
(1980) 02 CAL CK 0004
In the Calcutta High Court
Case No : Civil Rule No. 1194 (W) of 1979

Sakti Narayan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 19(1)(g), 19(5)
Railways Act, 1989 — Section 23, 27, 27(1), 28, 29

Citation : 84 CWN 837

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Soumen Ghose and Sham Sundar Manna, for the Appellant; S.K. Acharya, Advocate General and R.N. Das, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—The above Rules, along with others, were heard together by consent of parties as the points involved in these or the challenges as thrown were the same. It was also agreed by the learned Advocates appearing that arguments in Civil Rule Nos. 1194(W) of 1979, 1187(W) of 1979, 1199-93 (W) of 1979, 1195(W) of 1979, 2575-80(W) of 1979, 2583(W)-89(W) of 1979, 2773-2774(W) of 1979, 2776-2777(W) of 1979 and 1235-36(W) of 1979, would be advanced by the learned Advocates appearing for the petitioners in the respective Rules and thereafter the learned Advocates for the Respondents would give their replies in the respective cases. All these Rules, in the facts as mentioned above were analogously heard as group cases and it was also agreed at the Bar that all other Coal matters as in the list, would have or follow the same arguments and in fact no separate argument would be advanced. There is also no dispute that the relevant and material facts in issue in these Rules, so also the points involved or germane for consideration are the same. The petitioners are traders in Coal and Commission agents for the same and have stated to be carrying on the business of supplying Coal and Coke in different parts of India through Railways in "Smalls" i.e. less than wagon loads, It has

been stated that the supply of coal and coke in the manner and for the purposes as mentioned above, would be economic and advantageous through Railways apart from the fact that loading and unloading of such articles through or on rails would be the most convenient system.

2. They have claimed that u/s 27 of the Indian Railways Act (hereinafter referred to as the said Act), which deals with the duties of the Railway Administration for receiving and forwarding traffic without unreasonable delay and without partiality and which is to the following effect :-

(1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.

(2) (Omitted.)

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or stations within one kilometre of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as is referred to in section 28 and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates :

Provided as follows :--

(a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for airmails or goods may be per truck or per quintal (100 kilograms)

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are :

(c) if at the expiration of the prescribed period no such objection has been sent

by any forwarding railway administration, the rate shall come into operation at the expiration of that period;

(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Central Government, shall, on the request of any of the railway administration, decide the matter;

(e) if the objection is to the granting of the rate or to the route, the Central Government shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public as whether regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may" seem to the Central Government to be just and reasonable;

(f) if the objection is only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period but the decision of the Central Government as to its apportionment shall be retrospective in the case of an other objction the operation of the rate shall be suspended until the Central Government makes its order in the case;

(g) the Central Government in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;

(h) the Central Government shall not in any case compel any railway administration to accept lower rates than the rates which the administration may for the time being legally be charging for the like traffic carried by a like mode or transit on any other line of communication between the same points, being the points of departure and arrival of the through route; (i) subject to the foregoing provisions of this sub-section, the Central Government shall have full power to decide that any proposed through rate is due and reasonable notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

(j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Central Government may be general or special order prescribe.

(5) Any decision given by the Central Government under subsection (4) shall be final and binding on all parties concerned.

At all material times it was and still it is the obligation of the Railway administration to provide for all the necessary and reasonable facilities for receiving, forwarding and delivering of the traffic tendered by the public, without any such preference or advantage or prejudice and disadvantage as mentioned in section 28 of the said Act to the following effect :

A railway administration shall not make or give any undue or unreasonable - preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic in any respect whatsoever, subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

There was initially restriction imposed on booking of coal in smalls to 5 quintals per day from every station in Eastern South Eastern Railway. Such restriction was imposed by Circular dated 23rd April, 1973. The imposition of such restriction was challenged by several traders in Coal and the Rules, as obtained, was made absolute, consequently the circular in question was quashed. From such determination, an appeal was taken, which was not finally determined on merits as the Railway authorities informed the Court that the circular in question was withdrawn. The appeal, in fact was disposed of as, because of such subsequent happenings as mentioned above, the same was considered to have become instructions.

3. The petitioners have stated that in terms of the Goods Tariff No. 35, Part-1, Volume-1, as under :--

301. Coal not in wagon loads (1) Coal, Coal shale, soft coke, lignite and patent fuel when moving in "Smalls" will be charged at Class "55" at O. R. When offered for booking at Railway Risk, the freight charge leviable at Owner's risk as illustrated below. The Rules and Conditions of carriage will be the same as those notified for general goods.

(2) A surcharge of freight will be levied on "smalls" consignments weighing less than 50 quintals vide Rule 176(4) (a).

(3) In addition to the charges referred to in Clause (1) above cases or other special charges, notified from time to time individual Railways, will be levied,

(4) Coal, coal shale, coke, lignite and coal shale when tendered i.e. small lots must.....

Rule 302 (I) (h)

Coal Opens Covered;;

Marked carrying Marked capacity carrying capacity.

Rule 701 (7) (IX)

(IX) O. C. -- Indicates that the weight for charges is the carrying capacity of the wagon used, subject to Rule 163. The weight may be distributed over two or more consignments of goods to which the same weight conditions and the rate apply, loaded in the same wagon, provided that they are booked together by one sender to one destination on one invoice. Where the rates and conditions of carriage through to destination are not the same. Rule 194 (3) applies.

