
(1981) 11 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 605 of 1981

K.P. Sons

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Railways Act, 1890 — Section 28

Railways Rules, 1890 — Rule 201(10)

Citation : AIR 1982 MP 91 : (1982) JLJ 489 : (1982) 27 MPLJ 109

Hon'ble Judges : G.P. Singh, C.J.; K.K. Dube, J

Bench : Division Bench

Advocate : S. Awashthy, for the Appellant; S.P. Sinha, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.

The grievance in this petition under Article 226 of the Constitution is that a show of preference was made in favour of the petitioner by the Railway authorities in allotment of wagons for transporting lime from Jabapur railway station but in truth the petitioner was subjected to a great disadvantage with a view to harm him.

The petitioner is a partnership firm and carries on business of manufacture of lime at Katni. The petitioner also indents wagons for transportation of lime from Jabalpur. The petitioner transports lime from Katni to Jabalpur by trucks and then loads it in the wagons allotted by the railway for transportation to different places in India. Between 7th Apr. 1981 to 28th Apr. 1981 on various dates the petitioner indented for thirteen wagons as mentioned in Annexure-A. On 7th May 1981 the petitioner received information of release of ten covered wagons for loading lime. This order (Annexure-B) was issued on 6th May 1981 at 5-50 P. M. The petitioner could not load the wagons, for, according to him, the wagons were supplied much out of turn and the petitioner could not be ready with goods for

loading in the wagons. The petitioner complained on 7th May 1981 itself that the out of turn supply of wagons was with a view to harm the petitioner and such an action would encourage bribery and other illegal practices in the matter of supply of wagons. The complaint made by the petitioner had no effect, The petitioner then filed the present petition for quashing the order allotting the wagons and for directing the respondents to keep the petitioner's indent alive and for restraining the respondents from indulging in the malpractice of giving mala fide priority out of turn in violation of the rules.

Notice for admission of this petition was issued to the respondents. In answer to the notice, return has been filed and the petition has been heard on merits.

The return justifies allotment of wagons under Rule 201 of Goods Tariff No. 36 on operational considerations. It is stated that a policy decision was taken to clear off lime indents before the outbreak of Monsoon for the reason that transportation of lime during rains gives rise to number of claims entailing heavy cost in litigation. It is submitted that it was for this reason that wagons for lime loading were released in preference to timber merchants.

Section 28 of the Railways Act prohibits a railway administration from making or giving any undue or unreasonable preference or advantage to, or in favour of, any person or any particular description of traffic in any respect whatsoever. The section further prohibits the railway administration to subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 27-A empowers the Central Government, in case it is of opinion that it is necessary in the public interest so to do, to direct any railway administration, by general or special order, to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods as may be specified in the order. A direction u/s 27-A by the Central Government is not deemed to be a contravention of Section 28. The relevant provisions dealing with the registration of indents, allotment and supply of wagons are contained in Sub-rules (1) to (20) of Rule 201. The procedure laid down in these sub-rules is to be followed subject to this that the Railway Administration, after due notice, can make temporary local variations in any of the sub-rules as they think fit to meet any exceptional circumstances or to prevent misuse. All demands for dispatch of goods in wagon loads are entered in the wagon Demands/Priority Register maintained in the stations of goods sheds open for booking of goods in wagon loads. The prescribed registration fee is paid by the sender or his representatives at the time of registration of demands for wagons. Sub-rule (9) of Rule 201 provides that the wagon Demand/Priority Register should be open for inspection by merchants and traders during the hours of working of goods sheds at stations. Sub-rule (10) which is important provides for issue of allotment orders in accordance with the priority of registration and also having regard to preferential schedules prescribed by the Railway Board, quotas and restrictions in force and

other operating considerations. This sub-rule reads as follows.

"(10) Allotment/loading orders. -- Each item of wagon registration is given a serial number in the order of registration. Allotment/Loading Orders are issued in accordance with the priority of registration . and also having regard to preferential schedules prescribed by the Railway Board, quotas and restrictions in force and other operating considerations."

The Central Government, in exercise of its powers u/s 27-A of the Railways Act. issued General Order No. 66 directing all Railway Administrations to give special facilities for or preference to the transport of goods/class of goods specified in the schedule to the Order. The schedule to the Order is divided into five parts; Priority "A", Priority "B" Priority "C" Priority "D" and Priority "E". Lime is not specifically mentioned anywhere in the schedule. However, Item No. (i) in Priority "E" refers to "commodity quotas as given in Special Orders to Individual Railways." The relevant order issued by the Central Government dealing with commodity quotas or wagon quotas u/s 27-A is Special Order No. 1-C of 1981. The order, in so far as relevant, reads as follows :

"Whereas, in the opinion of the Central Government it is necessary in the public interest so to do;

Now, therefore, in exercise of the powers conferred by Section 27-A of the Indian Railways Act. 1890 (IX of 1890) the Central Government hereby directs that the Central Railway Administration shall give special facilities for or preference to the transport of goods/ class of goods specified in the schedule to this order in accordance with the wagon quotas shown against each commodity.

The special facilities for or preference to the transport of goods/class of goods in terms of wagon quotas are, however, subject to such variation that may be prescribed from time to time during the currency of this order by the Central Government for the movements of any of the commodities mentioned in the schedule hereto for any destination or area due to various causes e. g. floods, breaches, accidents, difficulties at the terminal or transshipment point/points or section/sections and dislocation in the rationalised pattern of movement of the commodities etc.

