
(2007) 02 MP CK 0073
In the Madhya Pradesh High Court
Case No : W. P. No. 3647 of 2000

Laxman Prasad Singh

APPELLANT

Vs

General manager, S. E. Railway and Others

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Constitution of India, 1950 — Article 14
Railways Act, 1989 — Section 2(41)

Citation : (2007) 2 MPLJ 484

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Aditya Adhikari, for the Appellant; Indira Nair with Ms. Jasmit Chana and N.S. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Petitioner is a Managing Partner of the firm M/s. Alcon Laboratory and Industries (India) which deals in dolomite chips. The same are transported by Railways to different factories on demand. The firm required operating space in terms of commercial plots for stacking of the dolomite chips and loading into wagons. So an application was made by the Petitioner on 26-12-1985 to the Respondent No. 3 for allotment of commercial plots namely Plot Nos. 22. 23. 24 and 25. The application was not processed in due time. The Petitioner was facing difficulty in loading the wagons at Chandia Road Railway Station. He approached the authorities for permission to stack the goods on the commercial plots for which the Petitioner had applied for grant of licence. He was informed vide Communication No. CHD/88/1/A1con/1 dated 27-1-1988 by the Railway Authorities that it was noticed that laborers were utilizing the Railway land for making "gitti" which was causing disturbance for safe working of staff. Petitioner was cautioned that he would be liable for action and payment of wharfage charges for encroaching of plots and other railway land. The Petitioner was also

asked not to dump dolomite on any land except the plots for which the application was made. He was asked to send a special representative and to arrange the payments accordingly. This is on record as Annexure/P-7. However, nothing positive was done on the application of Petitioner for allotment of commercial plots on license. A reminder memo dated 18-5-1988 was sent by the Petitioner followed by the reminders dated 3-10-1988 and 17-1-1989. Number of reminders as contained in Annexure/P-1 to P-15 were also sent. Thereafter the Petitioner again submitted a fresh application in May, 1993 for allotment of commercial plots Nos. 17 to 23 (Annexure/P-16).

On 2-7-1994, the Petitioner received the impugned memo issued by the Respondents requiring the former to deposit the wharfage to the tune of Rs. 1.78.29.060/- for storing dolomite chips from 5-11-1989 to 16-7-1994 (Annexure P-20). Petitioner went on making certain representations but of no avail. He received a memo on 17-2-2000 for the first time from Respondent No. 3 in which it was directed that the allotment of commercial plots would be considered on payment of wharfage charges to the tune of Rs. 1.78.29,060/-. This memo is on record as Annexure/P-23. Thereafter the Petitioner was served with another memo dated 24-5-2000 requiring him to remove the dolomite chips stored on the commercial plots of railways. It has been stated that the stacking of the dolomite chips has been done after due permission was given vide memo dated 27-1-1988 contained in Annexure/P-7. The Respondents themselves are responsible for making delay in consideration of the application of Petitioner for allotment of commercial plots. It is further stated that the basis on which the wharfage is calculated is illegal. The Petitioner does not deal in lime stone chips, accordingly, the imposition of wharfage charges is factually incorrect and legally untenable.

In the return it is stated that the Petitioner immediately after the application started dumping material on commercial plots of railways and gradually usurped mostly all the commercial plots at Railway Station Chandia without waiting for formal allotment and agreement. Various objections were raised including that the matter being of contractual nature, the writ petition is not maintainable.

Petitioner submitted a rejoinder that he did not deal in lime stone and thus the factual basis on which the wharfage is quantified is illegal and nonexistent. It has been reiterated that the Petitioner is continuing his business from those particular plots for which he was granted permission vide Annexure/P-7 dated 27-1-1988. It is further stated in the rejoinder that on account of non-allotment of plots the Petitioner obtained land from private parties to store dolomite chips. Thus, it is incorrect that Petitioner immediately after the application started dumping material on commercial plots of Railway Station Chandia. On the contrary, the Respondents have exercised the powers and violated Article 14 of the Constitution of India by making available the plots to certain persons who made applications subsequently.