The minimum weight may also be distributed over different consignments "of the same commodity up to a maximum of eight consignments per 4-wheeled wagon, twelve per 6-wheeled wagon and sixteen per bogie wagon from the same sender or different senders to the same; consignee or different consignee;; booked on the same date from the same station to the same destination in the same wagon, provided that--

(a) the sender or senders tender a separate Forwarding Note for each consignment with full particulars of all consignments proposed to be despatched duly endorsed or every Forwarding - Note, with the request that these be clubbed charges. :

(b) separate invoices and Railway Receipts are issued for each consignment, but each invoice and Railway Receipt contains details of the other consignments booked showing that the minimum condition has been complied with.

(c) packages forming part of each consignment are separately and distinctively marked.

The Rules and conditions of carriage of Coal in smalls will be the same as those notified for general goods. It is also the case of the petitioners that Rule 701 (7) (IX) of the said Tariff, make provisions for minimum weight which may also be distributed over different consignments of the said commodity up to a maximum or 8 consignments per 4-Wheeled wagons, 12 consignment for 6-wheeled wagons and 16 consignments of bogie wagons from the same sender or different sender to the same consignee or different consignees, took on the same commodity from the same station and to the same destination and also in the same wagon provided the conditions as mentioned hereunder :

(a) the sender or senders tender a separate forwarding note for each consignment with full particulars of all consignments proposed to be despatched, duly endorsed, on every forwarding note, with the request that these be clubbed together for purposes of freight charges.

(b) separate invoices and Railway receipts are issued for each consignment, but each invoice and Railway Receipt contain details of the other consignments booked showing that the minimum condition has been complied with

(c) packages forming part of each consignment are separately and distinctively marked." are satisfied.

It is also the case of the petitioners that in view of the Rules as mentioned above of the concerned goods tariff coal consignments booked in smalls are entitled to get clubbing along with other general goods. They have stated that small consignments of coal are clubbed together in terms of Rule 701 (7) (IX) of the concerned tariff for freight purposes at the minimum weight for charges for per wagon for coal and coke being marked carrying capacity is distributed over the different consignments of smalls.

4. The petitioners have alleged that several coal traders wanted to book and club their respective coal consignments in terms of Rule 701 (7) (IX) of the said tariff but the Railway authorities refused to club them on plea that; clubbed consignments of coal for smalls would become and would in effect mean wagon load. Against such decision Rule was obtained under Article 226 of the Constitution of India being Civil Rule No. 13673 (W) of 1976, challenging inter alia the legality, validity or otherwise of the decision to refuse to give the necessity benefits of clubbing of consignments in smalls under Rule 701 (7) (IX) of the said Tariff. This Rule, the petitioners have stated was made absolute on 2nd August, 1977 and the learned Judge, making such Order, directed the Respondents therein to allow clubbing with respect of the booking of coal in terms of the Rule of the concerned Tariff as mentioned above, subject to the availability of the wagons. It is an admitted fact that no appeal was taken from such determination and it has been alleged that after having the said determination against them, the Railway Authorities for the purpose of depriving the petitioners from the necessity benefits of clubbing made additions in the I. R. C. A. Goods Tariff No. 35 Part-I, Volume-I, under Rules 701 (7) (IX and 701 (7) (XIII) to the effect that clubbing of consignments is not permissible in the case of booking of Smalls" consignments of coal, coal shale lignite, patent fuel, soft coke, hard coke, domestic coke, coal/coke briquettes, briquettes fuel mixture and any other kind of fuel containing coal, coke and lignite as the major ingredient. This decision of the Central Government and the necessary sanction of them in respect of the said addition has been stated by the petitioners to be informed by the Deputy Director of Traffic Commercial (Rates) read about by circular, dated 13th December, 1978, which has been impeached in this Rule. This decision has also been appropriately stated by the petitioners to have been informed to all the Authorities concerned:

5. It is the case of the petitioners that the Railway Authorities by making such additions have discriminated between the goods containing coal, coke and lignite as major ingredient with other general goods and there is no rational basis for the said additions in the concerned goods Tariff and in fact, such addition was not made or done for public interest. It has been alleged that such addition is absolute beyond the competence, authority and jurisdiction of the respondents concerned inasmuch as u/s 54 of the said Act which deals with the powers for Railway Administration to impose conditions for working traffic and to the following effect :--

(1) Subject to the control of the Central Government, a railway administration may impose conditions, not inconsistent with this Act or with any general rule there under, with respect to the receiving, forwarding or delivering, of any animals or goods.

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

Would be subject to the control of the Central Government which in his turn may impose conditions in consistent with the said Act or the general Rules made there under with respect to receiving, forwarding or delivering of any animal or goods and further-more the said decision is in consistent with the section 28 of the said Act as quoted hereinbefore as such additions would subject the particular description of goods to undue or unreasonable prejudice or disadvantage inasmuch as the goods containing coal, as major ingredient would be, deprived from the benefit of clubbing the same. The Circular in question or the additions as made have also been claimed to be unequal in their operation and such act has been claimed to be an oppressive interference with the petitioners" right to trade and also their right to have the benefit of clubbing in respect of booking of coal in smalls. The classification among the traders trading in smalls and traders in coal or other articles having major ingredient as coal and other general goods has been claimed by the petitioners not to have any rational basis and -such classification has also been claimed by them to have no intelligible differential and nexus with the object sought to be achieved by the impugned addition or circular. The addition as made in the Tariff in question has also been claimed to be infringing the fundamental right of the petitioners, guaranteed under Article 14 and 19(1)(g) of the Constitution of India and has been stated to be contrary to the provisions of Section 28 of the said. It has been stated by the petitioners that in view of the circular in question as issued by the authority concerned, the addition in Rule 701 (7)(IX) of the Goods Tariff No. 35, Part-1, has no application to the injunction holders as a result whereof those petitioners who have got injunction from this Court, are getting the benefits of clubbing by such privilege is being refused to the traders like the petitioners who did not move this Court for appropriate relief or writs and obtained Rule as injuction for clubbing of coal consignment in smalls. It has been alleged that those traders who have moved and obtained in this Court with the corresponding interim order are regularly booking and clubbing their consignments of coal in smalls and are paying at a reduced rates. It has been alleged that after this, some of the holders of injunction made representation and it has thereafter been clarified by the Railway Board that such addition would not apply to these persons who obtained injunction from this Court, for clubbing of coal consignments. It is an admitted fact that the goods are clubbed for the freight purposes only and by giving facilities of clubbing, the Railway Administration would not loose anything as they would get the entire freight of the wagon by distributing the said freight over the other consignments. It has been stated that on the other hand, the traders would be got the incentive to book more consignments with a view to avail of the benefits of reduced freight. The petitioners have stated that in addition to the Goods Tariff under Rule 701 (7)(IX) was nothing but to create a class distinction within the meaning of Section 46C(a) whereby the word "classification" would mean the grouping the commodities into classes (both for smalls and wagon

