
(2014) 12 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 2525 of 1994

M/s. AIE Valley Traders (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Citation : (2015) 119 CutLT 1121

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : M/s. S.P. Mishra, Senior Counsel, A.K. Mishra, S.K. Mishra, Sudhir Ku. Mishra and K.C. Khuntia, Advocates, for the Petitioner; Mr. A.K. Bose, Asst. Solicitor General, M/s. A. Pal, O.N. Ghosh, D.N. Panda and Karunakar Jena, Advocates, for the Opposite Parties

Final Decision : Allowed

Judgement

Biswanath Rath, J. - Petitioner, a trader engaged in transportation of materials through railway by filing this Writ Petition has challenged the action of the Opp. Party No.1 in the matter of levy of "Wharfage" charges of Rs.13,86,248 with regard to R/R No.500007 to 5000012 & also for a direction to refund the aforesaid amount along with 18% interest from the date of collection till the date of payment holding the collection of the same as illegal.

2. Facts reveal that for the purpose of stacking raw materials to transport it to the destination station, the Petitioner company for the year 1988 applied to the Senior Divisional Commercial Manager, Waltair, Andhra Pradesh for allotment of a commercial plot nearby the goods shed at Vijayanagaram Railway Station. The application for allotment was not considered in spite of a recommendation of the local authority. Since the materials had already arrived, finding no other alternate, the Petitioner stacked the materials at the commercial site vacant at the relevant time but, with permission of the station authorities. The normal practise prevailing is, after the placement of indents for wagons, the raw materials were stacked as & when the wagons or rakes are made available the

goods are loaded to the wagons within the permissible free time of 9 (nine) hours from the time of placement of wagons. It is submitted by the Learned senior Counsel for the Petitioner that with intention to transport the materials, the Petitioner placed indents bearing No.1 & 2 on 1.1.1994, No.9-12 on 5.1.1994 & indents No.13 & 14 on 7.1.1994 for wagons, i.e., one rake of wagons with the Station Master, Vijayanagaram Railway Station for consignment of Casurina Timber Waste to Brajarajnagar Railway Station in favour of M/s. Orient Paper Mills the Opp. Party No.7. It is submitted by Learned senior Counsel for the Petitioner that it is only after acceptance of the indents for wagon & the collection of fee, the Petitioner was granted permission by the Station Master, Vijayanagaram Railway Station for having stock of the goods at the commercial plot which situated far away from the goods shed or the platform. On witnessing the development, the Petitioner brought in the goods being Casurina Timber Waste near the said Commercial plot & stocked the same.

It is next contended by the Learned senior Counsel for the Petitioner that although the Petitioner duly placed the indent for wagons in between 1.1.1994 & 7.1.1994 in three different spells, the Railway Authorities for the undisclosed reason, did not place the wagons within the required time & ultimately placed the wagons on 3.3.94. It is at this point of time, the Petitioner could only be able to load the Casurina Timber Waste to the wagons which got completed on 3.3.1993 itself & the loading was within the permissible time of 9 (nine) hours from the time of providing the wagons. It is contended by the Petitioner that while the matter stood thus the Petitioner was surprised to receive a demand from the Railway Authority illegally & unlawfully including the "Wharefage" for a sum of Rs.13,86,248. Particularly charging "Wharefage" from 14.1.1994 to 3.3.1994, it is in addition to the plot charges for goods consignment. By letter dated 3.3.1994, the Chief Goods Superintendent, Vijayanagaram South Eastern Railways informed the Petitioner about raising of "Wharfage" charges for 49 days & requested the Petitioner to pay the said amount immediately. The Petitioner disputed the same on the ground that the goods under the particular consignment were never stacked at the goods shed rather were stacked at commercial plot which is far away from the goods shed. The Petitioner explained the position by letter dated 3.3.1994. In the meanwhile, the Petitioner was intimated that neither the Divisional Railway Manager nor the Chief Commercial Manager South Eastern Railways have its power whatsoever to consider such request & that such power lies only with the General Manager, South Eastern Railways. Consequent upon, this intimation the Petitioner by his letter dated 10.3.1994 once again made a request to the General Manager, South Eastern Railway. It is alleged by the Petitioner that since the Petitioner had an account running & continuing with M/s. Oriental Paper Mills, the railway authority very clandestinely recovered a sum of Rs.13,86,248 towards "Wharfage" charge from Oriental Paper Mills. The Petitioner further alleged that even assuming that the "Wharfage" charges is payable by the consignee or the consignor, yet the same cannot be included in the railway receipts" particularly in view of the provisions

