(1988) 12 CAL CK 0046

In the Calcutta High Court

Case No : C.R. No. 19171 (W) of 1984

Messrs. Ballarpur Industries Ltd. — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 02-12-1988

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 16

Citation : 93 CWN 949

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Dipankar Ghosh and Soumen Ghosh, for the Appellant;Dipankar Gupta, Ashok Dhar for Coal India Ltd. and Eastern Coalfields Ltd., Bhaskar Gupta for the C.E.S.C. Limited, S.C. Bose, Saktinath Mukherjee and S. Banerjee for the Railways, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterjee, J.—The present writ petition has been filed by Messrs. Ballarpur Industries Limited a Company within the meaning of the Companies Act praying inter alia for issuance of a writ of mandamus commanding the respondents to act and proceed with law and directing the respondents not to overload and exceed permissible carrying capacity of the wagon while loading the sponsored movement of coal and not to realise any penalty imposed for overloading done by the consigner, Eastern Coalfields Limited from the petitioner and to forbear from overloading and/or exceeding permissible carrying capacity of the wagon in loading the sponsored movement of coal to the petitioner and/or to declare the Rule 161A of the Goods Tariff No. 37, Part I, Vol. 1 so far it authorises imposing of penalty inspite of failure of Railways to act according to rules is ultra vires and to refund the amount already paid by the petitioner as penalty and for other consequential reliefs as fully elaborated in the writ petition itself. It is stated that the petitioner has been carrying on business as manufacturer of paper and paper pulp and for the purpose of running the said factory, coal is an essential commodity. It is further stated, coal is an essential commodity. It is further stated that the production and supply of coal in India is being controlled by Coal India Limited, a Government of India Undertaking through its subsidiaries including Eastern Coalfields Limited and Central Coalfields Limited. u/s 27A the Central Government may, if in its opinion it is necessary in the public interest so to do by general or special order direct the railway administration to give special facilities of preference to the transport of any such goods or articles of goods consigned to Central Government or to the Government of any State or of such other goods or class of goods as specified in the order and to carry any goods or class of goods by such route or routes and at such rates as may be specified by the Government.

2. In exercise of the said power u/s 27A of the said Indian Railways Act, the Central Government time to time issued preferential traffic schedule and giving prioritoies "A", "B", "C", "D" and "E" in respect of various goods. The commodity "coal" comes under the priority "C". For the preferential allotment of wagon under priority "C" in respect of sponsored consumer a procedure has been introduced by the Railways Authorities under which the sponsoring authorities of the States and Central Government mentioned in the preferential traffic schedule shall recommend ceiling limits of quotas to the Director of Movement (Railways) at Calcutta for movement of coal from collieries in respect of each consumer in Annexure "A" and after issue of the said sponsorship recommending allotment of wagons for preferential movement of coal from collieries, the sponsored consumers through their middlemen and agents complete the financial arrangement with the collieries for obtaining their consent to load. The colliery concerned makes an endorsement on the programme in Annexure "C" is filed in the office of the Director of Movement (Railways) for preferential allotment of wagons.

3. Thereafter, the Director of Movement (Railways) sanctioned and/or approved the programme with or without any modification and/or on the basis of the said sanctioned and approved allotment of the wagons are made for movement of coal from the collieries. It is also stated that the petitioner after issue of the said letter of identification and/or sponsorship recommending the allotment of wagons of preferential movement of coal completed the financial arrangements through their agents and/or middlemen with Eastern Coalfields Limited for obtaining their consent to load. The system is that unless the entire value of coal is paid by cash and/or the bank guarantees furnished the Eastern Coalfields Limited does not consent to loading after the completion of the financial arrangement programme in Annexure "C" that the consent of the Eastern Coalfields Limited the programme is implemented. The Director of Movement (Railways) sanctioned and approved various programmes and in India sanctioned and approved various programmes in favour of the petitioner of preferential allotment of wagons on the basis of the sponsored and/or recommendation issued by the Director of Industries, Haryana. In respect of sponsored movement of coal in wagon load of colliery siding after the approval and/or sanction of the programme, wagons

