
(2015) 02 CAL CK 0003
In the Calcutta High Court
Case No : Writ Petition No. 2065 of 2006

Rameshwar Das

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Railways Act, 1989 — Section 65, 65(2), 79

Citation : (2015) 02 CAL CK 0003

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Shyamal Sarkar, Senior Advocate, R.A. Agarwal, Kumar Gupta, R.K. Gupta and Ramesh Dhara, for the Appellant; Animesh Kanti Ghosal and Syed Nasirul Hossain, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Debangsu Basak, J.—The writ petitioner challenges the imposition of punitive charges by the railway authorities.

2. Mr. Shyamal Sarkar, learned Senior Advocate for the writ petitioner contends that, the writ petitioner used the Indian Railways to transport goods under five several railway receipts in the months of July and August 2005. Those consignments were released in the months of July and August 2005 at the destination station without weighment in the presence of the writ petitioner. The railway authorities raised demands for punitive charges on October 17, 2005 in respect of four consignments. He contends that, the railway authorities having denied the writ petitioner the recourse to Section 79 of the Railways Act, 1989 cannot levy punitive charges on his client. In support of such contention he relies upon the unreported judgment and order dated July 30, 2009 delivered in W.P. No. 357 of 2006 and W.P. No. 358 of 2006 (Ultra Tech Cement Limited and Anr. v. Union of India and Ors.) as well as the unreported judgment and order dated January 27, 2010 delivered in A.P.O. No. 241 of 2009 and W.P. No. 358 of 2006 (Ultra Tech Cement Limited and Anr. v. Union of India and Ors.). He contends

that, applying the ratio of the two decisions cited by him, the notices impugned in the writ petition claiming punitive charges must be quashed.

3. Mr. Sarkar referring to an unreported judgment rendered in W.P. No. 2060 of 2006 contends that, since the railway receipts were issued containing an endorsement to the effect that "sender weight accepted", the burden was upon the respondents to show that the declaration of weight mentioned in the receipt was not correct.

4. Mr. Animesh Kanti Ghosal, learned Senior Advocate for the railway authorities contends that, Section 65 of the Railways Act, 1989 defines a railway receipt. In terms of the proviso to sub-section (2) of Section 65 of Railways Act, 1989 the burden of proving the weight of a consignment is on the consignor, the consignee or the endorsee as the case may be. He points out, in the instant case, the consignment was not weighed at the loading station. The railways had accepted the consignment with the endorsement "sender weight accepted" on the railway receipt issued. The railway receipt stated that the consignment would be weighed enroute. The railway stations where such weighment would take place are enumerated on the railway receipts. So according to him, the weight of the consignment was not established at the loading point. The writ petitioner in accordance with Section 65 of the Railways Act, 1989 is required to establish the weight of the consignment enroute at the two stations named in the railway receipts, or at least at the destination station. He points out that the provisions 79 of the Railways Act, 1989 is available to the writ petitioner in such circumstances to establish the weight of the consignment before taking delivery thereof. The consignment was weighed in one of the two stations named in the railway receipts for the purpose of weighment. No representative of the writ petitioner was present at the time of weighment. It is for the writ petitioner to establish the weight of the consignment under Section 65 of the Railways Act, 1989. The writ petitioner also had the provisions of Section 79 of the Railways Act, 1989 to establish the weight of the consignment. Instead of establishing the weight, the writ petitioner took delivery of the consignment unconditionally. The railway authorities, thereafter, raised demand for punitive charges in accordance with the Railways Act, 1989 on the basis of the weight found at the weighment station. The writ petitioner cannot assail such demand of the railway authorities. The writ petitioner having chosen to waive its rights under Section 79 of the Railways Act, 1989, cannot turn around and contend that the writ petitioner was denied such right. In support of his contentions, He relies upon All India Reporter Jagjit Cotton Textile Mills Vs. Chief Commercial Superintendent N.R. and Others, , All India Reporter 2010 Calcutta 13 (Bhagaban Dey v. Union of India and Ors.) and Union of India Vs. Rameshwar Lal Agarwal, .

5. I have considered the rival contentions of the parties and the materials made available on record.

6. The writ petitioner is an exporter of different types of materials. The writ petitioner had availed of the transportation of goods by rail in various rakes of

the Railways in the months of July and August 2005. The Railway authorities had accepted the consignments from the writ petitioner at the originating station without weighment and after accepting the weight given by the writ petitioner. The railway receipt issued was not clean in the sense that it records that the wagon would be dispatched without weighment and that, weighment of the consignment would be done enroute at the weighbridge at either of the two named stations enroute and that the railway receipt charges for the transportation are subject to alteration.

7. The weighment was done at Bimalgarh Junction (BUF) station one of the two stations named in the railway receipt without the representative of the writ petitioner being present. At no point of time during transit of the consignment or prior to taking delivery thereof did the writ petitioner invoke his rights under Section 79 of the Railways Act, 1989. The petitioner took delivery of the goods. The railway authorities, thereafter, issued the impugned notice dated October 17, 2005 demanding payment of punitive charges.

