
(2012) 04 MP CK 0087

In the Madhya Pradesh High Court

Case No : Writ Petition No. 469 of 2009

M/s. Maihar Cement

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Limitation Act, 1963 — Section 17(1)(c)
Railway Claims Tribunal Act, 1987 — Section 17(1)(a)
Railways Act, 1989 — Section 106, 106(2), 106(3), 3, 61
Railways Board Act, 1905 — Section 2, 3

Citation : AIR 2012 MP 104

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Aditya Adhikari, for the Appellant; Atul Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—This order shall lead to final disposal of writ petition Nos. 459/2009 -M/s. Maihar Cement v. Union of India and others; 460/2009 M/s. Maihar Cement v. Union of India and others; 461/2009 M/s. Maihar Cement v. Union of India and others; 463/2009 M/s. Maihar Cement v. Union of India and others; 464/2009 M/s. Maihar Cement v. Union of India and others; 466/ 2009 M/s. Maihar Cement v. Union of India and others; 468/2009 M/s. Maihar Cement v. Union of India and others; 470/2009 M/s. Maihar Cement v. Union of India and others; 472/2009 M/s. Maihar Cement v. Union of India and others; 473/2009 M/s. Maihar Cement v. Union of India and others; 474/ 2009 M/s. Maihar Cement v. Union of India and others; 4083/2009 M/s. Maihar Cement v. Union of India and others; 4086/2009 M/s. Maihar Cement v. Union of India and others and 14784/2008 M/s. Maihar Cement v. Union of India and others as the issue raised in these writ petitions being similar. Issue which crops up for consideration is whether respondent Railways are justified in declining to entertain the claim put

forth by the petitioner in respect of the over charge which accrued because of the goods booked for transportation to destination station were taken through shorter route than the route through which it were booked, which led to claim for the difference.

2. To be specific, the facts on record as are not disputed by either of the parties, are carved out from Writ Petition No. 466/2009 for the purpose of proper appreciation of the issue.

3. On 8.2.2008 rakes were booked for transportation of cement from Satna to Haibergaon. For that, the petitioner paid freight of Rs. 34,11,516-against the Railway Receipt Nos. 212005672 to 212005679 dt. 8.2.2008. It is not in dispute in all the cases that the cement was transported through a shorter route. The freight was paid for a distance of 1590 k.ms. and the same was taking into consideration that between Katihar Junction and Barsoi Junction there existed a meter gauge railway track, therefore, the consignment used to be transported from Katihar to Barsoi via Kumedpur. That, w.e.f. 11-12-2007, meter gauge was converted into broad gauge between Katihar and Barsoi as a result of which consignment could be transported directly from Katihar to Barsoi. The chargeable distance being 38.72 whereas the freight was charged as 59.99 kms. between the said stations. Thus extra freight in respect of 21.27 kms. was charged. It was the difference of amount/excess amount charged for aforesaid kms., which was claimed as refund on 25.8.2008.

4. The claim was repudiated on the ground of delay. The reliance was placed on the provisions of Section 106(3) of the Railways Act, 1989, which stipulates:

106. Notice of claim for compensation and refund of overcharge.

(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the over-charge has been paid

within six months from the date of such payment or the date of delivery if such goods at the destination station, whichever is later.

(Emphasis supplied)

5. The impugned order states that "with reference to your letter quoted above, it is advised that your claim has been received in this office after six (6) months from the date of booking of consignment/ payment of freight (sic)livery of consignment and is "Time Barred u/s 106 (3) of the Indian Railways Act, 1989. Your claim is therefore repudiated.

In case if documentary evidence about submission of claim in time" is produced, then your claim will be considered on merit.

This is without prejudice.

6. The orders are being challenged on grounds:

(a) That, the claim for refund based on the ground that though the goods which were booked for charging from longer route and carried through a shorter route is not a claim for refund for over charge within the meaning of Section 106 of Railways Act, 1989 as such Section 106 (3) of the Railways Act, 1989 has no application in the facts and circumstances of the case.

(b) Secondly, that by virtue of Railway Board"s Circular No. T.C. IV/94/4950 / Policy Matters dated 11.1.1995 there being delegation of power regarding settlement of delayed claim of refund in favour of Zonal General Manager, respondents were not justified in rejecting the claim putforth by the petitioner being time barred without invoking the powers delegated vide aforesaid letter.

