
(2013) 09 RAJ CK 0155

In the Rajasthan High Court

Case No : SB Civil Miscellaneous Appeal No"s. 1718, 1719, 1720, 1721 and 1725 of 2001

M/s. Manglam Cement Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 13, 23
Railways Act, 1989 — Section 124A, 2(31), 2(32), 2(37)

Citation : (2014) 3 ACC 99 : (2014) 1 WLN 427

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Deepak Goyal, for the Appellant; Ghanshyam Brijwasi for Respondent Nos. 1 and 2 and Mr. Alok Garg, for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—All these appeals filed u/s 23 of the Railway Claims Tribunals Act, 1987 (hereinafter referred to as "the Tribunal Act"), arise out of the common order dated 18.7.01 passed by the Railways Claims Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the Tribunal"), whereby the Tribunal has dismissed all the claim petitions filed by the appellant-claimant, allowing the preliminary objections raised by the respondent No. 3 with regard to the jurisdiction of the Tribunal. The question that falls for consideration before this court is, whether the respondent No. 3-Company could be said to be the "Railway Administration" within the meaning of Section 2(32) of the Railways Act, so as to cover its responsibility as the carrier under the provisions contained in the said Act, and to enable the Tribunal to exercise the jurisdiction, powers and authority u/s 13 of the Tribunal Act?

2. The short facts giving rise to the present appeals are that the appellant-company had filed the claim petitions before the Tribunal alleging that the consignments of cement were booked by it with the respondent No. 3 for being

carried from Morak District, Kota falling within the jurisdiction of the respondent No. 1 to Ghaziabad, falling within the jurisdiction of respondent No. 2. According to the appellant, the respondent Nos. 1 and 2 were the Government Railways, however the respondent No. 3 was a non-Government Railway, who supplied the containers/wagons to the appellant-company to carry the goods. As per the case of the appellant, due to the carelessness and negligence on the part of the railway administration, the consignments of the cement bags were not covered with Tarpaulin, and the said cement bags got damaged due to the rains and storms in the premises of the respondents. The appellant, therefore, had filed separate claim petitions before the Tribunal for separate consignments claiming compensation from the respondents. The respondent No. 3 in the said claim petitions raised preliminary objection as regards the jurisdiction of the Tribunal to adjudicate the liability against the respondent No. 3. The respondent Nos. 1 and 2 also raised the preliminary objection to the effect that the claim petitions were not maintainable against them in absence of any privity of contract between the parties. The Tribunal without entering into the merits of the claim petitions filed by the appellant dismissed the same on the ground of lack of jurisdiction, and allowed the preliminary objections raised by the respondents vide the impugned order.

3. It has been sought to be submitted by the learned counsel Mr. Deepak Goyal for the appellant that the respondent No. 3 was working under the agreement dated 31.7.1995 entered into between the respondent No. 3 and the President of India, and that it was supplying the containers and wagons to the appellant to carry the consignments, by issuing inland way-bills subject to the conditions and liability as specified in the Railways Act, 1989 (hereinafter referred to as "the said Act"). According to Mr. Goyal, the respondent NO. 3 was included in the definition of the "Railway Administration" contained in Section 2(32) of the said Act and the Tribunal had the jurisdiction to adjudicate the claims against all the respondents u/s 13 of the Tribunal Act. He also submitted that all the Directors of the respondent No. 3 were the Members of the Railway Board as per the Memorandum of Association, and the respondent No. 3 could not escape from its liability under the said Act. It was also submitted by him that the Tribunal had misinterpreted the provisions contained in the said Act and in the Tribunal Act and wrongly dismissed the claim petitions of the appellants.

4. However, the learned counsel Mr. Alok Garg for the respondent No. 3 submitted that the Tribunal had the jurisdiction to adjudicate the claims qua the railway administration only as contemplated in Section 13 of the Tribunal Act, and the respondent No. 3 being not the part of the railway administration, the Tribunal has rightly dismissed the claim petitions of the appellant-claimant on the ground of lack of jurisdiction. He has relied upon the decision of the Delhi High Court, confirmed by the Apex Court, in the case of Mittal Roadways (India) and Another Vs. Union of India (UOI) and Others, to submit that the respondent No. 3 which was the public sector undertaking had entered into an independent contract with the appellant and it could not be said to be part of railway

administration. The learned counsel Mr. Ghanshyam Brijwasi for the respondent Nos. 1 and 2 has also supported the submissions made by the learned counsel Mr. Alok Garg for the respondent No. 3 and further submitted that in absence of any contract between the appellant and the respondent Nos. 1 and 2, the Tribunal did not have the jurisdiction to entertain the claim petitions of the appellant-claimant.