were allotted to the colliery sidings according to the priorities and thereafter the colliery concerned loaded the coal in the said wagon and after loading was completed the wagon was brought to the weigh bridges of the station serving the colliery siding and weighing is completed the railway (sic)eipt is issued indicating the weight and freight be paid at the (sic)tination and price of the coal is realised and/or adjusted by the colliery authorities on the basis of the weight mentioned in the railway receipt. The writ petitioner further elaborated stating that each wagon as a mark carrying capacity and the minimum weight for charge for coal is the carrying capacity (sic)2 for BG wagons and carrying capacity +1 ton or MG wagon which are also known as permissible carrying capacity of the wagon. Even in case of unloading the minmimum weight for charge for wagon is required to be paid and in view of the fact that the loading is made under the super-(sic)ision of the Eastern Coalfields authorities in case of underloading excess or wagon at the destination is refunded by the Eastern Coalfields authoities as due to the underloading made by the Eastern Coalfields authorities. The consignee is required to pay and as such the excess payment on account of underloading is refunded by the Eastern Coalfields authorities. The penalty is imposed for loading beyond the permissible carrying capacity of the wagon under Rule 161A of the Goods Tariff No. 37 of Part I, Vol. I. The writ petitioner has alleged that wireless message issued by the Chief Commercial Superintendent (Rates). South Eastern Railway dated 18/5/84 that the Central Government had decided to amend the Rule 161A of the Goods Tariff with effect from 15/4/84. In case of consumer like the petitioner is required to pay a penal freight about four times more than the freight payable if the wagon is loaded upto mark carrying capacity +2 tons. The petitioner has further submited that in case of loading within the permissible carrying limit the freight will be at the highest rate since the petitioner has no control over the loading of coal in wagon load and the entire loading is made by the Eastern Coalfields Limited there was no request from the petitioner''s end to the authorities of the Eastern Coalfields Limited to overload the coal in wagon. The Railway Authorities are at liberty to remove and/or unload the excess quantity of coal so that no penal freight was imposed. In terms of the Rule 161A while loading commodities, the consignors are required not to exceed the permissible carrying capacity of the wagon used. The colliery authorities being the consignor of the sponsored movement of coal are required not to exceed the permissible carrying capacity while loading coal in the wagons and for the acts done and/or caused to have been done by the Eastern Coalfields Limited and/or their men and enquiries the burden load of penalty is being imposed (sic)n the consignee vis-a-vis the petitioner.

4. The petitioner is a sponsored consumer and it is the desire of the petitioner that the wagon should be allotted and loaded according to the sponsorship issued by the Director of Industries, Hariyana, as approved and/or accepted and/or sanctioned by the Director of Movement (Railways) and the colliery authorities of the Eastern Coalfields Limited should not overload any wagon and in case the wagon is found in excess of the permissible limit, it is incumbent, upon both

colliery authorities or the Railway Authorities to unload the excess quantity so that penalty may not be imposed upon the petitioner and wagons may not move with excess weight. Stating all such facts in details the petitioner filed the writ petition mainly on the ground, that the Eastern Coalfield Limited and other coal companies and their officers having competence, authority and/or jurisdiction to overload and/or exceed the permissible carrying capacity of the wagon while loading the sponsored moved of coal of the petitioner in wagon. For overloading it is incumbent upon the consignor to pay the penalty for such overloading. It is also incumbent upon the railway authorities for effective weighment at the booking station before issuing the railway receipt and to remove the quantity of coal with exceed permissible carrying imposed under Rule 161A upon the consignor not to exceed the permissible carrying capacity of the wagon while loading commodities. Eastern Coalfields Limited and their coal companies and their officers are under legal obligation not to exceed the said permissible limit and in case of that failure to fulfil the said obligations the penalty imposed by the said railway authorities under the Rule 161A and paid by the consignee and to destination ought to be refused by the consignor Eastern Coalfields Limited inasmuch as the petitioner, the consignee has no hand in the matter of loading the consignment and nothing has been done on the part of the consignee to exceed the permissible capacity of the wagon. It is one of the grounds that there is no privity of contract between the petitioner arid the railway authorities in respect of booking of sponsored coal consignment of the petitioner tram the colliery sidings and the coal consignments are booked by the Consignor, Eastern Coalfields Limited and other coal companies, and as such penalty imposed due to the overloading and/or exceeding permissible carrying capacity of the wagon will have to be borne and the release from the consignor, Eastern Coalfields Limited. The Rule 161A of the Goods Tariff No. 37, Part I, Vol. I so far it authorises imposition of penalty for overloading inspite of the failure of the railway authorities to act in accordance with the rules is wholly arbitrary and is ultra vires to Article 14 of the Constitution of India.

