

(2017) 01 GAU CK 0023
In the Gauhati High Court
Case No : Writ Petition (C) No. 46 of 2009

M/s Jain Brothers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 171 AIC 740 : (2017) 2 GauLT 345

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. P. Deka, Advocate, for the Petitioner; Mr. D.K. Dey, Advocate, For All the Respondents

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J. (Oral)—Heard Mr. P. Deka, learned counsel for the petitioner. Also heard Mr. D.K. Dey, learned standing counsel for the Railways, appearing for all the respondents.

2. The case of the petitioner is that the petitioner had placed order with one Koteswar Chem Food (P) Ltd, Chirai at Gujarat for supply of Refined Iodized Salt. M/s Koteswar Chem Food (P) Ltd, Chirai booked an indent at Chirai with the respondent Railway authorities for one rake consisting of 42 wagons out of which, 32 wagons were earmarked for New Guwahati Goods Railway Station (NGC) and 10 for New Bongaigaon Railway Station (NBQ). Though 42 wagons were indented, the Railways made available only 41 wagons and because of such short supply of 1 wagon, 32 wagons were booked for NGC and 9 for NBQ against Railway Receipt bearing No.212001777 dated 13.08.2008. Goods were accordingly loaded on 18.08.2008. When the petitioner had gone to unload the goods at NBQ, the respondent No.4 demanded payment of under charges amounting to Rs.2,79,078/- in view of the Circular No.C/486/RG/RPP/ GM/PT(IV) dated 24.06.2008. Protest being made by the petitioner, 800 numbers of Refined Iodized Salt bags weighing 50kg each was detained and the remaining

consignment was released.

3. By the aforesaid Circular dated 24.06.2008, the Policy Guidelines under the heading "Policy Guidelines-Freight Incentive Schemes and Transportation Products" was circulated. In the aforesaid Guidelines at Clause-5.3, it is provided that two point rakes can be loaded at trainload class rate under certain conditions, one of which (condition No.5) is that a minimum of 10 wagons should be loaded for each of the two destinations.

4. As noticed earlier, Koteswar Chem Food (P) Limited had indented 42 numbers of wagons for two destinations, namely, NGC and NBQ. However, instead of 10 wagons for NBQ, 9 wagons were made available and accordingly, 9 wagons were loaded for NBQ and because of the aforesaid shortfall of 1 wagon, a sum of Rs.2,79,078/- was demanded vide letter dated 21.08.2008 as under charge.

5. By an order dated 09.01.2009, while issuing notice of motion, the respondent authorities were directed to release the detained articles in question subject to furnishing a bank guarantee of Rs.2,79,078/-. The writ petition came to be admitted on 05.04.2012. Till then, no affidavit was filed by the Railways, though at the time when notice was issued, standing counsel, Railways had accepted notice. Subsequently on 27.09.2012, noticing that no affidavit was still filed, the interim order dated 09.01.2009 was made absolute without requiring the petitioner to give bank guarantee.

6. Mr. Deka, learned counsel for the petitioner has submitted that it was because of the inability of the Railways to provide 10 wagons, as demanded, there was a shortfall of 1 wagon and, therefore, the condition enumerated at Condition No.5 of Clause-5.3 being fulfilled, trainload class rate would be applicable and in the aforesaid factual scenario, letter dated 21.08.2008 demanding under charge is not permissible in law.

7. It is submitted by Mr. Dey on the basis of Annexure-I document dated 13.08.2008 that minimum number of wagons required to be loaded for availing trainload benefit is 38 wagons and admittedly, in the instant case, 41 wagons had been made available to avail the benefit of two point rate. However, he has submitted that although there was a demand made by the consignor for 32 wagons for the destination NGC and 10 for destination NBQ, when only 41 wagons were made available, the consignor ought to have correspondingly adjusted wagons for each of the destination stations suitably so that minimum of 10 wagons were loaded for each of the destinations. It is his submission that if the Railways had failed to provide minimum of 38 wagons and goods were loaded in respect of both the destinations with minimum of 10 wagons, benefit of Clause-5.3 would have been admissible. However, as only 9 wagons were loaded for NBQ, Condition No.5 of Clause-5.3 was not fulfilled, and therefore, the demand raised by letter dated 21.08.2008 is justified.

8. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials on record.

9. At the very outset, having regard to the controversy, it will be appropriate to quote Condition No.5 of Clause 5.3. It reads as follows:-

"5. A minimum of 10 wagons should be loaded for each destination."

10. The statements made in Paragraph-3 of the writ petition that Koteswar Chem Food (P) Limited had booked an indent with respondent authorities for one rake consisting of 42 wagons out of which 32 wagons were earmarked for NGC and 10 for NBQ has not been denied in the affidavit. Similarly, the statement made in Paragraph-4 that though the indent for one rake consisting of 42 wagons was made, only 41 wagons were placed is also not denied.

11. In the Railway Receipt (Annexure-I), against the column of "Commodity Description", it is clearly written that the party demanded 42 BCN EX-CHIB of which 32 BCN was for NGC, clubbed with 10 BCN wagons for NBQ and that Railways supplied only 41 BCN wagons resulting in short supply by Railways in respect of NBQ. There is also a Photostat document at Annexure-II issued from Chief Goods Supervisor, Chirai to Chief Goods Supervisor, NBQ, wherein it is mentioned as follows:

"A 41 BCN loaded with Refined Iodised Salt Ex CHIB to NGC 32 + NBQ 09. Party Dimand 42 BCN for 32 BCN NGC + 10 BCN NBQ But Rly. supply only 41 BCN one wagon sort Supply By Rly. Therefore the Last party for NBQ will get one Sorty Supply." (Reproduced as it is)

12. Clause-4 of the Policy Guidelines dated 13.06.2008 provides that in cases where even the minimum number of wagons qualifying for Block Rake cannot be supplied by the Railway against trainload indent due to shortage of wagons, operating or any other constraint, the rail user(s) shall not be penalized and in such cases also, the benefit of trainload rate can be extended.

13. It is no doubt true that in the instant case, 41 numbers of wagons, which is above the minimum number of wagons, which is 38, was provided. However, the fact that Railways could not place 42 wagons, as demanded, is not denied and it is also borne out from the records. It is also not in dispute that in respect of NBQ, 10 wagons were booked but only 9 could be loaded because of short supply of 1 wagon.

14. If we give literal interpretation to Condition No.5 of Clause-5, it may appear that there is force in the argument of Mr. Dey that there was a failure on the part of the consignor to load 10 wagons for destination NBQ. But when 10 wagons could not be loaded though indented because of failure on the part of the Railways to provide wagons, as demanded, the condition should be deemed to have been fulfilled because but for the failure on the part of the Railways to provide the wagons, goods would have been loaded in all 10 wagons as per demand made by the consignor. It is not a case where the consignor did not seek to book minimum of 10 wagons in both the destinations. There are uncertainties in respect of availability of wagons. Therefore, the condition No.5 of Clause 5.3

has to be interpreted and understood in the sense that a consignor must indent and book minimum of 10 wagons for both the destinations. If wagons are available, well and good. But per chance, if wagons are not available and as a result of the same, less than 10 wagons could be loaded, Railways cannot take the plea that condition No.5 of Clause 5.3 is not fulfilled.

15. In view of the above discussion, I am of the considered opinion that demand for Rs.2,79,078/- made vide letter dated 21.08.2008 is arbitrary and illegal and, therefore, the same is set aside and quashed.

16. The writ petition is allowed. No cost.