization plant, which is 100% export oriented unit and blast furnace unit in Mangalore. The petitioner procures its raw materials in the form of iron ore fines from M/s. NMDC Limited, a Central Government undertaking from its mines at Donimalai in Bellary District as well as its mines at Bailadilla Sector in Chattisgarh. The petitioner is having its own private railway siding at Panambur, Mangalore for unloading raw materials transported through railways. It has long term contracts for supply of raw material with M/s. NMDC. Iron ore fines procured by petitioner will be converted into iron oxide pellets which are considered as value addition and same is exported and also marginally sold at domestic market.

2. Under the Railways Act, 1989 ("Act" for short), various duties have been classified for the purpose of determining rates to be charged for carriage of such goods and commodities. The rates are fixed based on classification of

commodities. Goods Tariff No. 45, Part I (Volume II) contains the classification of Commodities. Iron and steel is classified as Class 180. There was no distinction on the transportation of iron ore through railways for making pellets or steel which are sold either locally in domestic market or exported. The Railway Board issued Rate Circular after obtaining sanction from Central Government from time to time towards freight charges for transportation of iron ore. One such circular issued by the Railway Board is at Annexure "A" dated 1.7.2008. It is clear from the said circular that pelletization units receiving iron ore in their private or assisted sidings for conversion into iron ore pellets for consumption of iron and steel manufacturing plants will be treated on par with steel manufacturing units. The Railway Board issued yet another rate circular at Annexure "B" dated 1.6.2009 which makes a distinction in pelletization units receiving iron ore for conversion to pellets for domestic consumption and for export of pellets. In other words, any movement or traffic of iron ore meant for domestic consumption for manufacture of iron and steel as well as cement will be charged at Class 180 without levy of distance based charges prescribed at para 1 of circular whereas same pellets if exported will attract additional levy of distance based charge. Thus, the distinction was made in so far as movement of iron ore for pelletization plants for purposes of export, which will be charged in addition to Class 180 the levy of distance based charges. The relevant portion of the said circular is as under:

5. Pelletization Unit: Pelletization units receiving iron ore in their private or assisted sidings for conversion into iron ore pellets for domestic consumption of iron and steel manufacturing plants will be treated at par with steel manufacturing units. However, they will need to comply with provisions of Para 3(B) for availing freight rates as prescribed in Para 2. The Iron Ore Pellets for export as well as Iron Ore moved for such pelletization (for export) will be charged at Class 180 along with levy of Distance Based Charge.

3. The Divisional Commercial Manager, South Western Railways, Hubli, issued a letter dated 21.10.2011 calling upon the petitioner to furnish the details of iron ore pellets manufactured and exported from out of iron ore sourced from Hubli division by rail to take further necessary action in the matter. This notice was issued in pursuance of the rate circular at Annexure "B" dated 1.6.2009. The petitioner has sent a reply to the said notice at Annexure "G".

4. The petitioner contends that the respondents have not taken any action pursuant to the circular against the petitioner. When action was taken against it for the violation of circular conditions, it made efforts to orally plead that the circulars are discriminatory and unenforceable which yielded no result. That is why they have filed this writ petition seeking the aforesaid reliefs.

5. The respondents have filed statement of objections contending that Sections 30 and 31 of the Act governs the fixation of rates and other charges. u/s 36 of the Act, if any dispute arises regarding fixing of tariff, etc., the aggrieved party has to file a complaint before the Railway Rates Tribunal. Under the Act and the

Rules made thereunder, guidelines are issued by way of circulars from time to time fixing the tariff for domestic and non-domestic consumption and it is the policy decision of the Central Government and as such, the same cannot be questioned as either discriminatory or arbitrary. The guiding principles for classification of goods tariff and general rules for charging of freight are issued by way of circular instructions for transportation of commodities both domestic and non-domestic purposes as per the tariff fixed in the circulars. In terms of the rate circular No. 24/2009 issued by the Railway Board dated 12.5.2008, the tariff in respect of domestic and non-domestic is clearly laid down. It is further contended that the impugned circulars levying additional charges for transportation of iron ore/iron ore fines; if the same is used in manufacture of pellets for export is also valid and in accordance with the Act and the Rules and the policy guidelines issued from time to time by the Government. It is neither discriminatory nor arbitrary.

6. Sri D.L.N. Rao, Learned Senior Counsel appearing for the petitioner submits that the distinction in pelletization units receiving iron ore for conversion to pellets for domestic consumption and for export of pellets is discriminatory in nature. In the sense, in so far as movement of iron ore meant for domestic consumption for manufacture of iron and steel as well as cement will be charged at Class 180 without levy of distance based charges. The rate circulars would categorically show that the Railway Board has discriminated petitioner and persons similarly situated, who transport iron ore/iron ore fines for purposes of manufacturing iron ore pellets and for export of the same inasmuch as they have been asked to pay apart from what is stated in Class 180 additional rates based on distance based charges. Iron ore pellets is as much value added product as steel, pig iron, etc. In so far as transportation of iron ore/iron ore fines for purposes of manufacture and export of steel or pig iron is excluded from levy of distance based charges in addition to charge at Class 180 but iron ore pellets are singled out for discriminatory treatment violating Article 14 of the Constitution. It is argued that petitioner is a manufacturer of iron ore pellets, which is value addition treated on par with manufacture of iron and steel etc., is singled out for discriminatory treatment in the levy of charges for transportation or iron ore through railway rakes. In this connection, he has relied on the decision of the Apex Court in the case of State of Uttar Pradesh and Ors., AIR 2007 SC 2123) (supra) .