5. The writ petition is contested by the Eastern Railway Authorities and the Eastern Coalfields Limited by filing separate affidavits-in-opposition. It is the specific case of the Eastern railway Authorities that in Eastern Railway, over 5,000 wagons were loaded daily with coal from colliery sidings located at Dhanbad and Asansol. The loading is done by Coal India Limited and its subsidiary Companies. At all loading points weigh bridges are not available and as such coal is loaded upto a mark given in each wagon and the freight is imposed after weighment of the loaded wagon in some weigh bridge. The loading of coal in wagons is done either manually by illiterate labourers or by mechanical means. The loading methods of wagons are such that it cannot be assured invariably that the coal is loaded upto a specified tonnage. Due to this reason, in case of wagon overload upto 2(two) tons above the permissible carrying capacity, no penal charge is levied. The overloading of coal in any wagon is not a phenomenon which can only be viewed from financial angle only. It is a

phenomenon, which is the safety aspect also. Penal charges have been prescribed for overloading of coal so that overloading may be financially unremunerative, to the parties who are responsible for this. In case railways are prevented from realising due penalties as per rule, not only the railways but also industries in the country and the general public as a whole will be put in imminent sufferings as flow of coal wagons to their destinations will be retracted. With the object of discouraging and overloading of wagons, Rule 161 of I.R.C.A. Goods Tariff was amended in December 1974 wherein stringent provisions were provided. In the year 1981 after careful considerations of the matter Board decided to provide a separate Rule in the I.R.C.I Goods Tariff exclusively dealing with penalty for loading wagons with coal beyond permissible carrying capacity. According to the decision of the Railway Board notwithstanding anything contained in the Goods Tariff or any other rules or instrumentions charges of the normal wagon rate should be levied if the overloading is upto 1(one) ton and had small rate applicable to Coal Tariff if overweight is more 1(one) ton for the entire distances from the booking point to the destination. The Railway Board by its letter dated 7th of May, 1981 communicated to the General Managers of Indian Railways aboiut the introduction of a new rule i.e. Rule 161A of the I.R.C.A. Goods Tariff the Railway Board in the- aforesaid circular dated 7th May, 1981 further provided that since operational does not feasible to permit adjustment of load in case of bags wagons loaded with coal beyond their permissible carrying capacity, freight charges should be levied for the excess weight if it is more than 1(one) ton beyond permissible carryiong capacity should be levied at the appropriate small rate in terms of Rule 161A. Therafter, correction slip no. 2 dated 21st August, 1981 was issued by which heading of Rule 161 of the Goods Tariff No. 36 Part I, Vol. I was amended and the Rule for 161A was incorporated. The correction slip no. 3 dated 1st February 1982 heading of Rule 161 and Rule 161A was again amended. In April 1984 the Central Government amended Rule 161A of the I.R.C.A. Goods Tariff No. 37, Part I, Vol. I. The said decision came into effect from 15th April, 1984. The Rule 15A of the I.R.C.A Goods Tariff No. 37, Part I. Vol. I was further amended with effect from 1st August, 1984 by the Railway Board and by such amendment it was provided that the new structure of penalty was provided.

6. The respondent nos. 11 to 14 vis. Eastern Coalfields Limited, The Coal India Limited and their senior officers and management also contended the writ application by filing affidavits-in-opposition. It is contended that the relationship between the petitioner and the respondent nos. 11 to 14 is in the realm of contract. The contract comes into the existence as soon as the order is placed by the consignees on the respondents and pursuant to the contract the coal is loaded in wagons FOR and despatched to the petitioner. The sale price of coal or coking coal with prescription of classes and grades thereof and duly classified under VI different tables has been fixed by the Central Government (Ministry of Energy) under notification bearing no. 8013 (E) dated 7th January, 1984 in pursuance of clauses 3 and 4 of Colliery Control Order 1945 has continued in