contained in Section 2(33) of the Railway Act, 1989 & Section 65 thereof. According to the provisions contained in Section 65, the railway receipt will only include the freight charges & under no circumstances can include "Wharfage" The Petitioner further contended that the "Wharfage" charge is chargeable in the goods receipt & dispatch related to destination station & the "Wharfage" charge is all related to delay dispatch at the destination station. Taking queue of Section 2(41) of the Act, the Petitioner claimed that the "Wharfage" charge is levied on the goods for not being removed from the goods shed at the destination station after expiry of free time for said removal & it is in this context the Petitioner claimed that the "Wharfage" is chargeable in respect of inward goods & has thus no connection with the dispatch of outward goods. It is on these premises, the Petitioner claimed that the charging of the "Wharfage" demand on the head of the "Wharfage" charge is contrary to law. Consequently collection of the "Wharfage" as against such consignment is also bad. Therefore, the Petitioner claimed not only the refund of the "Wharfage" but also appropriate interest for such illegal collection by the Railway Authority.

3. Per contra, the Railway Authority, i.e., Opp. Party No.2 in their appearance filed show-cause, inter alia, contending that the Writ Petition is not maintainable in view of availability of statutory alternate remedy under the provisions of Railways Claims Tribunal Act, 1987 particularly, in view of provision contained in Section 13 of the Act. On the question levying "Wharfage" charge on the outward consignment of Vijayanagaram, the Opp. Party No.2 contended that the levy has been made on the basis of a Railway Boards instruction dated 8.9.89 which clearly indicated charging of "Wharfage" is also leviable on outward consignment in case of goods stacked in the said premises of the forwarding station & further if the loading is delayed beyond permissible free time of seven days.

4. The Opp. Party No.2 next contended that since the dispatch was made after expiry of seven days free time, the Railway Authority was competent to charge & realize "Wharfage" charges in respect of goods in the railway premises including goods shed at the forwarding station. As the consignor refused to pay "Wharfage" charge against the consignment even after loading of the goods in the wagons, the Chief Goods Supervisor, Vijayanagaram was constrained to write a letter in the said regard on 3.3.94. As a consequence of which, following the provisions contained in Sections 83 to 85 of the Indian Railway Act, the Railway Authority having no other security available have lein on the goods for realization of the charges & its under this constrain they had no other alternative but to include the "Wharfage" in the railway receipt.

5. During course of argument Mr. Pal, Learned Counsel for Railways dropped question of maintainability on the plea of their filing the detailed counter. Further in view of long pendency of the Writ Petition in this Court for over 20 years, I am also of the opinion to interfere in the Writ Petition & pass an order rather than asking the Petitioner to move the railway Tribunal at this point of time as the proceeding before the Railway Tribunal will be grossly barred by this time.

6. Consequent upon the filing of the counter, the Petitioner filed a rejoinder substantiating its claim in the Writ Petition challenging the impugned action of the Railway Authority in referring to the provisions contained in Sections 36 & 37 of the Claims Tribunal Act, 1987 & submitted that he has no scope to go to the Railway Claims Tribunal. Reiterating its stand in the Writ Petition, the Petitioner again submitted that the charge of "Wharfage" in absence of providing wagons in due time, further charging of "Wharfage" in a outward station & also inclusion of "Wharfage" in the R/R are all bad in law.

7. In response to above, the Opp. Party filed a counter to the rejoinder affidavit & submitted that the charging of "Wharfage" is based on the circular of the Railway Board dated 8.9.89 & 21.6.90 & they are justified charging "Wharfage" as the consignees were not loaded or dispatched even after expiry of seven days period. It further submitted that the "Wharfage" can be charged even in case of non-supply of the wagons & since the Petitioner stocked the goods for 49 days beyond permissible period of seven days. The "Wharfage" is leviable.

8. For better appreciation of the matter it is necessary here to refer to the following provisions contained in the Railway Act, 1989.

Section 2(33), Section 2(41), Section 63, Section 64 & Section 65 are as follows:-

"2.(33) "railway receipt" means the receipt issued under Section 65;

"2.(41) "Wharfage" means the charge levied on goods for not removing them from the railway after the expiry of the free time for such removal;

"63. Provision of risk rates.- (I) Where any goods are entrusted to a railway administration for carriage, such carriage shall, except where owner's risk rate is applicable in respect of such goods, be at railway risk rate.