Respondents submitted additional return specifying the quantity stored by the

Petitioner on railway land. It has been expressly stated that the commercial plots are allotted by the General Manager on the specific recommendation of the divisional authorities as per the laid down procedure but not by the Station Master. When it came to the notice of the Respondent No. 3 that the Dy. Station Master has permitted the Petitioner to stack the material on plots applied by him. it was informed to the Petitioner vide order dated 13-7-1988 (Annexure-1) that the Dy. Station Master's order dated 27-1-1988 (Annexure/P-7) was irregular and that the material stacked on railway plots in unauthorized manner should be removed. It is contended that the application of the Petitioner was cancelled due to non-payment of wharfage raised on the unauthorized stacking of the material on the railway land/plots by the Petitioner. The plots were allotted to M. P. State Mining and Ceramic Industries in the year 1978 and ultimately cancelled as the party failed to offer rail borne traffic and pay the license fees etc. The Petitioner in paragraph-3 mentioned that they are still continuing the business from the plots. The Petitioner has not loaded a single wagon in the last two years but stacked material unauthorisedly on the railway land/plots. None of 26 commercial plots available at Chandia Road is allotted to any party on date. The parties are now operating by dumping their material on the railway land and loading them into the wagons. The material of the parties if found stacked on the railway land beyond the free time, wharfage is charged as per the rules. The plots proposed by the Petitioner were not allotted to him because a huge amount of railway dues were still lying outstanding against the Petitioner. Accordingly, it is contended that the petition being devoid of force, is liable to be dismissed.

Shri Aditya Adhikari, Ms. Indira Nair and Shri N. S. Ruprah, counsels made their submissions which have been considered in the light of the material on record.

Petitioner has sought following three relief's:

- (1) For quashment of order dated 2-7-1994 (Annexure/P-20) imposing thereby the wharfage to the tune of Rs. 1,78,29,060/-.
- (2) For quashment of order dated 17-2-2000 (Annexure/P-23) that his application for allotment would be considered after deposit of wharfage to the tune of Rs. 1,78,29.060/-.
- (3) For quashment of order dated 24-5-2000 (Annexure/P-24) directing thereby the Petitioner to remove the subject contents lying unauthorisedly at CHD on payment of all railway dues within seven days, failing which the same will be disposed of by public auction as per rules.

In the additional return submitted on 9-5-2003. it has been expressly mentioned in paragraph-6 that the application of the Petitioner was cancelled due to non-payment of wharfage raised on the unauthorised stacking of material on the plots/railway land by the Petitioner. The Petitioner has not amended the writ petition and has not chosen to challenge the cancellation of his application which took place long back in the year 2003. In view of this, relief (2) containing a challenge to the decision that the application of the Petitioner for allotment would

be considered only after deposit of wharfage has become in fructuous. As regards relief (3). it may be seen that the Petitioner was asked to remove the material stacked by him within a period of seven days of payment of all railway dues. It is not the case of the Petitioner that the plots occupied by him were allotted to him. His total reliance is on Annexure/P-7 which is issued by the Dy. Station Master with the following contents:

You are hereby requested not to dump Dolomite on any land except the plots for which you applied and also plots pending for allotment may be brought by sending a special representative of yours to Sr. Des/BLP and to arrange the payments accordingly.

It is noticed labours are utilized for making gitti in rly. plots causing disturbance for safe working of staff. It is highly objectionable that the plots are being utilized for the purpose of stocking Dolomite gitti for loading in wagons.

This may be treated as very serious offence and you are liable for action and payment of wharfage charges for encroaching of plots and other railway land. Immediate action from your end is required. Thanking you very much.