force by Section 16 of Essential Comidities Act, 1955. Table VI thereafter describes types of coke and sale price and Class II speaks of the price which does not take into account "freight". The respondents have disputed the right of the railway respondents who applied Rule 161A of the Goods Tarrif No. 37 containing general rules for acceptances, carriages and delivery of goods in respect of the wagons loaded by the respondent nos. 11 to 14. They have submitted further that assuming the rules applied before the said Rule could at all be invoked. There was a previous stage when another Manual Rule 1877 of the Indian Railways Commercial Manual Vol. II by the Government of India, Ministry of Railways had to be applied since it dealt with disposal of excess loaded consignment where the wagons weight on a weigh bridge station. The Rule required excess load to be removed from the wagons and separate unloading tally book to be maintained by the concerned authorities of the Railways who are incharge and in control of the Weight Bridge Station. Duty under Rule 1877, therefore, is equal a duty placed on the Railway not on the consignor of the consignees, the excess weight was to be removed by the Railway under the said Rule and the booking point under the instructions issued in default in this regard on the part of the Railways cannot result in excess freight. Charges being claimed against the consignor of the consignee. They have further submitted that Rule 161A who attracted obligation in any cases when the wagon is not weigh in weigh bridge at a weigh bridge station for reasons beyond the control of the Railways. It is a duty of all concerned to harmonise the rules rendered find any inconsistency and conflict. Nowhere Rule 161A mentions weigh bridge and wherefrom at weigh bridge is involved which necessarily speaks in accordance with the Rule 1877. As matter of fact, in the Central Railways where Rule 1877 is applied wherefrom wagon is weighed on a weigh bridge station but those respondents supported the petitioner in the stand regarding the applicability of the Rule 1877 and submitted that no excess freight can be demanded in relation to the excess levy of a wagon where the Railways Authorities are in control of the weigh bridge and fails to unload such excess quantity of coal. In any event, it is submitted that by reason of Rule 306 of the Rules of General Tariff, Goods Tariff No. 37, dealing with rights and conditions for carriage of coal, Rule 161A would have no application in view of the special provision made for Coal Tariff by the Eastern Railways which is a special Rule contemplated by Rule 306 of the General Rules. Rule 29 of the Coal Tariff of the Eastern Railways sets out the procedure where a wagon is loaded in excess of the maximum rate prescribed. The petitioner, however, cannot have any cause of action against the Eastern Coalfields Limited and its employees and agents since the levy and collection of penalty/penal freight from the petitioner is entirely by the respondents and therefore the petitioners cannot have any grievance against the respondent nos. 11 to 14 merely their consignees in FOR/Ex-colliery siding on the basis of the contract. The penalty/penal freight charges by railway respondents are on the quantity of coal loaded in excess of the permissible carrying capacity of wagon which ought to have removed on proper weighment. Coal is loaded on the railway wagons under the supervision of the respondent nos. 11 to 14 besides the petitioner''s representative/agent who may and ought to be present at. the time of loading of coal. This is more so in case of a representative of consignee in view of the terms of sale/price which are FOR, i.e. Ex-colliery siding and when the seller/consignor completes the delivery at ex-colliery itself. In case, any discrepancy in loading is noticed, corrective action has to be taken before the wagons are despatched for the final destination. Coal being the property of the consignee is a loan entitled to claim against the railway. The avoidance of over-loading is the obligation of the railway and/or is the removal of excess load since the operation at the weigh bridge which is normally at a short distance from site of loading, is exclusively controlled by the railway authorities without any reference. In view of the fact, that the answering respondents to meant to assess whether the wagon is being loaded in excess of the permissible capacity or not, the Joint Director, Tariffic (Rates), Railway Board by a letter dated 8th April, 1977 as indicated the steps to be taken by the railway authorities. The said directions from the Railway Board are quite in conformity with the provisions of Rule 1877 of the Indian Railways Commercial Manual. When as a result of weighment at a intermediated weigh bridge station a wagon is found to be off-loaded, the excess load should be removed and the wagon despatched to the destination station. A separate unloaded tally book should be maintained from such off-loaded consignments. Immediately, after unloading the excess weights, the sender''s instructions regarding its disposal should be obtained through the Station Master of the Booking Station. For this purpose, the Weigh Bridge Station should be sent to the Booking Station a statement in the proforma appearing at Appendix XVIII/F i(sic) a sealed cover book under a free service weigh bridge. The booking on receipt of the said statement referred to clause (xi) should serve a notice on the sender in the proforma appearing at Appendix XVIII/G and obtained his acknowledgement which should be prescribed at a Booking Station these suggestions were made. The said respondents have further categorically asserted that the positive obligation cast on the railways under Rule 1877 of the Indian Railways Commercial Manual, Vol. II to remove the excess load of weighment of a wagon at booking point or at the Weigh Bridge Station. They have further submitted that like the petitioner, the respondent no.s 11 to 14 are not in a position to assess whether or not the wagons are being loaded in. excess of the permissible carrying capacity. It is the sole responsibility of the railway respondent to see that wagons are off-loaded beyond the permissible carrying capacity in accordance with the Rule 1877 of the Indian Railways Comercial Manual, Vol. II. The levy/imposition/collection and recovery of penalty or penal freight charges is done by the railway respondent. It has, however, been pointed out that coal is of heterogeneous nature, mined and supplied in bulk quantity. The weight of coal is assessed on the basis of its bulk density which wide varies from grade to grade, seam to seam and size and size on account of the factors like moistures, ash-contents etc. and also influenced by the underground geological condition. Due to the inherent nature and condition of coal the wagons are at times loaded even on the basis of volumetric weight and according to the loading provided in the wagons, the weight of coal is bound to vary at the Weigh Bridges. The weighments are loaded in different manners namely manually and mechanically. When the wagons are loaded manually the loading is done on the basis of bulk density and wagons loaded upto the loading line marked or, the wagons. The assessment of loading is made on the basis of the number of buckets put it into the wagons. One loaded mechanically, its number of buckets which formed the basis of assessment. After loading on wagons weighment is done at the Weigh Bridge manned and operative wholly by the railways. During this weighment, it is detected where wagons are overloaded or not. Based on the weight recorded at the Weigh Bridges Railway Rule are issued by the railways. The railways are paid by the consignee either at the loading point or at the destination depending upon the arrangements. Earlier the practice was that in case the wagons are found to be overloaded at the weighing/ booking point, adjustment was made by off-loading excess weight by railway respondents. The railways have also accepted that it is their responsibility to carry out such weighment and adjustment as would be evident from the directions contained in the letter dated 4th of June, 1975. The address by the Director, Traffic (Commercial), Railway Board, New Delhi. It is clearly pointed out that in case invoice weight includes over-weight then no penal charges could be levied. The duty to unload the excess coal under Rule 1877 is in the nature of statutory alteration. Various sub-rules thereunder referred to the notice to the sendor''s as regards excess quantity which is unloaded and which obviously is not indicated in the R.R. in this behalf. It has been reiterated that it is the responsibility of the railway respondent to see that there is no excess loading of the railway wagons beyond the permissible carrying capacity. Since Rule 161A of the Gods Tariff No. 37(1) mentioned a Weigh Bridge and weighment by a Weigh Bridge is most essential. It is submitted that Rule 1877 is the one which will apply otherwise the Rule will never come into application. They have also submitted that these wagons are sometimes overloaded and at times underloaded. The underloading of wagon is due to manifold reasons at times underloading of weighment is due to shortage of wagons besides certain other relative reasons. In case of underloading the railway receipts by the railways indicate the loaded weight but the charges made for the full wagon load in accordance with the Rule 160 of the Goods Tariff No. 37. It is thus in the nature of idle freight but in case of overloading is not explained as to why R.R. issue for excess load and why the application is not carried out in effect. However, the entire claim is made against the consignee. Payment, if any, which was made to the consignee without any application to pay him for loss on account of payment of freight by him for full wagon load in case of underloading would not logically justify the consignee to claim any payment on that basis in case of overloading. The responsibility of off-loading of excess load has always been of the railways but it has been made clear that in case the invoice weight is within, then the penal charges can be levied. An unwarranted amendment of the Rules under which the railways can charge penalty/penal freight on the quantity loaded in excess cannot be enforced on account of the failure of the railways to discharge its own obligation to unload the excess quantity.