loads) as duly authorised by the Central Government and notified in the Indian Railway Conference Associations' Goods Tariff. The petitioners have stated that the Tariff in force for the same time being for the purpose of determining rates to be charged.

The said Section 46C(a) defines "Classification" which means the grouping of commodities into classes (both for smalls and wagon loads) as duly authorised by the Central Government and notified in the Indian Railway Conference Association's Goods Tariff in force for the time being for the purpose of determining rate to be charged;

b) class rate" means a rate fixed according to the class given to a commodity in the classification of goods;

(c) commodity includes livestock;

(d) demurrage means the charge levied after the expiry of the free time allowed for loading a wagon;

(e) "parcel" means any package or merchandise or other goods entrusted for carriage by passenger or parcels train;

(f) (Omitted).

(g) station to station rate" means a special reduced rate applicable to a specific commodity booked between two specified stations.

(h) wharfage means the charge levied on goods for not removing them from the railway premises after the expiry of the free time allowed for such removal.

6. It is categorical case of the petitioners that the addition in the concerned Goods Tariff had not been notified for the purpose of determining the rate to be charged and such addition cannot be given effect to without necessary notification. As such the addition as made has been claimed to be fully unjustified, discriminatory, arbitrary and apart from contending that such addition has been made with the mala fide intention and object of disapproving the coal trader, the benefit of freight under clubbing and also to nullify the determination of this Court in Civil rule No. 13673(W) of 1976, as mentioned above The petitioners have stated that before the judgement in that case which was delivered on 2nd August, 1977, the Railway Authorities did not allow, any coal trader, to book the coal consignments under "to pay" invoice without any injunction issued by this Court and even after the judgement nobody was allowed to book and club coal consignments without the injunction order issued by this Court.

In view of the provisions of the Goods Tariff and Eastern Railway Coal Tariff, the petitioners have stated that traffic in coal should be booked either as under :--

(a) Weight only invoices being the weight and rate but not the calculated freight.

(b) "Paid" invoices.

(c) "To-pay" invoices.

On the basis of the above the petitioners have stated that the amount for payment of freight due on consignments booked under "To-pay" invoices is required to be made before the consignments are delivered at the station of destination. As such the petitioners have contended that the Rules and conditions of carriage in respect of booking of coal in smalls should be the same as those notified for general goods and coal in smalls should also allow to be booked under "To-pay" invoices. It is also needless to mention that has also been appropriately made by the petitioners that for failure of: payment of freight the Railway Authorities; has right to detain and sell the concerned consignments. It appears that by circular, dated 17th May, 1973,- the Chief Commercial Superintendent concerned informed that the Railway Board with effect from 28th instant has required that prepayment of freight should be compulsory in respect of coal booked in smalls. It is the case of the petitioners that prior to the decision as mentioned above, they were booking coal in smalls regularly under "To-pay" invoices, but after the aforesaid decision, the respondents and the authorities under them have refused and they are refusing to book coal in smalls under such system. It is also their case that although the system as mentioned above, is not being allowed in respect of booking of coal in smalls but such system is available in respect of coal in wagon load. This decision in having prepayment of freight made compulsory in respect of booking of coal in smalls has been claimed to be violative of Article 14 of the Constitution of India and Section 28 of the said Act. The petitioners have stated that in making prepayment of freight compulsory, the Railway Board cannot pick and choose only coal in smalls and allow all other similar articles under "To-pay" invoices. As such, it has been claimed that the decision for booking of coal in smalls has been subjected to unreasonable prejudice and disadvantage. The petitioners have stated that because of such decision they have now required to carry large sum of money for booking of coal in smalls and that is creating prejudice and harassment so far as they are concerned. In fact, it has been alleged that the petitioners are thus suffering financially. It has been claimed that there is no reasonable basis for making the prepayment of freight compulsory in respect of booking under "To-pay" invoices and that too when coal in wagon load is booked under "To-pay" invoices.