(c) It is further contended that Section 61 of the Railway Act. 1989 which deals with maintenance of rate books etc. for carrying of goods provides for that "every railway administration shall maintain, at each station and at such other places where goods are received for carriage, the rate books or other documents which shall contain the rate authorised for the carriage of goods from one station to another and make them available for the reference of any person during all and other reasonable hours without payment of any fee", having not been adhered to by the Railways, they are not justified in rejecting the claim for refund of overcharge by the petitioner being time barred.

7. In substantiation therefor reliance is placed on the decision rendered in the The Associated Cement Co. Ltd. Vs. Union of India (UOI), . It is urged on the basis of said decision that, overcharge having been held to be that it does not include excess money charged on supposition that goods are carried by longer route for refund of such excess money notices are not required. On the strength of the aforesaid proposition Learned Counsel for the petitioner reiterates that the respondents were not justified in treating the claim for refund of excess money as refund of overcharge and rejecting the same being barred by time as stipulated u/s 106(3) of the Railways Act.

8. In furtherance of the submission that there was valid delegation of power in favour of Zonal General Manager to have considered the time barred claim, it is contended that the notification having been issued in exercise of power u/s 3 of Railways Board Act, 1989, the respondents were not justified in not exercising the discretion conferred.

9. For these reasons the petitioner seeks quashment, of the order rejecting the claim of the petitioner for refund on the ground of limitation and a command to respondents to refund the amount due to the petitioner together with interest at the rate of 12 %.

10. The respondents on being noticed have raised preliminary objection. It is contended that since the claim for refund of overcharge falls within the meaning of Section 106 of 1989 Act which provides for notice of claim for refund of overcharge, the petitioner has an alternative remedy of approaching the Railway Claims Tribunal. It is further contended that the claim for refund having not been preferred within a period of six months from the date of such payment or the date of delivery of such goods at the destination station whichever is later is barred by time as per sub-section (3) of Section 106 of 1989 Act. The respondents in furtherance of their submissions have placed reliance on the decision of Supreme Court in Birla Cement Works Vs. G.M., Western Railways, and another, On the basis whereof it is contended that the provisions of Limitation Act, 1963 are not applicable for refund under 1989 Act. Regarding delegation of power in favour of Zonal General Manager the respondent Railways vide I.A. No. 3999/2012 has filed circular issued by the Railway Board No. TC4/07/ RP/1 dated 22.2.2010; on the strength whereof it is contended that, the circular dated 11.1.1995 which authorized the Zonal General Manager to take up the time barred cases of refund has been withdrawn. It is contended that since the circular dated 11.1.1995 does not exist no relief can be granted to the petitioner. Furthermore, while contradicting the factual aspect adumbrated on Section 61 of 1989 Act, it is contended on behalf of respondent Railways that the information that there will be a change in distance (resulting in change of freight) was circulated by the Railways on 11.12.2007 and thereafter on 18.1.2008. Denying the allegation that it was on 22.8.2008 that the petitioners came to know about change, it is contended that the petitioner, is a regular customer, and is expected to know about circular issued on 11.12.2007 and 18.1.2008. It is contended that it is to overcome the issue of limitation that the petitioner has cooked up a story of having received the information regarding change of rate on 22.8.2008. In furtherance to the said submissions it is asserted that Notification dated 11.12.2007 was circulated to all Station Masters and out agents of the Railway concerned and the petitioner should have known it as wide publicity was given to the notification.

11. The issues which crop up for consideration is that (i) whether will not the claim of excess money charged on supposition that goods are carried by longer route for refund be on overcharge as is provided u/s 106 which restricts the

claim by embargo of limitation under sub-section (3). (ii) Secondly, if an overcharge, the claim for refund being expressly time barred, whether obligatory it was for the Zonal General Manager to have exercised the discretion of entertaining the time barred claim as conferred vide Circular No. TC. IV/94/4950 Policy matters dated 11.1.1995. And the effect of subsequent Circular No. TC. 4/07/RP/1 dated 22.2.2010. And (iii) thirdly, the effect of Section 61 of the Act of 1989.