7. Having heard the learned counsels for the petitioner, the Coal India and Eastern Coalfields, Calcutta Electricity Supply Corporation and the Eastern Railway Authorities this court finds and after going through various affidavits in details filed by the respective parties and perusing the relevant provisions of the Indian Railways Act and its various Sections along with the amendments that Section 53 of the said Act is very important for the purpose of the present case. This Section provides inter alia that maximum carrying capacity of the wagons in view of Section 53(1) of the Act, the gross weight of every wagon or truck bearing on the axle when the wagons or trucks loaded to its maximum carrying capacity shall not exceed such limit as may be fixed by the Central Government for the class of the axle under the wagon or truck. It is clearly found that this sub-section deals with "gross weight" which means the weight of the contents of the wagons plus the weight of the wagon itself when loaded to its maximum carrying capacity. This gross weight is not to exceed a certain limit which is fixed by the Central Government. Section 53(2) provides inter alia that subject to the ceiling fixed under sub-section(1) the Railway administration shall determine the normal carrying capacity for every wagon and shall exhibit the words and figures representing such normal present carrying capacity on the outside of every wagon. It is all the more certain that the normal carrying capacity plus the weight of the wagon cannot exceed the limit of gross weight as fixed under sub-section(1). Sub-section (4) of Section 53 enables the railway administration for notification to vary the normal carrying capacity provided that the gross wight of such wagon plus the wagon load does not exceed the ceiling fixed under sub-section(1). It will be appreciated that even when the normal capacity is varied it cannot be so varied that the weight of the wagon when loaded to such refixed normal capacity exceeds the ceiling fixed under sub-section (1).