5. In order to appreciate the rival contentions raised by the learned counsels for the parties it would be beneficial to reproduce Section 13 of the Tribunal Act, which pertains to the jurisdiction, powers and authority of the claims Tribunal, which reads as under:-

13. Jurisdiction, Powers and Authority of Claims Tribunal.-

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act,-

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) Compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable u/s 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration u/s 124A of the said Act or the rules made thereunder.

(2). The provisions of the Railways Act 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.

6. So far as the definition of Railway Administration is concerned, Section 2(32) reads as under:-

2(32) " railway administration", in relation to-

(a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee of

the railway or the person working with the railway under an agreement;

7. As transpiring from the record of the case, as also the impugned order passed by the Tribunal, it was not disputed between the parties that the consignments in question were booked with the respondent No. 3-Company and that the respondent No. 3 while booking the consignments had issued the inland way-bills to the appellant. It was also not disputed that the said inland waybills were subject to the conditions and liabilities as specified in the Railways Act. It was also not disputed that the respondent NO. 3 had executed an agreement with the Government of India relating to the movement of goods, booking and collection of freight charges. The said agreement is part of the record. From the said memorandum of agreement it transpires that the said agreement was entered into between the President, Union of India, acting through the authorised officer, Ministry of Railways (Railway Board) and the respondent No. 3-company i.e. concor in respect of booking and delivery of containerised traffic for carriage by Indian Railways, collection of freight and other charges relating thereto, payment of charges of I.R. to the respective railways by concor, maintenance of documents relating thereto, settlement of claims of the customers, for compensation in respect of goods lost or damaged and all other rail related matters specifically agreed upon between the parties from time to time. Thus, from the bare reading of the said agreement, it clearly transpires that the respondent No. 3 though was a non-Government railway, was working with the railways under the said agreement and, therefore, was included within the definition of "railway administration" as contained in Section 2(32) of the said Act.

8. The court also finds substance in the submission made by the learned counsel Mr. Deepak Goyal for the appellant that as per Section 2(31) of the said Act, "railway" included all rolling stock, stations, offices, warehouses, etc., and that as per the definition of the "rolling stock" as contained in Section 2(37), of the said Act, it included the wagons and containers moving on the rails. The necessary corollary therefore would be that the containers provided by the respondent No. 3 to the appellant for the purpose of carriage were the "rolling stock" and were also included within the definition of "railway". It is also pertinent to note that the general responsibility of a railway administration as carrier of goods is contained in Chapter-XI of the said Act, and the Tribunal has the jurisdiction, powers and authority to decide the claims for compensation in relation to the responsibility of the railway administration as carriers, u/s 13 of the Tribunal Act. As held hereinabove, the respondent No. 3 being the railway administration, the Tribunal had the jurisdiction to decide the claim petition of the appellant claiming compensation for the alleged loss or damages caused to it of the goods entrusted to the respondent NO. 3 for carriage by railway, u/s 13 of the Tribunal Act. The court, therefore, is of the opinion that the Tribunal has committed an error and illegality in dismissing the claim petitions of the appellant on the ground of lack of jurisdiction.

9. The decision of the Delhi High Court relied upon by the learned counsel for the

respondents could not be made applicable to the facts of this case inasmuch as in the said case the question was as to whether the concor which was a public sector undertaking and the other five private parties were rightly dropped by the Tribunal from the array of the parties or not. The question as to whether there was any agreement between the concor and the Railways in existence or not, so as to include concor within the definition of the "railway administration" u/s 2(32) of the said Act does not appear to have been argued or dealt with in the said case. Whereas in the instant case, as stated hereinabove the appellant had placed on record the agreement dated 31.7.95 entered into between the respondent No. 3 concor and the President, Union of India acting through the authorised officer, Ministry of Railways for the purposes mentioned therein, and therefore, in the opinion of the court, the respondent No. 3 was working with the railway under the agreement and was included in the definition of the "railway administration" u/s 2(32) of the said Act, and that the Tribunal had the jurisdiction u/s 13 of the Tribunal Act, to entertain the claim petitions filed by the appellant against it alongwith the other respondents.

10. In that view of the matter the impugned order dated 18.7.2001 passed by the Tribunal is quashed and set aside. The Tribunal is directed to decide the claim petitions of the appellant on merits and in accordance with law. The appeals stand allowed accordingly. The copy of the order be placed in the connected appeals.