7. It has been stated that in view of the orders made by this Court booking of coal in smalls was only permissible subject to the availability of the wagon and occasions from very often arose when the coal consignment booked in smalls by the same coal trader or several coal traders on the same day from the same station to same destination were loaded in the same wagon and in that event the said coal consignments were to be clubbed together for the freight purposes with a view to give benefit of wagon load rate in terms of Rules 701 (7) (IX) of the Tariff. But the respondents concerned refused to club such coal consignment in smalls and that too irregularly and without any justifiable reason. It has been claimed that at all material times and still it is incumbent upon the respondents to book and club coal and coke consignments in smalls under "To-pay" " invoices

without giving effect to the addition and/or amendment as impeached in this proceeding. The petitioners have stated that they wanted to book coal and coke consignment in smalls under "To-pay" invoices from several stations of Dhanbad and Asansol Divisions of Eastern Railway and Adra Division of South Eastern Railway but the station authorities refused to club such coal in smalls in view of the addition as mentioned above. The petitioners have stated further that thereafter they made representation to the authorities concerned for due redress of their grievances and difficulties to allow them to book and club coal consignments in smalls under "To-pay" invoices but such benefits have been refused.

8. The answering respondents apart from filing their opposition also filed applications for vacating varying the interim orders as issued and the are further leave to treat the said applications as mentioned above, as part of the affidavit. The respondents have broadly stated the challenge of the petitioners against the jurisdiction as sought to be imposed by the authorities concerned with regard to "To-pay" invoices should not be allowed to be agitated or determined at this stage when such action was taken in 1973 and for such long time the petitioners have not raised any dispute before any forum including this Court. They have further stated that the injunction in the blanked form which has been issued should not be allowed to subsist because of the admitted fact that such mandatory order of injunction should not have issued apart interlocutory stage are more particularly when such order of injunction is completely contrary to the relevant statutes or provisions. It was also contended by them that there has been no bona fide in the application and the grounds as has been urged would no avail or any assistance to the petitioners. For the background and circumstances for making prepayment of freight compulsory in respect of coal in smalls, the respondents have stated that coal and transport both being very vital for the development of the nation and either of them or both remains scarce at one time or the other the quite necessity was felt to plan and control the movement Of coal through-out the country, in public interest. It has been stated that for such purpose a directorate under the charge of Director Rail Movement assisted by a Joint Director Transportation (Coal) was created by the Government of India, Ministry of Railways well defined function and powers in respect of the following :

i) plan rationalisation in loading of coal to avoid cross running and maximisation of movement in block rakes.

ii) watch over the allotment and loading of coal to ensure equitable distribution of, available coal/coke amongst different consumers according to priority,

iii) keep over-all watch over programming and day-to-day allotment iv) observe the stock position of the important consumers and arrange for emergency supply against sponsored programmes to avoid distress etc.

b) Movement of coal by rail in rakes and wagon loads is done in accordance with :

i) Preferential Traffic Schedule" issued by the Central Government u/s 27A of the

Indian Railways Act whereby sponsored coal was accorded priority "C and non-sponsored coal priority "E".

ii) Coal Tariff, in Rule 1 where of it is laid down that coal/coke will be loaded only from colliery sidings, coke oven plants and washeries and the name of the despatching colliery, coke even plant and washery would be the sender in each case.

iii) Procedural order circulated to all concerned in circular No. CM 67/8/ Prog (Policy) dated 18.10.1967. I crave leave to refer to the Preferential Traffic Schedule, Coal Tariff and the procedural order at the time of hearing.

9. It has been stated that programme for distribution of coal by rails are done by the Railway Authorities keeping in view the interest of general public, the priority needs of supplies to industries consumers as sponsored by the appropriate authority as well as the interest of Railway Administration including their capacity to supply wagon. The deponent of the affidavit who is the senior Commercial Officer (Rites), has stated that by the impugned circular dated 13th December, 1978 the Central Government have decided that in the public interest clubbing of consignments should not be permitted in the case of smalls consignment of coal coal shale 1 ignite. patent fuel, soft coke, hard coke, domestic coke and other similar fuel. He has stated that sanction on the Central Government was thus given to the addition as mentioned above and the circular in question was notified to all concerned duly.

10. It is the case of the deponent that what is prohibited in the concerned circular dated 13th December, 1978., is clubbing of consignment in the case of smalls consignments of coal shale etc., but booking of the same in "smalls" if not clubbed is still permissible. He has stated that the pattern of movement of rail of coal shale etc. in wagon loads on the railways is that coal shale etc, would be loaded only from the colliery sidings coke oven plants and washeries in public interest and movement of the same in wagon load is not permissible from way-side railway station. He has stated that if the consignment of coal in "Smalls" are clubbed together and offered for booking at way-side station, it becomes wagon load and movement of which if permitted would frustrate and nullify the law or the requirements of the statute prohibiting such movement from way-side movement. It has been stated that the circular dated 13th December, 1978 in question is sought to bring in consistency in the pattern of movement of coal shale etc., by rail in public interest and also in the interest of having management of movement of various categories of traffics over the railways. The particulars of the categories of traffic or movement which are done by rail and are controlled and regulated by the corresponding Tariff rules have been given in details by the said deponent and he has stated that every traffic is required to follow the procedure set out in the corresponding tariff rules and relevant circulars.