8. It is obviously clear that from the provision of Section 53 with the ceiling fixed under sub-section(1) is the maximum to which a wagon can be loaded to ensure the security and safety of such wagons. Any wagon cannot be loaded beyond the ceiling under the law.

9. The challenge has been made that Rule 161A permits the Railway Administration to enhance freight charges regardless of the excess load. The answer has to be found out as to whether Rule 161A fixed any limit which the loading can be made or it is by way of penal measure proposing to charge the enhanced freight. The main attack is that the scheme of Section 53 cannot permit the railway administration to allow the excess load for the purpose of realisation of enhanced freight by way of penal measure.

10. This question has got to be examined in the proper prespective. Although, it has been strenuously argued that Rule 161A does not specify any upper limit which the loading on be made, the ceiling of maximum loading u/s 53(1) is known only to the Central Government since there is no express provision for exhibition of the same. It is also argued that the Central Government has not exercised any powers u/s 53(4) varying the normal carrying capacity of the

wagon and it has not been shown by the Railways that such power has been exercised. An emphasis has been made that there is nothing in Rule 161A to ensure that the gross weight does not exceed the ceiling fixed by Section 53(1).

11. The attention of the Court has been drawn that u/s 63 of the said Act a similar restriction has been provided on the maximum number of passengers which can be carried in each compartment of the railways. An analogy has been made that while the maximum limit is not adhered to, can the Railway Authorities charge double or triple fare for unauthorised extra passenger?

12. An indication has been made that Rule 1877 lays down a complete procedure as to what is required to be done by the Railway in case any wagon is found to be loaded beyond its normal carrying capacity. It is canvassed that the Railway Authorities, on detections of such overloading at the nearest weigh bridge would unload the excess and then disposed of the same in accordance with the procedure prscribed. When Railway Authorities have the power to take effective steps under Rule 1877 the steps taken for realisation of penal freight under Rule 161A cannot be harmoniously reconciled.

13. The Central Government is empowered u/s 29 to fix minimum freights. Rates have been defined as needed above as Section 3(13) to include any fare, charge or other payments for the'' carriage of any passenger on the Railways and the proposed step of minimising penal measure is contrary to and/or inconsistent with Section 53 as submitted.