This is issued under Item "E" of General Order No. 66 and is in supersession of all previous special orders pertaining to Central Railway issued on the subject.

Commodity.

no. of wagons (in terms of (sic) wheelers per day.)

From B. G. Stations

Beedi leaves

14

Rotractories, latasite, earth ore etc.

1

Bones

2

Charcoal to Bombay area

31

Bauxite

2

Charcoal to all other areas

14

Firewood

24

Coarse foodgrains and pulses on
trade account

128

Pig manure

12

Iron and steel scrap

23

Cattle fodder

29

Jaggery

2

Limestone

4

Manures and Chemicals

18

Oil

10

Oil cakes

32

Seeds other than oil-seeds

21

Straw board

10

Sand for goods factories (other than
Class sheet Industries)

2

Stone and ballast

11

White Clay

1?

Empty chlorine-cylinder

8

(per week)

Fire bricks and potteries

8

Lime

26

Sand for other than glass factories

29

Jowar & Bajra to Bombay area

2

Timber and bamboos

63

Matches

2

Miscellaneous

110

Salt non-programmed

5

(per week)

It was stated at the Bar and was not disputed that before 7th April 1981 indents for two wagons for loading charcoal and fourteen wagons for loading timber had already been registered. The learned counsel for the petitioner contends that had the railway authorities acted bona fide they should have released wagons for loading charcoal and timber, indents for which were registered earlier, and the sudden release of wagons out of turn was only to harm the petitioner, for, he could not reasonably be expected to be ready for loading lime at that time.

The consignors make a reasonable guess of the period according to the indents registered in the Indent Register as to when they are expected to get the wagons and they keep themselves ready for loading the commodity at the time when the wagons are allotted in the normal course. It will entail heavy expenditure if the consignors are to keep the goods in "stock" for loading all the time during the period the indents are pending. A sudden release of wagons out of turn, therefore, cannot be utilized by the consignor who is put to serious loss by cancellation of the indent on his failure to load the wagons. The question thus before us is whether the respondents released ten covered wagons on 6th May 1981 for lime loading to the petitioner out of turn in contravention of Rule 201. We have quoted Sub-rule (10) of this Rule which provides that the allotment orders are issued in accordance with the priority of registration and also having regard to preferential schedules prescribed by the Railway Board, quotas and restrictions in force and other operating considerations. It has already been noticed that indents for two wagons for loading charcoal and fourteen wagons for loading timber were registered prior to the registration of the petitioner's indents for lime. Charcoal, timber and lime all fall under item No. (i) in priority "E" of the schedule to General Order No. 66 being covered by Special Order No. 1-C fixing quotas for these and other commodities. In the normal course, therefore, wagons should have been released for charcoal and timber before being released on indents registered by the petitioner for lime. The release of wagons out of turn to the petitioner was in contravention of Sub-rule (10) of Rule 201. The learned Standing Counsel for the Central Railway, however, submitted that the release of wagons to the petitioner was on the basis of a policy decision to clear off lime indents before the outbreak of Monsoon as the transportation of lime during rains gives rise to a number of claims entailing heavy cost in litigation and that this policy decision falls within the words "other operating considerations" as they are used in Sub-rule (10) of Rule 201. There are various reasons for not accepting this argument. Now the wagons were released on 6th of May when the rainy season in this area generally commences from 15th of June. It is also to be noted that the petitioner indented for closed wagons and not open wagons and it is expected that the goods loaded in the former would not be damaged by rain. It is further not clear as to when the alleged policy decision was taken. At any rate, no prior notice of that decision was given to the petitioner so as to forewarn him that the wagons indented by him would be released out of turn and he should get ready for loading lime. It is true that the opening words of Rule 201

lay down that the Railway Administration can make such temporary local variations in any of the rules as it considers fit to meet any exceptional circumstances or to prevent misuse. But the necessary requirement for implementation of such a local variation is that it should be done after due notice. The policy decision referred to in the return for release of wagons for lime could not be given effect to as an operating consideration without prior notice to the persons to be affected by it. Even otherwise it would be just and proper to insist upon. prior notice of such a policy decision so that the persons concerned may not suffer loss. It is not alleged that the policy decision was such as emergent operational consideration of which no prior notice could be given to the persons affected. In our opinion, therefore, the out of turn release of wagons to the petitioner cannot be supported on the basis of the policy decision alleged by the Railway in the return. It is thus clear to us that the petitioner was subjected to unreasonable prejudice or disadvantage in contravention of the prohibition contained in Section 28 of the Railways Act. In the circumstances, the release of wagons and cancellation of indents for not utilising them must be held to be arbitrary and invalid. The petitioner's indents for the wagons must still be taken to be effective and the respondents will have to make available those wagons to the petitioner within a reasonable time. Before concluding we must emphasise that strict adherence to rules in the matter of allotment of wagons is necessary to avoid encouragements to illegal practices and harassment of traders.

The petition is allowed. The impugned order of release of ten wagons for lime loading is quashed. The respondents are directed not to treat the petitioner's indent of ten wagons for lime as cancelled and they are further directed to release these wagons within two months with a prior notice of week to the petitioner. The petitioner will get costs of this petition. Counsel's fee Rs. 100/-.