11. It is the case of the deponent that coal coke is an essential commodities

vitaly needed by the people in every walk of life throughout the country. He has stated that coal India Ltd. now owns and operates coal mines in Bengal and Bihar fields and the respondents herein are trying to provide an efficient transport system so that the coal is can be reached throughout the country very early and at the cheaper rate. It has been stated that coal and its transportation problems are entirely different and distinct from general merchandise and this is the reason why separate Ta riff Rule known as Coal Tariff has been framed. The deponent has been stated that according to Rule 1 of the Eastern Railway Coal Tariff, coal coke would be loaded only from colliery sidings, coke oven plants and washeries as the name of the despatching colliery, coke oven plants and washeries would be the sender in each case. This system has been stated to have been evoked for the purpose of easy realisation of necessary duties and cess which are commonly called as the labour Department Central Cesses and are payable on coal at rates varying non-cooking or hard coke under the provisions of the Tariff in question. It has been stated that such cesses are collected by the Railway Authorities concerned along with freight charges at the commencement of despatch of coal from the particular colliery from which it is raised or in case of "To-pay" Railway Receipted destination station collect the Labour Department Tariff Central Cesses along with freight charges. This freight rate has also been stated to be fixed and realise according to classification of coal shale etc. The deponent has further stated that for collection of cess and freight the quality of coal is identified by reference according to the Coal Board's grade certificates for the coal cess from which the coal is raised. This apart, it has been stated that special arrangements are required for dealing with consignments of coal such as installation of weighbridge for weighing of coal wagons before despatch and providing sidings for removal of coal from wagons loaded in excess of the carrying capacity. The deponent has stated the weighment of wagon loaded with coal prior to their being invoiced is essential both for sagery and collection of freight and cess. He has further stated that such weighment is possible only at a place which is not only equipped with a suitable weighbridge but has also facilities for keeping the off-loaded coal in excess of carrying capacity and re-weighment of the wagons after removal of excess coal. He has further stated that re-booking of coal once booked from a coal invoicing station within the coal field area and received at the destination station to any other station impedes proper supply and distribution of coal to different parts of the country. He has further stated that taking coal from the collieries to far away station and they booking it from such station by railway back covering the said route, affects of distribution of coal on priority basis and it is also a waste of the available transport capacity.

12. The deponent has further stated that the Railway Administration have the duty to arrange for receiving and forwarding traffic which duty again have to be performed by them in keeping in view of their capacity to allot wagons and also the needs of public interest. It has further be stated that such fact necessitates optimization of the limited transport capacity which. is available at their disposal.

The deponent has stated that since the Railway transport is limited, compare to the rapid growth in population and industrialization, the country has to preserve the same and use it to the maximum addition. It has been stated that for optimisation of transport, loading in bulk and movement as such to points of concentrated consumption, located over long loads, for subsequent dispersal by lesser modes of transport is absolutely necessary. He has stated that by keeping loading, confined to collieries, cockeries and washeries railway has sought to build into the Coal tariff, a most efficient method of transportation. He has further been stated that if this restriction regulation is not introduced and instead, free and scattered loading of coal is allowed all that would immediately lead to dissipation of rail transport and wagons " days would be mostly wasted in dispersal and collection over such larger areas and that would immediately reduce the overall movement capacity and would be detrimental to public interest.

13. The deponent has denied that there is any discrimination in the system involved in the loading of coal vis-a-vis that for loading of other minerals such as iron ores etc. It has been stated that coal and its transportation problems are different in kinds from those of other minerals ores and in view of the peculiar characteristic of coal and its dealings by middlemen. It has been stated that regulation of loading of coal and mentioning the names of the despatching collieries appear inescapable in the public interest while it is not so in the case of other ores. It has further been stated by the deponent that coal is a commodity which is raised in bulk and transported a bulk through rake programmes whereby cost of transportation could come down to the advantage of public at large. It has been stated that the Railway freight for coal is also kept down to the benefit of the public at large. He has stated that more number of: distribution agencies would mean more number of staff, wastage of wagon capacity, extra handling cost, wastage of wagon days in collection, dispersal, shunting and additional wear and tear to Railway rolling stock. It has also been stated that the less cost of coal, the greater is the benefit to the society. The deponent has further claimed that the coal to be a dirty commodity and the deponent has relied on proverb that if coal is washed two times, dirty will not be removed "Angara Sathdothehei, Malinathan na munchanti" and has stated that for loading of such commodity. It is inescapable and proper that coal loading should be absolutely segregated from loading points of other commodities. The deponent has stated that demand made by the private coal traders, if allowed, from other points in wagon loads or by clubbing of consignment of coal in smalls, will degenerate such points to coal sidings only in that no other high rated commodities shall ever be loaded. For example the deponent has stated that no trader of jute will ever bring his raw jute or finished production anywhere near the place where coal is being loaded because coal stain will bring down the prices of such other goods. As such it has been stated by the deponent that the correct things therefore is to coal loaded as close to its natural sources, i.e. mines and pitheads and organise from the points of distribution. In the returns to the Rules the

respondents has also mentioned that present lifting capacity in respect of coal/coke and demands their case that about 90%, of the coal/coke produced in the Bengal-Bihar coal field is moved by Rail to the consuming points from the colliery sidings. The capacity and condition of these sidings, which were constructed much prior to the obtaining of the Rules have also been mentioned and it has been stated that the type of construction of these sidings also stand as a major obstacle to the transport of coal in Box Wagons. As such, it has been stated that after nationalization of the coal mines, the necessity of rationalising the earlier existing loading arrangements was felt and the relevant decision was taken and accepted by the Ministry concerned, after due deliberation. In fact, it has been stated that in view of the existing conditions of the sidings and the collieries which stand in the way of proper loading facilities for wagons. It was felt that there was immediate scope for rationalisation of wagon supplies and Movement in the Bengal-Bihar Sector which according to deponent constitute one third of the total loading on the Indian Railways by making :--

(a) Immediate adjustments in loading patterns within the facilities as available and

(b) plan for remodelling of colliery sidings, and abandoning such sidings which would not served the necessary purpose, as necessary. The measures as mentioned above have been stated to have been sought to be evolved for the purpose of achieving optimum results for improving the utilisation of existing assets which, according to deponent concerned would result in better loading within the existing resources.