14. The attention of the Court has also been drawn that the consignor and the consignee have no control over the loading of the wagons and the charge of penal freight is wholly unwarranted and uncalled for and ultimately it has to be passed over to the consumer. The respondents have tried to argue that in a circuitous process a profit element is added to the move of the Railways. It is by way of permitting excess load to realize penal freights. It is submitted that since there is no practical way to load the wagons properly, it is for the Railways to find out the wagons properly. It is for the Railways to find out the device prohibiting excess load and the consignor and the consignee are not interested to overload the wagons and the proposed step for realization of the penal freight is motivated and the Court should interfere with the matter and to make payment of penal rights.

15. This Court has closely scrutinized the scheme of loading wagons and the infrastructure on the realization of freights. This Court has looked into the provisions of Section 53 of the Act and its various sections as indicated above and it has gone through Rule 161A and also Rule 1877.

16. It is to be appreciated that daily 5,000 wagons are loaded with coal from colliery sidings located at Dhanbad and Asansol Divisions. The loading is done by Coal. Indian Limited and its subsidiary Companies. Since the loading of coal in wagon is done either manually or by mechanical means, the loading method of wagons are such that it cannot be assured invariably that coal is loaded upto a

specified tonnage. Accordingly, the overloading upto 2(two) tons above the permissible carrying capacity there is no levy of penal charges. In order to discourage overloading of wagons Rule 161 of the I.R.C.A. Goods Tariff was amended. After careful considerations of the matter, the Board decided to provide a separate Rule to deal with exclusively the penalty for loading wagon with coal beyond permissible carrying capacity.

17. As in April, 1984 the Central Government amended 161A of the I.R.C.A, Goods tariff No. 37, Part 1, Vol. 1 prescribing as follows:-

(a) When overweight is one ton or less per wagon such overweight should be charged at the wagon load rate;

(b) If the overweight exceeds one ton but does not exceed 2(two) tons per wagon such overweight should be charged at the small rate applicable to the commidity from forwarding station to destination station;

(c) If the overweight exceeds the above limit such overweight should be charged at the double the small weight applicable to the commodity.

18. Rule 161A was further amended with effect from 1st August, 1985 and by such amendment penalty for loading commodities in loose condition beyond the permissible carrying capacity of the wagon was fixed in the following manner :-

(a) If the overweight above the permissible carrying capacity of the wagon is 2(two) tons or less per wagon such overweight will be charged at the trend load/ wagon load rates as the case may be applicable to the commodity

(b) If the overweight exceeds 2(two) tons of the permissible carrying capacity but does not exceed 2(two) tons then the charges will be at the small rate applicable to the commodity.

(c) If the overweight beyond the permissible carrying capacity exceds the limit of 3(three) tons per wagon, the entire overweight in excess of permissible carrying capacity will be charged at the double the small rate applicable to the commodity.

19. Thus, it is clearly seen that the first gap was given at the time of. excess load and the second gap was given and if there is propensity to increase overloading beyond the permissible gaps there is proposed imposition of penal rates. Such a step for imposition of penal rate is not contrary to and inconsistent with the scheme of fixation of rates as envisaged u/s 53 of the Act, It is not also inconsistent with the rights and the powers of the Railways Administration under Rule 1877. If Rule 161A as amended is looked in the proper perspective it will be appreciated that in the order to check the propensity to load in excess with the risk of getting more commodities by sacrificing the safety measure and the expenses passed over to the consumers cannot be supported. There may be an analogy that the house-owner should be asked to be a very alert so that the burglary may not take place but the burglar cannot be checked by imposing the penalty if the act is accomplished. Looking to the entire infrastrucure of the

Railways Act and the connected Rules regarding the loading of coal wagons and the realisation of Penal Charges under the Rule 161A is neither irregular nor illegal.

20. The challenge is made to the framing of Rule 161A and the steps taken by the Railway Administration are fallacious. This Court with all its anxieties considered the case made out by the petitioner and finds that there is no merit in it. As a result thereof, the writ petition is dismissed and in consequence thereof the Rule is discharged and all interim orders are vacated.

This unit petition has been heard along with C. O. 3850-55(W) of 1985, (2) C. O. 13205-6(W) of 1985 (3) C. O. 17421-25 (W) of 1985, (4) C. O. 14179(W) of 1986 and In re East India Colliery and since the similar point arises in all the unit petition, this judgment covers all the cases, and in consequence thereof all the aforesaid similar unit petitions are dismissed, and all interim order made therein, are vacated. There will be no order as to costs.

