
(2014) 02 DEL CK 0095
In the Delhi High Court
Case No : FAO 156 of 2009

M/s. Jaiprakash Associates Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 106 140 192 77

Citation : (2014) 02 DEL CK 0095

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sushil Kumar Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this first appeal filed u/s 23 of the Railway Claims Tribunal Act, 1987 challenge is laid to the judgment of the Tribunal dated 27.2.2009 which has dismissed the claim petition as the requisite notice u/s 106 of the Railways Act, 1989 was not given, and which notice is a pre-requisite for filing of the claim petition. The Railway Claims Tribunal in this regard has held as under:

Issue No. 5

Since according to Railways Act, 1989, serving notice u/s 106 of the Railways Act is a pre-requisite for filing Claim Application before the RCT, we will discuss this issue first.

Regarding notice u/s. 106 (78B of old Act) of the Railways Act, the applicant has stated in para 6 of their claim application that two notices dated 29.1.1994 and 19.2.1994 were served on the respondents and another notice u/s 78B & 140 (106 & 192 of the new Act) of the Indian Railways Act dated 18.2.1992 was also issued.

The respondents in para 6 of the Written Statement have specifically denied serving of notice U/s. 106 of the Railways Act and submitted that "no notice u/s 106 Rlys. Act 1989 has been served on respondents, so the application is liable to be rejected.

The applicant has placed on record a photocopy of the notice dated 18.2.1992 u/s 78-B & 140 of the Indian Railways Act.

A perusal of the photocopy of the notice dated 18.2.1992 and on close scrutiny it is revealed that there was no stamp and signature of the respondent on the said notice dated 18.2.1992 as an acknowledgement of receipt of the same. At the bottom some superimposed portion of a seal and some printed material of Post & Telegraph Department can be seen which clearly proves that this is not the photocopy of the original notice u/s 78B of the Railways Act. Moreover, even in this bottom portion, no signature and date of receipt of the respondent is recorded. The applicant has also not produced any registered AD card of Post & Telegraph Department indicating service of the so called notice on the respondent within 6 months i.e. 22.2.1992. The applicant has also not produced any letter from the respondent wherein the respondent has acknowledged receipt of this notice u/s 78B and 140 of the Indian Railways Act in time. Therefore it is abundantly clear that the applicant has failed to prove service of notice u/s 106 of the Railways Act (78B of the old Act) on the respondent within time. Therefore we can safely concluded that no legal and valid notice u/s 106 of the Railways Act has been served on the respondent by the applicant.

In this connection, a reference may be made to a decision of Hon"ble Bombay High Court reported in AIR 2007 (NOC) 1359 (Bom.) Union of India Vs. State Trading Corpn. Ltd. and Anr.-where it has been held that "Notice under S. 106 to railway administration-Is mandatory."

We may further refer to a decision of Hon"ble Bombay High Court in Khandelwal Ferro Alloys Ltd. Vs. Union of India (UOI), , wherein it has been held that mere addressing of claim to Railways and posting is not sufficient. A claim can be said to have been preferred to the Railway Administration only if it reaches them within the prescribed period. The Hon"ble Bombay High Court further observed that-

To say that addressing a claim to the railway administration and posting it through a registered post within the prescribed period would amount to preferring the claim to the railway administration would be stretching the meaning of the word "preferred" and ignoring the words "to the railway administration" occurring in Section 77. In the context in which the words "preferred" is used it can reasonably be interpreted only to mean "served" and not merely despatched or posted. From the point of view of the railway administration, the claim is preferred only when it reaches the railway administration and not otherwise.

In this case the applicant has not even submitted any proof of despatching this

notice within prescribed period, that is to say that unless a claim notice duly reaches and is received/acknowledged by the office of the respondent, it cannot be said to be a valid and legal claim notice, even if it has been despatched by the applicant corporation in time.

A reference may also be made to a decision reported in AIR 1991, Guw. 35, Suraj Mal Tewari Vs. Union of India & Ors.-wherein it was held that the limitation would start from the date of delivery of the goods to the Railways for carriage. In this case, the Hon"ble High Court of Guwahati observed that "claim u/s 78-B is not a part of the cause of action although it is a condition precedent and/the mode of procedure for getting the relief, and as such, the result of non-compliance with the, provisions of Section 78-B was that no valid suit was there viz. the suit was not maintainable.

In the light of the above decisions and on the facts and in the circumstances of the case, the applicant has not been able to establish the service of a legal and valid claim notice upon the respondent, within the prescribed period. Hence, we record our finding on issue No. 5 in the negative and against the applicants.

(underlines added)

2. A reading of the aforesaid paras shows that there is nothing on record to show receipt of the requisite notice within six months i.e. on or before 22.2.1992. There is nothing on the record of the Railway Claims Tribunal of any AD card or any postal receipt of the notice having been received before 22.2.1992.

3. Learned counsel for the appellant argued that the order of the Tribunal dated 7.3.2005 shows that a witness of the Northern Railways admitted of having received the letter dated 18.2.1992, however, in my opinion this would not help the appellant because the question is when was the letter dated 18.2.1992 received by the respondent/Railways. Also, while recording of the order dated 7.3.2005 there is at best an affirmation of the witness towards receipt of the letter dated 18.2.1992 and which could be existing in the file and there is nothing as to when this document was received by the respondent. Therefore, merely because the order dated 7.3.2005 of the Tribunal recorded that the letter dated 18.2.1992 was in the file of the Department cannot mean that it is also proved that this letter was served upon the respondent on or before 22.2.1992.

4. I may note that since the Railways deal in thousands and thousands of claims, there is legal requirement of giving a notice of the claim within six months because only in such a case, the documents would be reserved by the Railways and otherwise the same are not. In view of the above, there is no merit in the appeal, and the same is, therefore, dismissed, leaving the parties to bear their own costs.