

(2018) 10 GAU CK 0037

In the Gauhati High Court

Case No : Civil Writ Petition No.2803, 2607 Of 2012

**M/S Hari Krishan And Sons And Anr @APPELLANT@Hash Union Of India
And Ors**

Date of Decision : 12-10-2018

Acts Referred:

Citation : (2018) 10 GAU CK 0037

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : B Goyal, BK Das

Final Decision : Dismissed

Judgement

1. Heard Ms. B Goyal, learned counsel appearing on behalf of the petitioners. Also heard Mr. BK Das, learned Standing Counsel for the respondent/

NF Railway.

2. The petitioners have challenged the decision of the Railways Authority imposing demurrage charges vide order No. G1005/DM/GVG/2012 dated

21.05.2012 issued by the Divisional Railway Manager, Comml. Ambala Cantonment by way of which the appeal of the petitioner No. 1 praying for

waival of demurrage of Rs. 2,94,000/- thereby directing the CGS/GVG to collect the full amount of demurrage was rejected.

3. The petitioners in the course of their business purchased coal from North Eastern Coalfields, Coal India Limited sold under E-tendering system. The

petitioner No. 1 was allotted one rack of coal. The said coal was dispatched by the North Eastern Coalfields, Coal India Limited from theTirap

Colliery at Margherita through the Railways to the destination station at Mandi Govindgarh.

4. The North Eastern Coalfields Coal India Limited, Ledo, Assam registered the

indents for transportation of coal sold to its purchasers through racks and the North Eastern Coalfields collected the value of coal from its purchasers as well as the freight for transportation through railway and the same was paid by the North Eastern Coalfields to the Railways Authority. The General Manager, North East Frontier Railway, Maligaon, Guwahati as well as the authorities at Tinsukia Railway Station at Tinsukia, Assam are all parties to the contract arising out of the registration and allotment of the racks in question. The parties including the petitioners are governed and bound by the terms and conditions arising out of the registration of indents at Maligaon, Guwahati.

5. The rack was shown to be given placement for delivery on 05.04.2012 at 0535 hours. The rack was not given proper placement at the siding for unloading by the labourers. There were already other racks to be unloaded when the rack of the petitioners was placed on 06.04.2012 after about 1600 hours. The rack of the petitioners was placed on 06.04.2012 at 1600 hours in such a manner that half of the wagons were placed at the platform where no unloading could be done at all. The said inconvenience and disadvantageous placement of the rack was of such nature that the same could not be unloaded within the 9 (nine) hours free time allowed by the Railways. The petitioners were forced to wait till the racks were given proper placement.

6. On 06.04.2012 the rack which was purportedly given placement for delivery was moved from its position after 1600 hours. The unloading was completed at about 0100 hour on 07.04.2012. As such, as per the petitioners, even if there was delay the same would come to Rs. 100/- x 42 wagons = Rs. 4200/-. Under such circumstances, if at all there was a delay the same was less than 3 hours and the demurrage charges, if any, would come to Rs. 4200/-.

7. The Railways authority without giving proper placement facilitating unloading, without authority vide letter/ instruction bearing No.

09/COML/CNL/2012 dated 02.04.2012 the Senior DCM/UMB instructed the Goods Supervisor, Mandi Govindgarh to impose charge two times

demurrage and subsequently vide letter dated 07.04.2012 the Senior DCM/UMB issued instructions to the Goods Supervisor to impose charge of four

times of penal demurrage. On the basis of the said instructions demurrage was

charged for the rack as per two times the normal demurrage charge applicable for detention of wagons which comes to Rs. 2,94,000/-.

8. Representations were preferred by the petitioners against imposition of such penal demurrage charge and the Chief Goods Supervisor, Mandi

Govindgarh forwarded to the Senior Divisional Commercial Manager, Northern Railway and vide the impugned order dated 21.05.2012 rejected the

prayer of the petitioners thereby asking the petitioners to pay the demanded penal demurrage charges within 7 days thereof.

9. On the basis of the said pleadings Ms. Goyal submits that the said imposition of penal demurrage and that too, on the four times the normal penal

demurrage charge is totally arbitrary and totally without any basis nor due to negligence on the part of the present petitioners. Referring to the

imposition of penal demurrage charge for two times and four times respectively issued on 02.04.2012 and 07.04.2012, Ms. Goyal further submits that it

is mandatory on the part of the Railways authority to issue such notices of penal demurrage charge prior to giving into effect and the said time limit is

48 hours if due to heavy pipe line for unloading of racks exist. The same accordingly is required in order to act by the petitioners at least thereby

delaying the departure from the destination. In the present case in hand, there cannot be any question for imposition of the penal demurrage inasmuch

as the rack was moved on 06.04.2012 and placed at second position. The demurrage charge cannot be imposed until completion of the free time of 9

hours from the placement for delivery. The placement means putting the rack in a convenient location for unloading the wagons which is not the case

in hand. But even then, the appellate authority failed to consider the said grounds and as such the act of imposition of the penal demurrage charges is

illegal and liable to be set aside and quashed.