8. Similar endorsement as that of the railway receipts concerned in the writ petition was considered in *Bharat Food Products and Biscuits Co. Pvt. Ltd. and Anr.* (supra). It was held in such case that, the burden was upon the respondent to show that the declaration of weight mentioned in the receipt was not correct. On perusal of such judgment I find that, such position in law went in by way of an admission on the part of the railway authorities as recorded therein. The proviso to the Section 65(2) of the Railways Act, 1989 was not pressed by the railway authorities therein.

9. In *Rameshwar Lal Agarwal* (supra) a Division Bench of this Court found in the facts of that case that, the writ petitioner took delivery of the consignment without applying for re-weighment under Section 79 of the Railways Act, 1989. It has been held that once such delivery was taken the writ petitioner was estopped from questioning the weighment done by the railways.

10. *Jagjit Cotton Textile Mills* (supra) was considered in *Ultra Tech Cement Limited and Anr.* (supra) by the Single Bench. In *Ultra Tech Cement Limited and Anr.* (supra) it has been held that,

"The railways submit that since there was no weighment at the boarding station for want of a weighbridge thereat and all the relevant railway receipts referred to weighment being carried out at an intermediate station, it was incumbent for the consignor or the consignee or the endorsee to have deputed a representative at the weighment station to ascertain the result thereof. It is suggested that since the petitioners or the consignors did not attend the weighment despite being made aware of the same, they cannot be heard to question the levy of the penalty on the ground that they were not informed of the overloading prior to the consignments being released. The railways refer to a judgment reported at *Raghu Forwarding Agency and Another Vs. Union of India (UOI) and Others*, and another judgment reported at *Jagjit Cotton Textile Mills Vs. Chief Commercial*

Superintendent N.R. and Others, ."

"The railways" argument that since the petitioners chose not to be represented when the weighment was undertaken at an intermediate station they cannot be permitted to question the authenticity thereof, does not appeal. If the statute has given the consignee or the endorsee a qualified right to seek weighment, the railways cannot altogether scuttle such right by making a claim on account of penalty for overloading at a time when no meaningful request for weighment can be made by the consignee or the endorsee. The railways' right to claim penalty, as has been recognized in the Division bench judgment of Agarwala and Co., is subject, if not to reweighment, at least to the right of the consignee or the endorsee to be afforded an opportunity to request weighment under Section 79 of the Act."

"Since it is the admitted position that the claim on account of penalty in respect of every consignment covered in either petition was raised (and the petitioners were informed of the charge of overloading) more than several weeks subsequent to the delivery of the respective consignments, the claims are bound to fail on the ground that the petitioners were not afforded a chance to exercise the right conferred on a consignee or an endorsee under Section 79 of the Act."

11. Section 65 of the Railways Act, 1989 deals with railway receipts. In the proviso to sub-section (2) of Section 65, it is provided that the burden of proving the weight or as the case may be, the number of packages stated would lie on the consignor, the consignee or the endorsee where the weight or the number of packages is not checked by a railway servant authorized in this behalf. The proviso also requires the railway servant authorized in this behalf to record a statement to that effect on the railway receipt issued by him. In the instant case, the weight of the consignment was not measured at the loading station. The endorsement to such an effect was made by the railway servant on the railway receipt. The burden to prove the weight of the consignment therefore remained with the consignor, the consignee or the endorsee in terms of the proviso to sub-section (2) of Section 65 of the Railways Act, 1989. In terms of the proviso to Section 65(2) of the Railways Act, 1989 the burden proof lay on the writ petitioner to demonstrate that the weight of the consignment as recorded in the railway receipt at the originating station was the correct weight and not the weight of the consignment as found by the railway authorities at a point subsequent thereto. The writ petitioner was however, entitled to the benefits of Section 79 of the Railways Act, 1989 to establish the weight of the consignment covered by a railway receipt. In the instant case, the writ petitioner did not avail of such benefit.

12. However, the fact scenario in the instant case is similar to that obtaining in Ultra Tech Cement Limited and Anr. (supra). In this case also punitive demands were raised by the railway authorities subsequent to the writ petitioner taking delivery of the materials without the writ petitioner being afforded an opportunity of weighment under Section 79 of the Railways Act, 1989. Ultra Tech Cement

Limited and Anr. (supra) has been upheld by the Division Bench in A.P.O. No. 241 of 2009 and the same constitute a binding precedent. Applying such ratio, it must be held that the railway authorities have denied the petitioner an opportunity of weightment under Section 79 of the Railways Act, 1989 and, therefore, are not entitled to raise the bills for punitive charges.

13. In Bhagaban Dey (supra) the Court did not entertain the writ petition on the ground of disputed questions of fact being involved in the writ petition.

14. The writ petitioner has challenged four notices of punitive demands. The writ petitioner has paid the railways demands raised for Railway Receipt Nos. 502541, 502561 and 427135 on September 15, 2005 prior to the filing of the writ petition. The writ petitioner has not made out a case of payment under duress in the petition. In such circumstances and since the writ petitioner has already paid the demands in respect of the said three railway receipts prior to the filing of the petition without challenging the right of the railways to receive such payments in the petition, I find no reason to disturb such settled position. So far as the demands in respect of Railways Receipt Nos. 383750 and 502552 are concerned, they are set aside.

15. W.P. No. 2065 of 2006 is, therefore, allowed to the extent indicated. No order as to costs.