Undoubtedly, the railways provide transport facilities and while performing the "Act of State" it provides transport facilities to the citizens of India and while performing its commercial functions it provides dumping and transport facility to business class. The process of allotment of commercial plots is stated to be a lengthy process. The procedure prescribed for the same is gathered from Annexure/R-2 to the following effect:

- A) The party has to apply in the prescribed proforma along with the recommendation of the station master of the station concerned.
- B) The genuineness of the party is ascertained.
- C) The present and future traffic should justify the allotment of the plots.
- D) It should be ensured that whether station has rake loading facilities or not.
- E) It should be ensured that the railway is in the position to supply the wagons or not.
- F) The proposal should be justified from financial point of view.
- G) It should be ensured that the railways do not require the land asked for by the party.
- H) After having satisfied with the above report etc. a proposal is drawn and sent to DRM for his approval.
- I) The proposal is then sent to the Hd. Qrs. i.e. Calcutta for their examination. During the examination, all the queries made by them are answered.
- J) If the proposal is found feasible then it goes to the General Manager for

sanction.

K) After receiving the allotment order from the Hd. Qrs. the licence fee etc. is paid by the party and proper agreement is executed.

Thus, the proposals for allotment are scrutinized from every angle to safeguard the railway's interest. A care has to be taken that the allotments may not result in counter-products and the parties after allotment may not stop the payment and carry on their private business on railway land. In the prescribed procedure a Dy. Station Master has no role and in this view of the matter Annexure/P-7 appears to be without jurisdiction.

Learned Counsel for the Petitioner has been unable to establish that the Dy. Station Master of Chandia Railway Station had any authority to allow the Petitioner to dump dolomite on the plots of railways for which an application for allotment was made by him. Annexure/P-7 has no approval by any of the authority competent to allot the plots. Accordingly, it is held that Annexure/P-7 being without power or authority, stacking of material by the Petitioner on the plots/railway land cannot be said to be justified.

As regards, the delay on the part of railway authorities in considering the application for allotment, it may be seen that the Petitioner submitted his application for allotment initially in the year 1985. As stated hereinabove, the allotment of commercial plots takes a bit little more time on account of the prescribed procedure. The Petitioner did not insist for decision on the application for allotment and it seems that he started utilizing the plots applied for by him. On the strength of the letter dated 27-1-1988 (Annexure/P-7). he continued with his business activities and instead of insisting for proper allotment and agreement, he submitted a fresh application for allotment in May. 1993. Thereafter, again, on 19-12-1999. he submitted a fresh application for allotment. As per the averments contained in the writ petition, undisputably. the Petitioner continued with his business activities. Petitioner, had he wished so, could have approached the Court of law immediately when he found that his application for allotment submitted in the year 1985 was not being processed either quickly or in due time. Instead, he continued with his commercial activities under the shelter of Annexure/P-7 which has already been found to be without any authority of law. In this view of the matter, Petitioner cannot blame the Respondents and cannot take advantage of his own activities. Since, the Petitioner is not found to be an allottee of the said land and his application for allotment having been cancelled, he is liable to remove his material from the plots/land of railways.

Relief (1) and (3) are about wharfage and its recovery. It is submitted that the wharfage has been wrongly worked out. It is based on the plea that the Petitioner did not use to deal in lime stone and has not stacked the same on the plots in question. The Petitioner has admitted in the writ petition that he occupied the plots by stacking the material on the strength of Annexure/P-7. The

question that whether lime stone was stacked by the Petitioner or not and how much area was occupied by the Petitioner by stacking the material, is obviously, a disputed question of fact. This Court in writ jurisdiction does not act as an appellate authority.

As regards wharfage, the same is defined in Section 2(41) of the Railways Act. 1989 as follows:

"wharfage" means the charge levied on goods for not removing them from the railway after the expiry of the free time for such removal." Power of the Respondents to charge wharfage is also not disputed to the Petitioner. The objection about the quantification of wharfage, admittedly, thus depends on the disputed question of facts which cannot be gone into in the present writ petition. Accordingly, this Court declines to quash Annexure/P-20 on account of involvement of disputed questions of facts. Petitioner would be at liberty to challenge the same before the appropriate forum in accordance with law.

In the result, writ petition is dismissed in the aforesaid manner, however, without order as to costs.