14. It has been stated that to determine and find out the lines, manner and way on which such workings of the Railways should be followed, is absolutely discretionary matter within the Railways authorities, who in their turn would be entitled to and would also formulate policy in due consideration of the favourable resources, materials at their disposal. It has been stated that when large number of indents for wagons are pending at all stations, unrestricted and scattered movement of coal, for which extensive facilities are available and existing at the colliery sidings only, would impeded the general flow of traffic of other consumer goods. It has also been stated that diversification of booking points would result in additional cost on account of staff, shunting arrangements, collection and dispersal of loads amongst others. The deponent has stated that even in the case of general merchandise, in order to quicken the movement and for other operational reasons, the Railway authorities are not allowing booking for any goods traffic within a distance of 15 Km. He has also stated that apart from the above, such authorities are withdrawing the booking facilities from the existing ones and consolidating the same at central points in order to facilitate quick and easy movements and also to curtail traffic delays. The deponent has further stated that from 1972 to 1977, about 40 to 50 stations have been closed goods booking. It is also his case that the objective is not to give absolute freedom in the matter of loading of coal at any cost and functions of the Railway

Administration are to carry the goods and minerals to the community as efficiently as possible and not necessarily create a special image of freedom in the use of such facilities. It has been stated that the policy of the Railway Administration is to allow all future loadings in full train loads and the minimum unit is train load of 70 four wheeler units with a weight of 1600 metric tonnes. It has also been stated that even this unit of loading is uneconomical for the Railway Administration and as such efforts are being made to increase such unit of loading to 44 BOX wagons which would be equivalent to 2420 metric tonnes. The deponent has stated that if such practice can be evolved then the cost of coal to the society and its people would come down. He has further stated that if scattered movement of coal is allowed, cost of coal to the consumers viz., society and its people would increase because road transport will have to be scattered for any prices of coal. The deponent has further stated that the later practice as mentioned above has other defect and haphazard and the consumers meaning thereby the society and its people would suffer if such practice, allowed to continue. In view of the above it has been stated that the Railway authorities have themselves set the objective of maximising block rake movement. For the reasons as above it has also been stated by the respondents that coal coke is loaded by the Railway administration only from the colliery sidings, coke oven plant and washeries and for planning the movement of coal by keeping view as mentioned above, the Ministry of Railways have created a directorate at Calcutta under the charge of Director, Railway Movement.

15. It is also the case of the respondents that coal traffic has received a lion's share of the Eastern Railway administration's transport capacity and the capacity of the affidavit has given examples to establish such facts, There is no doubt about the increase in demand of wagons for coal coke. It has been stated that over and above which movements of coal, if the Railway administration is required to undertake large scale further movement of coal from way-side station by way of clubbing of consignments of coal in "smalls", there should created serious inroads into their capacity to cater the needs of various other categories of traffic moved on Rail and would completely disrupt and disorganize the system in which the Railway traffic is worked for public interest. -

16. Rules 1 and 2 of the Eastern Railway Coal Tariff Part-1 hereinbefore to as the said tariff was prior to their amendment whereas under 1 all traffic in coal will booked under (a) "weight" only invoices showing the weight and rate, but not the calculated freight, (b) "paid" invoices (c) "to pay" invoices and name of the despatching collieries was required to be entered as the sender in the each case.

Rule-2 : Coal will booked under "pay" invoices only on written request of the colliery despatch the coal and provided the freight is tendered as the time of despatch It has been stated in or about 1971 when coal traders started large scale booking of coal from way-side station from where such commodity could not be booked, the situation came to such a pass that immediate clarification of the rules as mentioned above by incorporating necessary amendments and so

also the goods Tariff and Alphabetical List of Railway station, were felt. As such the said tariff was initially amended in 1972 and thereafter in 1976 and after necessary amendment inter alia laid down that coal coke should be loaded only from the colliery sidings, coke oven plants and washeries. Even such amendment according to deponent did not work well or given the required result. It has been stated that when booking of coal by Rail was thus centralised at colliery sidings, coke oven plant and washeries in public interest and for the efficient management of moving various categories of traffic over the Railways, traders like the petitioners alleged to be dealing in coal demanded large scale booking of such commodities from way-side sidings in "smalls" by clubbing and making wagon load with wagon load rate of freight which is less than the charges for "smalls" on the plea of the then existing provisions in I. R. C. A. Goods Tariff Rule 701 (7) (IX) as quoted above. It is the case of the respondents that the provision which remain in the Goods Tariff and the said tariff permitting booking of coal from stations other than colliery sidings, if it is in "smalls" did not contemplate large scale booking of coal in "smalls" from such stations by traders and some traders started submitting indents for booking huge quantities of coal in "smalls" by way of clubbing to circumvent the rule in respect of the ban in booking of coal in wagon loads from way-side railway station. It has also been stated that since the large scale booking of coal in "smalls" by way of clubbing of wayside railway station would lead to the administrative and operational problems and would also vitiate public interest as booking of coal in wagon loads from way-side railway station, which is provided by law. The authority concerned had no other alternatives but to refuse demands for clubbing of coal consignments in "smalls", as the position became unmanageable and unrealistic. Admittedly at this point of time this Court was moved under Article 226 of the Constitution of India and Civil Rule No. 12773 (W) of 1976 in the case of Raj Kumar Agar-walla vs. Union of India and Ors., was obtained. The said Rule was dealt with and disposed of by Amiya Kumar Mukherjee, J. on 2nd August, 1977 holding inter alia amongst others that if the authorities want to prevent clubbing of coal in "smalls", in that case, the relevant rules should be amended. The copy of the judgement as referred to hereinbefore, has also been introduced as Annexure-C to the affidavit in opposition. It appears from the said determination that the learned Judge also directed the respondent therein to allow the petitioner in that Rule clubbing with respect to the booking of coals in terms of Rule 701 (7) (IX) of the Goods Tariff subject to the availability of the wagons.