10. Mr. Das who produced Wagon Transfer Registrar placement/ unloading w.e.f. 23.03.2012 to 09.04.2012 submits that as per the records, the said

notification of two times penal demurrage charges for inward rack at GVG was notified on 02.04.2012 and would remain enforced for 1 week. The

rack of the petitioners was placed for unloading on 05.04.2012 at 0535 hours and the same was released on 07.04.2012 at 0100 hour resulting 35 hours

consumption in the process of unloading exceeding 9 hours free time for the purpose of unloading. On the basis of the delay on the part of the

petitioners the demurrage charges were imposed and the petitioners paid the same without any objection. According to Mr. Das, there is no arbitrariness in imposing the demurrage charges.

11. Considered the submission of the learned counsel for the parties. The respondent Senior Divisional Commercial Manager, Northern Railway,

Ambala Cantonment, filed the affidavit-in-opposition on behalf of the respondents. It is stated in the said affidavit-in-opposition that the penal

demurrage was imposed as per rules and the placement of racks were made by operation of feasibility and availability of space. The Railway Board

Rate Circular No. 74/2005 authorises CCM/COM/DRM to impose penal demurrage after giving 48 hours advance notice to the parties and the said

increase in the demurrage rate is subject to maximum of six times of the prevalent rate. Mr. Das produced the Corrigendum No. 2 to Rates Circular

No. 21/2007 dated 17.01.2008 whereby under Group I Wharfage rates would be levied under Group I Rs. 100/- per wagon each or part thereof and

the said rate is applicable uniformly for all types of wagon w.e.f. 01.02.2008. The stand of the Railways is clear and specific that the penal demurrage

charges are to be imposed after giving 48 hours advance notice to the parties.

On perusal of the Wagon Transferred Register produced by Mr. Das, the learned counsel for the Railways, it is seen that the rack of the present

petitioner was placed for unloading on 05.04.2012 at 0535 hours. From the said register itself it is clear and apparent that the said penal demurrage

notification was issued on 02.04.2012. From the Annexure-4 which is the copy of the said notification of penal demurrage it is seen that the same was

received by the agent of the present petitioners. There is material piece of evidence brought by the respondent Railways in order to show that the said

penal demurrage was imposed after giving 48 hours advance notice to the parties inasmuch as the notification dated 02.04.2012 was received by the

agent of petitioner. Clause 3.3 of the Rates Circular No. 74/2005 dated 19.12.2005 speaks of in case excessive congestion takes place at any terminal,

CCM/COM/DRM can increase the demurrage rates even at progressively increasing rate subject to a maximum of six times of the prevalent rate.

This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified

period.

12. In the present case in hand, the notified date was 02.04.2012 and in terms of the said Clause 3.3, 48 hours notice with wide publicity must be

given. Annexure-3 of the writ petition is the Notice No. 09/COML/CNL/2012 CG dated 02.04.2012 wherein it has been notified by the Senior

DEM/UMB that due to heavy pipe line penal demurrage charge for two times at GVG Goods Office, penal demurrage charge for two times for 1

week with immediate effect shall be imposed from the date of its issuance i.e. 02.04.2012. 48 hours will expire at 1415 hours of 04.04.2012 as the

same was notified at 1415 hours of 02.04.2012. Accordingly, in my opinion, the said notification was with respect to two times penal demurrage

charge and the week w.e.f. 02.04.2012 ends on 07.04.2012 at 1415 hours.

Under such circumstances, the petitioners are liable to pay penal demurrage charge for two times as from the register it is seen that racks were

released, on 07.04.2012 at 0100 hour. Under such circumstances, in my opinion, the imposition of two times penal demurrage charges is not illegal.

Regarding the other grounds cited by Ms. Goyal it is difficult to accept with respect to the constraints so submitted and pleaded inasmuch as the

representation which forms the Annexure of the representation of the agent of the petitioners does not indicate the grounds mentioned in this writ

petition and accordingly, in my opinion, the same cannot be accepted. In the result, this writ petition is dismissed holding that there is no error apparent

in the rejection of the appeal vide order No. G1005/DM/GVG/2012 dated 21.05.2012 issued by the Divisional Railway Manager, Comml. Ambala

Cantonment. Accordingly, this writ petition is dismissed.