12. Regarding the first issue reliance being placed on the decision in Associated Cement Co. Ltd., (AIR 1998 MP 2111 (supra), wherein it is held by learned Single Judge of this Court:

8. It is obvious that this section is mandatory in nature and, therefore, the claims of the appellant must fail if claim is for overcharge of freight. The service of notice under S. 78B of "the Act of 1890" is a must, before person can claim refund of "over charge" or compensation for loss, destruction or deterioration or non-delivery of animals or goods. Now, the word "overcharge" has not been defined in "the Act of 1890". Therefore, ordinary dictionary meaning of the word has to be applied. Overcharge means charge more than what is actual value of anything. Strictly speaking, overcharge means to charge more than what is due to a thing or a transaction. The appellant in this case says the value of freight should be measured by distance to which the goods were in fact, carried and not on the hypothetical basis that goods were to be carried in accordance with the supposed rationalization scheme. The longer rationalized route was different than the actual shorter route as chalk is different from cheese. The longer route was costly to the appellant. The shorter was cheaper. The appellant was not charged more for the same thing. It was charged more for some thing different. Thus, the appellant was not charged more than the due charge for 1294 kilometers. It was charged for 1315 kilometers on a supposition that it was due. The extra charge was something undue, for this reason, the refund cannot be said for an "overcharge".

9. Here, the excess of money recovered from the appellant is not of the same "genus or class". Excess of freight charged was not permitted by law. The excess charge belonged to different "genus or class" because it was charged on a supposition that goods are liable to be carried by longer route under the rationalized scheme. It was actually not so. Thus, it falls in the category, i.e., "money recovered when nothing was due". To such a case, S. 78B of "the Act of 1890" did not apply.

13. However, it appears that the decision in Birla Cement Works Vs. G.M., Western Railways, and another, was not taken note of, which was also a case of refund of excess money charged as freight.

14. It is held in V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Another,

54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are

rendered 'Per incuriam'. This concept of 'Per incuriam' has been explained in many decisions of this Court. Justice Sabyasachi Mukharji (as his Lordship then was) speaking for the majority in the case of A.R. Antulay Vs. R.S. Nayak and Another, explained the concept in the following words: (SCC p.652, para 42) (at p. 1548, para 44 of AIR)

42....."Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

Subsequently also in the Constitution Bench judgment of this Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , similar views were expressed in paragraph 40 at page 705 of the report.

15. In Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, it is observed:

67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

16. Thus, clear it is that, the decision on an issue by the Supreme Court has the binding effect. In Birla Cement Works Vs. G.M., Western Railways, and another, which was not taken note of in The Associated Cement Co. Ltd. Vs. Union of India (UOI), the case was also of refund of excess charge as will be evident from the fact of the said case reproduced in toto:

1. The petitioner is a manufacturer of cement at Chittorgarh in Rajasthan. It had transported cement to various destinations through railway carriages. Prior to 3.5.1989, the petitioner got the cement transported through meter gauge from the railway siding at Chanderia. After conversion into broad gauge the railway siding was at Diftkola Chittor Broad Gauge Rail Link. In consequence 34 kilometers" distance was added to levy freight charges. Thereafter, between May, 1989 and March, 1990 the petitioner had, various consignments, booked and transported the cement to diverse destinations and paid the freight charges. Later, on January 21, 1991, the petitioner has sent a notice to the Western Railway u/s 78B of the Indian Railway Act, 1890, (for Short, "the Act"), claiming refund of different amounts. Since it was rejected, on 23.12.1991 the petitioner laid the claim u/s 16 of the Act before the Railway Claims Tribunal at Jaipur, which by its Order dated 25.11.1992, dismissed the petition holding as being barred under S. 78B of the Act. When it was challenged in Civil Appeal No. 84/93 and batch the Single Judge of the High Court by his order dated 25.1.1994

dismissed the same. On further appeal No. 76/ 94, the Division Bench by order dated 3.10.94 confirmed the same. Thus, these Special Leave Petitions.

2. The principal contention raised by the petitioner is that it had discovered the mistake when the railway authorities have confirmed by their letter dated 12.10.1990 that they have committed mistake in charging excess freight on wrong calculation of distance. The limitation starts running from the date of discovery of mistake and, therefore stands excluded by operation of S. 17(1)(c) of the Limitation Act, 1963 (Act 21 of 1963) and that S. 78B has no application to the facts in this case. In consequence, the High Court and the Tribunal have committed error of law in rejecting the claim for refund. We find no force in the contention.

3. Section 17(1)(c) of the Limitation Act, 1963, would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is the creature of the statute. Therefore, it is not a civil court nor the Limitation Act has application, even though it may be held that the petitioner discovered the mistake committed in paying "over charges" and the limitation is not saved by operation of S. 17(1)(c) of the Limitation Act.