17. It is the case of the answering respondent now that after such determination the Central Government considered the matter and thereafter the impugned circular dated 13th December 1978 was issued Whereby clubbing of coal coke shale amongst others in "smalls" has been banned in public interest. In fact, the impugned circular lays-down that clubbing of consignments is not permissible in the case of booking of "smalls" consignment of coal, coal shale, lignite, patent fuel, soft coke, hard coke, domestic coke, coal coke briquettes, briquettes fuel mixture and any other kind of fuel containing coal, coke and lignite as the major

ingredients. Such decision, from a reference to the impugned circular also to have been made in public interest.

18. The deponent has stated that clubbing of coal in "smalls" and making it a wagon-load from way-side station would mean and give rise to the same problems as loading and booking coal in wagon-load from way-side station, which is prohibited in law. It is the case of the respondents that extensive facilities exist and are available at colliery sidings for moving of coal coke and coal shale amongst others to the entire length and breadth of the country, by rail and the petitioners, who claimed to be coal traders would take advantage of the facilities existing at the colliery sidings. In fact, it has been sought to be contended that the right to for the booking of coal in "smalls", has been misused and because of such misuse the entire practice and existing facilities for moving of goods on rail has been sought to be frustrated.

19. Coal being a low value commodity the respondent has stated that in case the same is allowed to be booked with "To-pay" freight and delivery of the consignment is not taken at the destination it would be difficult to realise the necessary effect by auctioning the commodity. There is no dispute that such power to have coal auctioned if necessary freight is not paid, is admitted. Apart from the fact that the coal required to be auctioned may not fetched the necessary value. It has also been stated that such auctioning would be haphazard and would also cause delay and haphazard to the Railways in the matter of realizing the freight. As such, it has been stated that it was decided to impose conditions of pre-payment of freight for coal when booked in "smalls" the compulsory prepayment of freight for coal when booked in "smalls" has been sought to be justified for the reasons as mentioned above, and that apart it has been claimed and contended that no interference by this Court on this aspect should be made because of the unusual delay in challenging the auction as taken and in fact, when such auction was taken in 1973. It has also been contended that on this aspect of the challenge towards "To-pay" in fact and in effect there is no proper averment in the petition.

20. It is true that by Circular 23rd April, 1973, restrictions were sought to be imposed on booking of coal, coal shale, coke etc. in "smalls" 5 Quintal per day for every station and such limitations in booking was also stated to be good till the availability of the transport capacity of the Railways improved. These restrictions as imposed was found by Amiya Kumar Mukherjee, J. to be unreasonable on the basis of the reasons as mentioned in case of Satyanarayan Murarka -Ms- Union of India 78 CWN 884. The appeal which was taken from such determination by the respondent Union of India was not decided on determined on merits as the time of hearing of same, because of the changed situation and position, the same was not pressed. The said appeal numbered was registered as FMA No. 400 of 1975 Union of India & Ors -Vs- Satyanarayan Murarka & Ors.) the appeal was disposed of on 1st March, 1976 and for the facts and circumstances as mentioned hereinbefore the appeal, court made it clear that

they had not gone into the merits of the appeal. Thus, the petitioner contended that the determination in *Satyanareyan Murarka -Ms-Union of India (Supra)*, still held good on the law and the point. In *Satyanarayan Murarka's* case it has been observed that the circular dated 2nd April, 1978 which was purported to have issued by the General Manager, Eastern Railway, u/s 54 of the Railways Act read with paragraph 201 of the Goods Tariff, which restricted the booking of coal in "smalls" to 5 quintal per day from any station on the rail was inconsistent with the last part of section 23 of the said Act and Rule 201 of the Goods Tariff and was beyond the power of the Railway administration and as such ultravires section 28 of the said Act. It has also been observed that the circular was infringed article 14 and 19(i) (g) of the Constitution are not reasonable restrictions in the interest of general public within the meaning of Article 19(b).

21. The respondents have further denied and disputed the challenge of the petitioners that in the instant case the Railway authorities by making the additions as impeached have discriminated between the goods containing coal, coke and lignite as major ingredient with other general goods. It has been stated that because of the multifarious problems as mentioned and which is special and specific so far coal is concerned, the terms as sought to imposed were not unreasonable on or coke because of their special characteristic cannot be equitted with other merchandise or goods. It has also been claimed that there has been no rational basis for the addition as made and the same was not done in the interest of public as alleged. In the facts and circumstances of the cases and background as mentioned hereinbefore, the deponent has claimed that restrictions as sought to imposed were for the interest of public and they were not unreasonable to. It has further been claimed that the restrictions as sought to be imposed cannot also be claimed discriminatory because by imposing of such imposition no discrimination had been created with regard to coal and other goods. Since there has been no discrimination in the instant case in respect of coal, it was contended that there was no discrimination because discrimination if any and if the same is required to be brought within the umbrella of Article-14 of the Constitution of India that must be between the same class. It was stated that discrimination if any must be established between class but not between equals and unequals. It has also been claimed that the classification among the traders booking in "smalls" and between the trader in coal and other articles having major introduction as coal and other general goods has got no rational basis and such classifications has also got no intelligible differentia nexus with the object sought to be achieved by the addition in question as alleged and as such additions have also been claimed not to be interferred with or infringed Articles 14 and 19 of the Constitution of India. It has stated that Railways treats of the uses of railways similarly and do not stand in the way of anybody's freedom of trade. It has also been claimed that if the petitioners want or wish to avail of railway transport facilities, this must abide by the limitation and restrictions and allotment of wagons which are reasonable and are framed for smooth flow of various traffics over the railways and which are framed in public interest.