7. On the other hand, Learned Advocate appearing for the respondents submits that under Sections 30 and 31 of the Act and the Rules made thereunder, guidelines are issued by way of circular from time to time fixing the tariff for domestic and non-domestic consumption and it is a policy decision of the Central Government and as such the same cannot be questioned as either discriminatory or arbitrary. It is further submitted that as per the guidelines issued from the Ministry of Railways, the iron ore pellets for export as well as iron ore moved for such pelletization (for export) will be charged at Class 180 along with levy of distance based charge. It is therefore necessitated for the respondents to collect

the charges for iron ore transport for manufacturing of iron ore pellets meant for exports in accordance with the guidelines issued by the Ministry of Railway. It is submitted that the circulars receiving additional charges for transportation of iron ore/iron ore fine if the same is used in manufacture of pellets for export is also valid and in accordance with the Act and the Rules and the policy guidelines issued from time to time by the Government and therefore, it is neither discriminatory nor arbitrary. He prays for dismissal of the writ petition.

8. I have carefully considered the arguments made by the Learned Counsel for the parties at the Bar and perused the materials placed on record.

9. Section 30 of the Act provides for fixing of the rates. It states that the Central Government may from time to time by general or special order fix for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply. Section 31 authorises the Central Government to classify or reclassify any commodity for the purpose of determining the rates to be charged for the carriage of such commodities and increase or reduce the class rates and other charges.

10. The contention of the respondents is that in exercise of the power conferred under these provisions, rate circulars have been issued from time to time. One such rate circular is No. 36 of 2009 dated 1.6.2009 (Annexure "B"). There is a marked difference between the rate circular at Annexure "A" bearing No. 30/30/2008 and Annexure "B" bearing No. 36/2009. Clause 5 of Annexure "B" states that the iron ore pellets for export as well as iron ore moved for such pelletization (for export) will be charge at Class 180 along with the levy of distance based charge. In the previous rate circular, this clause was not included. The question is whether the Central Government is justified in including the said clause in Annexure "B" circular.

11. Fixation of tariff by the Government for carriage of goods and passengers is a complex fiscal exercise. Guidelines are issued from time to time fixing the tariff. It is a policy decision of the Central Government which cannot be questioned unless it is shown that the policy is violative of any statutory provision or the Constitution. The Court should not ordinarily interfere with the same unless there is a clear violation of law or clear arbitrariness. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review. It is not for the Courts to consider the relative merits of different economic policies and consider whether a wiser or better one can be evolved.

12. In M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, , the Apex Court has held that judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert by its own views. When the legislature acts within the sphere of its authority and delegates power to an

agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness.

13. In *Krishnan Kakkanth Vs. Government of Kerala and others*, , the Supreme Court has held that it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid "embarking on uncharted ocean of public policy".

14. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the Apex Court has held that wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.

15. In *Pallavi Refractories and Others Vs. Singareni Collieries Co. Ltd. Etc. Etc.*, , it has been held that price fixation is generally a legislative activity. It may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Price fixation is neither the function nor the forte of the Court. The Court is neither concerned with the policy nor with the rates. But in appropriate proceedings, it may enquire into the question, whether relevant considerations have gone into and irrelevant considerations kept out while determining the price. Judicial function in respect of such matters stands exhausted once it is found that the authority empowered to fix the price has reached the conclusion on rational basis.

16. In *Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another*, , the Apex Court has held that in the areas of economics and commerce, there is far greater latitude available to the executive than in other matters. The Court cannot sit in judgment over the wisdom of the policy of the legislature of the executive. It has been held thus:

The power to lay down policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is settled law that the Court gives a large leeway to the

executive and the legislature. Granting licenses for import or export is an executive or legislative policy. The Government would take diverse factors into account for formulating the policy in the over all larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.

There should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the Statute or by the Constitution encroach into this field. It does not make any difference whether the policy has been framed by the legislature or the executive and in either base there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise.

17. In *State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd.*, it has been held that the Courts should not normally interfere with fiscal policy of the Government more so when such decisions are taken in public interest and where no fraud nor lack of bonafide is alleged much less established.

18. It is clear from the rate circular at Annexure "A" dated 1.7.2008 that pelletization units receiving iron ore in their private or assisted sidings for conversion into iron ore pellets for consumption of iron and steel manufacturing plants will be treated on par with steel manufacturing units. The circular at Annexure "B" has made a distinction in pelletization units receiving iron ore for conversion to pellets for domestic consumption and for export of pellets. Movement of iron ore for pelletization plants for purposes of export which is charged in addition to Class 180, the levy of distance based charges. This has been done u/s 30 of the Railways Act. It is a policy decision of the Central Government. The respondents have clarified that the circulars levying additional charges for transportation of iron ore or iron ore pellets is quite distinct and separate with that of domestic consumption. Petitioner cannot contend that there cannot be any distinction between such transportation for the purpose of domestic consumption or for transport of value added material. I am of the view that the impugned clause in the circular at Annexure "B" is neither discriminatory nor arbitrary and is not violative of any statutory provisions. This Court cannot sit in judgment over the wisdom of the policy of the executive in the areas of economics and commerce.

19. The decision relied on by the Learned Senior Counsel for the petitioner in *Deepak Fertilizers and Petrochemical Corporation Limited's* case (supra) has no application to the facts of this case. In the said case, reasonableness of the

classification for the purpose of levy of tax was examined by the Court. In the present case, the policy of the State levying additional charges for transportation of iron ore or iron ore pellets if the same is used in the manufacture of pellets for export is under challenge. I have already held that the circular in question is not violative of any statutory provisions or the Constitution.

20. In the result, the writ petition fails and it is accordingly dismissed. In view of the dismissal of the writ petition as above, I.A. No. 1/2013 does not survive for consideration. It is accordingly dismissed. No costs.