4. Section 78B of the Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of animals or goods carried by railway unless his claim to the refund has been preferred in writing by him or on his behalf to the railway administration to which the animals or goods were delivered to be carried by railway etc. within six months from the date of the delivery of the animals or goods for carriage by railway. The proviso has no application to the facts of this case. An over charge is also a charge which would fall within the meaning of S. 78B of the Act. Since the claims were admittedly made under S. 78B itself but beyond six months, by operation of that provision in the section itself, the claim becomes barred by limitation. Therefore, the Tribunal and the High Court have rightly concluded that the petitioner is not entitled to the refund of the amount claimed.

5. We do not find any ground for our interference with the orders challenged in S.L.Ps. The Special Leave Petitions are accordingly dismissed.

17. Thus, even a case where refund of excess amount paid towards the freight the same would be a refund of overcharge and is governed by the provisions u/s 106 of 1989 Act. Sub-section (3) whereof clearly stipulates that a person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

18. It is not in dispute that in bunch of these cases that the claim preferred was after expiry of six months from the date of payment/ delivery of such goods at the destination station. Thus the law laid down by this Court in The Associated

Cement Co. Ltd. Vs. Union of India (UOI), is not binding in view of decision by the Supreme Court in Birla Cement Works Vs. G.M., Western Railways, and another,

19. The question next is whether the General Zonal Manager was under an obligation to have exercised the discretion conferred vide Notification dated 11.1.1995. The notification was in following term:

Government of India

Ministry of Railways,

Railway Board

NO. TCIV/94/4950/Policy Matters New Delhi D/- 11.1.1995

The General Manager/Refunds All Indian Railways,

Sub: Relegation of powers regarding settlement of time barred refund cases.

Please refer to Board's letter No. 94/ TC.III/3/1 dt. 12.10.1994 which is in supersession of Board's letter No. 77/TC.III/94/4 D/- 20.6.1977 under which Board have decided to delegate full powers to General Managers to settle FASCAO irrespective of the monetary limits.

Since the instruction issued on 20th June 1977 were made applicable in settlement of time barred claims for refund of overcharge also vide Board's letter No. CIV/77/4950/22 dt. 02.11.1977, it is clarified that the delegation of powers referred to in Board's letter No. 94/TC-III/ 3/1 D/- 12.10.1994 extends not only to time barred claims for refund of overcharge.

The receipt of this letter may pleased to acknowledged. (It disposes of Eastern Railway's letter No. CC/RS/Policy/94 D/-14.11.1994.).

20. Apparent it is from the notification that the same has been issued by the Railway Board which is in purported exercise of powers conferred by Section 3 of the Indian Railway Board Act, 1905, which stipulates:

3. Mode of signifying communications from the Railway Board. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction, to be given or signified on the part of the Railway Board, for any of the purposes of, or in relation to, any powers or functions with which it may be invested by notification u/s 2, shall be sufficient and binding if in writing signed by the Secretary to the Railway Board, or by any other person authorized by the said Railway Board to act in its behalf in respect of the matters to which such authorization may relate; and the said Railway Board shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

21. The Railway Board empowering the General Manager to settle the time barred refund cases, the General Manager could not have abdicated the power so

conferred upon him; as he was bound by it. The question now is what would be effect of subsequent notification issued on 22.2.2010, which is in the following term:

Government of India (Bharat Sarkar)

Ministry of Railways (Rail Mantralaya)

(Railway Board)

No. TC-IV/ 2007/RP/I New Delhi, Dated 22-2-2010 The General Managers (Claims),

All Indian Railways

Sub: Settlement of time barred claims for refund of excess freight and goods compensation claims.

Ref: Board's letter Nos.

77/TC-III/4 dated 20.6.1977

94/TC-III/3/1 dated 12.12.1994

TC-IV/ 94/4950/Policy Matters dated 11.01.1995.

A doubt has been raised by some Railways regarding settlement of time barred claims for refund of over charge and goods compensation claims.

2. In case of refund of overcharge, which is covered u/s 106(3) of Railways Act 1989, a clear notice identifying the goods (RR No : originating & destination station and date of booking) should be received by the Railway Administration (GM/CCM/CCO) within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later. A mere complaint that a particular party was being over charged cannot be taken as a notice u/s 106(3). In case of claim for compensation for the loss, destruction, damage, deterioration or non-delivery of goods, a notice should be received within a period of six months from the date of entrustment of goods.

