

(2010) 07 AHC CK 0234

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10993 of 2010

Prakash Road Lines Through Its Proprietor

APPELLANT

Vs

Union of India through its Secretary Railway Board, New
Delhi and others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0234

Hon'ble Judges : Ashok Bhushan, J and Virendra Singh, J

Final Decision : Dismissed

Judgement

Virendra Singh, J.—By way of this writ petition, the petitioner has prayed for a writ, order or direction in the nature of quashing the demand notice dated 20.01.2010 issued by respondent no. 3 the Commercial Superintendent, Nakaha Jungle, North Eastern Railway, whereby the petitioner has been directed to pay Rs. 13,79,407/ as punitive charges for the overload alleged to have been loaded on the goods train.

2. We have heard learned counsel Sri M. K. Tiwari on behalf of the petitioner and Sri Govind Saran learned counsel for the respondent.

3. It is submitted on behalf of the petitioner that the petitioner is enrolled consignee of M/s Bridge Cement Industries and M/s Jagdamba Cement Industries, Nepal and is regular user of the Indian Railway for proper and smooth transportation of the cement clinker and other materials associated to it. A rake consisting of 58 BoxN Wagon loaded with Cement Clinker was booked ExLCTS Nakaha Jungle Goods Shed on Railway Risk Rate which was delivered to the petitioner on 20.01.2010. It was properly weighed at several points under the strict control and supervision of the Excise and Custom Authorities being the duties leviable on the consignment. It was also duly weighed at the originating/ first weigh bridge on the orders of the CFTM, North Western Railway, at Railway Bridge, LCTS/BANAS under the supervision of railway staff where the punitive charges detected on the wagon were duly deposited. The reweighment of the

goods loaded on the wagon was illegally and arbitrarily done by the railway authorities against the provisions of the relevant rules thereby demanding a sum of Rs. 13,79,407/ as punitive charges. Section 78 of the Indian Railways Act permits Railways to reweigh any consignment before its delivery, but the Railway Board by way of Circular permitted reweighment only in exceptional and peculiar circumstances and merely on the instructions of the Divisional Railway Manager which should be done thereby giving an opportunity to witness the reweighment by the consignee and only if the wagon has not been weighed at the originating station due to non availability of the weigh bridge. In such circumstances, the Commercial Control of the originating station should send a message for the weighment of such rake to the Commercial Control of the Division where the first available enroute weigh bridge is located. Since the Railway Board has itself decided that once the weighment has been done at the originating station, it cannot be done at enroute or destination station in normal circumstances, therefore, the railway authority has reweighed the consignment ignoring the circulars in this regard. The petitioner had also moved a representation/appeal on 26.01.2010 against the notice dated 20.01.2010 ventilating all the grievances, but nothing has been done in this matter. On 08.02.2010 again, a representation was sent by the petitioner. There was no justification with the Railways for the second weighment at Sawai Madhopur Weigh Bridge as it was already done at the weigh bridge situated at LCTS/BANAS.

4. Learned counsel for the respondent submitted that the petitioner was found overloading of the goods train and for this reason, he is liable to pay a sum of Rs. 13,79,407/ as punitive charges imposed as per rules and regulations prescribed in Section 73 of the Indian Railways Act. The Railway Administration has not established railway weigh bridge at LCTS/BANAS, the loading in this case on the rolling stock was not supervised by the railway authorities. The petitioner has himself accepted overloading of the rake at the time of the delivery of the consignment. Since no weigh bridge has been established at the originating station by the Railway Administration, hence, the weighment of the consignment in question at Sawai Madhopur cannot be challenged saying it unreasonable and against the Rules.

5. In the light of the contentions of both the parties, we have gone through the entire facts and circumstances on record. It is an admitted fact that the consignment weighment at Sawai Madhopur weigh bridge is found overloaded for which though there is a dispute in between the parties as to whether the consignment was weighed at its originating station or whether there was no facility available for such weighment as is the case of the respondent, but looking into this fact that there has been a difference of weight found at the weigh bridge situated at Sawai Madhopur, therefore the technical objections raised by the petitioner in this petition with regard to the circulars of Railway Board are not acceptable. The goods under consignment being liable to be weighed by the Excise Department for the purpose of excise duty, etc. being under weighment for storage inside the factory by the paraphernalia of the Custom Department, is

the internal matter in between the Custom Department and the petitioner and the Railway Department is least concerned about such facts of weighment of the consignment.. Since the Railway Administration has not established railway weigh bridge at LCTS/BANAS, from where the consignment is said to have been loaded, therefore, the reweighment of the consignment at Sawai Madhopur cannot be challenged. So far the question of this dispute on the facts is concerned as to whether the weighment at LCTS/BANAS was done on the direction of CFTM or as to whether there has been any importance of such weighment at that weigh bridge alleged to have been available at LCTS/BANAS the originating station, such disputes cannot be decided in writ side in the light of this admitted fact that the consignment was found overloaded on the weigh bridge at Sawai Madhopur. Similarly, the contentions of the petitioner raised through the rejoinder affidavit that the weighment advice of Sawai Madhopur is not correct as the weighment is done at the speed of 15 km/hour while it could have been done at the speed of 10 km/hour and the first wagon being dummy wagon having its maximum weight for 23 tonnes, which is shown in the weighment advice as 60 tonnes and the other facts in dispute of this weighment may not be the issue of decision in writ jurisdiction of this court. The fact of overloading has been accepted by the petitioner as is exhibited by the respondent as per Annexure CA4 to the Counter Affidavit and the delivery has already been made under the clear signature, therefore, the reweighment of consignment which is prerogative of the Railways, cannot be declared as illegal or arbitrary.

6. Therefore, this petition has no force, which is liable to be dismissed and is hereby dismissed accordingly.