(2) Any goods, for which owner's risk rate & railways risk rate are in force, may be entrusted for carriage at either of the rates & if no rate is opted, the goods shall be deemed to have been entrusted at owner's risk rate.

64. Forwarding note.- (1) Every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government:

Provided that no forwarding note shall be executed in the case of such goods as may be prescribed.

(2) The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note.

(3) The consignor shall indemnify the railway administration against any damage suffered by it by reason of the incorrectness or incompleteness of the particulars in the forwarding note.

65. Railway receipt - (1) A railway administration shall,-(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of

such loading; or

(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(2) A railway receipt shall be prima facie evidence of the weight & the number of package stated therein:

Provided that in the case of a consignment in wagon-load or train-load & the weight or the number of packages is not checked by a railway servant authorised in this behalf, & 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."

9. There is no denial to the fact that the indents were placed by the Petitioner in between 1.1.94 to 7.1.1994 with consequential deposits in between that period. There is also no dispute that the wagons were placed as against the said indents on 3.3.1994. There is no material forthcoming from the pleading & submission of the railway authority that at any "point of time intimating the transporter/trader that they are unable to make available the wagons within seven days as required. There is no denial that loading got completed within 9 (nine) hours relaxation period from the time providing the wagons. It appears that the Petitioner had no fault for the delayed dispatch of the materials. From the point of view of Section 2(41) of the Act as referred to herein above, I do not see any justifiable reason for charging "Wharfage" for the entire period from 14.1.1994 to 3.3.1994 for which I disapprove the action of Railway Authority so far it relates to charging of "Wharfage".

10. From the submissions made by the Railway Authority in paragraph-3 of their counter to the rejoinder it is amply clear that the Railway Authority had not provided the wagons in time. Therefore, Railway Authority is not justified in claiming unlawful stacking of goods in the goods shed. The pleading of parties did not also establish that the materials got stacked in the goods shed rather it is established that the same got stacked in a commercial plot. Further in view of the statutory provision since the "Wharfage" is chargeable at the destination under the premises that no person should block his materials at the destination of the beyond period of seven days so as to preventing the Railway Authority from running with shortage of place. Thus charging of "Wharfage" in the present scenario is also otherwise bad.

11. The railway receipt as defined under Section 65 & as quoted herein above, does not include inclusion of the "Wharfage". In view of this statutory position, the preparation of railway receipt is wholly improper & it has to be revised in terms of provision contained in Section 65 of the Railway Act, 1989. It is well settled principle of law as laid down by Privy Council in *Nazir Ahmad v. King Emperor* 1936 P.C. 253 & subsequently followed by the Apex Court in *Municipal Corporation of Delhi v. Jagdish Lal & anr*; AIR 1970 S.C. 7; *Ram Charan Kesbab*

Adke (Dead) by LRs v. Govind Joti Chavare & ors, AIR 1975 S.C. 915 & Babu Verghese & Ors. v. Bar Council of Kerala & ors, AIR 1999 S.C. 1281 prescribed that if the statute prescribes a thing to be done in a particular manner, the same should be done in the same manner or not at all.

12. In view of clear provision contained in the Act for collection of "Wharfage" for delay receipt of materials by the trader at the out station the Railway Authority cannot apply the collection of "Wharfage" at the inward station by merely bringing an instruction/notification or a circular. Law is well settled that the circular & notification cannot supersede the statutory provision. If the Railway Authority had the intention to the charge "Wharfage" at the inward stations also nothing prevented the Railway Authority for bringing the amendment to the provisions contained in the statute.

13. Under the above circumstances & in the findings arrived herein above particularly keeping in mind the statutory provisions referred to herein above this Court hold the collection of "Wharfage" as well as inclusion of "Wharfage" in the Railway Receipt as bad. In declaring so, this Court directs the Railway Authority to make refund of sum of Rs.13,86,248 (rupees thirteen lakhs eighty-six thousand two hundred forty-eight) to the Petitioner along with interest @ 8% per annum from the date of such collection till date of payment. The amount indicated herein above along with interest as directed herein above be paid to the Petitioner within a period of four weeks from the date of Judgment.

14. The Writ Petition succeeds. However, there shall be no order as to cost.