3. It is further clarified that GMs have been delegated powers by Railway Board vide abovereferred, letters for settlement of only time barred goods compensation claims, and refund of over charge, which are barred by limitation as per section 17(1) (a) of the Railway Claims Tribunal Act 1987. These powers are subject to compliance of provisions contained in Section 106 of the Railways Act,

4. The limitation period for filling of a claim for damage/deficiency/non-delivery or refund of overcharge is three years from the date of entrustment of goods to Railway for carriage, or payment of such overcharge, as per the Section 17(1)(a) of the Railway Claims Tribunal Act 1987. However, this is subject to compliance of the provisions of Section 106 of the Railway Act, 1989.

5. In case a customer has given a valid notice as per the provisions of Section 106 of Railways Act 1989, but could not approach Railway Claims Tribunal within three years, the General Manager of the concerned Railway Zone can settle such claims on merits of the case. However, these powers delegated to General Managers for settling suit barred claims/ claims for refund of over charge are subject to receipt of a valid notice, as per the provisions of section 106 of the Railways Act, 1989.

6. In case a customer has failed to give a valid notice to Railway Administration, as per the provisions of Section 106 of the Railways Act 1989, he cannot claim a relief from the General Manager and also will not get any relief from Railway Claims Tribunal/any other court, as compliance of section 106 is mandatory in nature.

7. However, in case of compensation claims for damage, deficiency or non-delivery of goods, the interpretation of "notice" is liberal in the Act. As per Section 106(2) of the Railways Act 1989, any information demanded or enquiry made in writing or any complaint made in writing to any of the Railway Administrations within the stipulated time period with particulars sufficient to identify the goods, shall for the purpose of this section, be deemed to be a notice of claim for compensation.

8. In view of the above, notwithstanding anything contained in Board's circular letters referred to above, any claim for compensation or refund of overcharge beyond six month becomes barred by limitation by operation of the provision contained in Section 106 of the Railways Act, 1989 and the Railway administration has no power to entertain any time barred claim in absence of any provision in this regard in the Railways Act itself.

9. As such, Board's letters referred to above are hereby withdrawn with immediate effect.

10. This issues with the concurrence of the Finance of Ministry of Railways.

11. Please acknowledge receipt of this letter.

(S.R. Sett)

Director Traffic Commercial (Claims),

Railway Board.

22. Close reading of the aforesaid circular reveals that, the same is clarificatory and withdraws the Circular dated 11.1.1995 from a prospective date but not the powers conferred on the General Manager. The General Manager still enjoys the power to consider time barred claims for refund of excess freight and goods compensation claims.

23. Since the circular dated 22.2.2010 is not effective from a retrospective date and the right having accrued in favour of petitioner for consideration of time

barred claim for refund of overcharge vide circular dated 11.1.1995, the respondent Railways are not justified in their stand that the General Zonal Manager does not have the power to consider. Since the claim of the petitioner was declined much before advent of circular dated 22.2.2010, when the circular dated 11.1.1995 was in vogue. The General Manager being bound by the said circular dated 11.1.1995 was under an obligation to have considered even a time barred claim for refund of overcharge.

24. In respect of retrospectivity of the circular, it is held in *Sri Vijayalakshmi Rice Mills, New Contractors v. State of Andhra Pradesh* (AIR 1976 SC 1471), that:

5.....It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospectivity, may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disability or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force. (See *Nani Gopal Mitra Vs. The State of Bihar*,

25. In *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, , it is held:

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon Vs. Union of India (UOI)*, *B.S. Yadav and Others Vs. State of Haryana and Others*, and *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*,

26. The aforesaid decision is though in the realm of the service conditions, however, has the relevance in the context of accrual of right in favour of petitioner vide circular dated 11.1.1995. In the case at hand the right of the petitioners' claim for, refund of time barred dues towards overcharge being covered by the Notification dated 11.1.1995, the respondents were not justifying in not referring the same to the General Manager who was empowered to decide the time barred claim.

27. In view whereof while holding that the claim of excess payment of freight charge being a claim for overcharge and is governed by the provisions contained u/s 106 of 1989 Act, and that the circular dated U.1.1995 issued by Railway

Board in purported exercise of its powers u/s 3 of 1905 Act which empowered the General Manager to take into consideration the time barred claim for refund of overcharge as per the circular in existence then and sub-sequent Circular dated 22.2.2010 being not effective from retrospective date will not abdicate the General Manager of his powers as it existed in the year 1995, it is directed that the General Manager shall consider the claim of the petitioner for refund of time barred claim towards overcharge and shall pass reasoned and cogent order while taking into consideration the contention of the petitioner qua Section 61 of 1989 Act. The impugned order is accordantly quashed. The petition is allowed to the extent above. There shall be no costs.