22. As mentioned hereinbefore, the facts of the cases at the points involved are being the same, the arguments as advanced on behalf of the petitioners although whereby different set of lawyers yet they were on the same line. The prayers in the petition and arguments as advanced do give rise two challenges and arguments were on that basis. Initial challenge is against the addition made in the I. R. C. A. Goods Tariff No. 35 Part-1 under Rule 701 (7)(IX) and Rule 701 (7) (XII) and to the circular dated 13th December, 1978. The challenge is in respect of the decision of the Railway Board in making pre-payment of freight compulsory in respect of coal in "Smalls" as contain in the circular of 1973 which is in Annexure-C to the petition. The said circular was admittedly issued on 17th May, 1973.

23. In respect of the initial challenge it has been claimed that the respondents have no competence authority or jurisdiction to make the addition in question in the relevant Tariff such addition is also in consistent with the provisions of Section 28 of the said Act and by such addition coal or other articles having major ingredients as coal has been to be to undue and unreasonable prejudice or disadvantage and further because by such addition coal or the articles as mentioned it would deprived from the benefit clubbing as against other articles. The Circular in question has also been claimed to be inoperative because by the same or the additions as made there would be an oppressive interference with the right of traders viz., petitioners in matter of getting the benefit of clubbing in respect of booking of coal in "smalls". The addition as sought to be made has also been claimed to be malafide and contrary to Rule 301 apart from the fact that the same was not for public interest but was given effect to for the purpose of nullifying the decision in Civil Rule No. 13673 (W) of 1973. The classification in respect of traders booking in "Smalls" as sought to be made has also been claimed to be unreasonable and discriminatory because such restrictions as sought to be incorporated in respect of booking of coal in "smalls" according to petitioners had no rational basis or nexus to the object concerned and the effect of the same was to create unreasonable distinction between equals. As such it was also the contentions of the petitioners that the action as sought to be taken by making addition in question as infringed the fundamental rights guaranteed under Article 14 and 19 (1) (g) of the Constitution of India and also contrary to Section 28 of the said Act. It has been claimed by the petitioners that the respondents concerned at all material times had no and still have no competence, authority or jurisdiction to refuse the booking of coal in "Smalls" and to club such consignments as prayed for by the petitioners. It was contended that in purporting to give effect to the addition a policy of picking and choosing in the matter of booking and clubbing of coal and other general goods in "smalls" have been created or give effect to which was improper.

24. In respect of the second contentions, it was contended that the decision of book coal in "smalls" on "To-pay" basis and in respect of the others was also highly discriminatory and improper. Such action has also been claimed to be violative of Section 27 and 28 of the said Act and it was contended that the

refusal to distribute the minimum weight over the several consignments in spite of the due compliance of the requirements of law has also been imposed an unreasonable restrictions to the petitioner's freedom of trade and commerce and as such contrary to Article 19 of the Constitution of India. This pre-payment of freight in respect of booking of coal and coke as compulsorily made, has been contended to have created discrimination between coal traffic in "smalls" and the coal traffic wagon load and also in respect of other goods or traffic, and as such has been claimed to be hit by Article 14 of the Constitution of India, so also the sections as mentioned above. The decision to follow the pre-payment of freight, only in respect of booking of coal in "smalls" has also been claimed to be unreasonable, arbitrary and furthermore the same has been claimed to be without any rational basis. The petitioners have claimed and contended that the coal/coke or other ingredients as involved, should be allowed to be booked in "smails" and they should also be permitted to be clubbed together and there should be no restrictions on the question of pre-payment of freight. More particularly so, when clubbing of coal in "smalls" has not been prohibited under the relevant statute.

25. The additions involved, have admittedly been made in two places and more particularly under Rules 701 (7) (IX) and 701(7) (XII). It was thus contended on behalf of the petitioners that when no such additions has been made under Rule 301, the amendments in the sub-Rules of 701 as mentioned above, were invalid and inoperative. It was in fact, contended that without such amendment, the amendments or additions under the sub-Rules as mentioned hereinbefore, could not be given effect to or made operative, It is not in dispute that the additions by way of amendment have been made under the sub-Rules of Rule 701 as mentioned above. It was further contended by the petitioners that no public interest having been disclosed, the additions as made or sought to be made, were also improper. Apart from the above, it was contended that no amendment as required, having also been incorporated under Rule 201, which is in Chapter II of the said Tariff and deals with the Rules for the Registration of Indent, Allotment and Supply of wagons, the actions as sought to be taken through the purported amendments, was also improper, The restrictions as sought to be incorporated in respect of booking of coal in "smalls" or clubbing of such coal in "smalls", have also been claimed to be contrary to Rule 201 (3), the relevant provisions of which are quoted as under :

(3) (a) A limit may be placed by Railways on, the quantity of goods permitted to be registered at a time by one indenter.

(b) Railways may require that indents for wagons are registered in multiples of two wagons or three wagons where considered necessary, to ensure better utilisation of wagons in transshipment.

When limits are placed on the registration of goods in the manner indicated above, full details thereof will be exhibited at the stations.

26. Apart from the above such action has also claimed to be contrary to Note (2) under Rule 201 (5), which lays down that no registration fee is leviable for registration of "smalls" and also contrary to the provisions contained in sub-Rule (13) of Rule 201, which deals with minimum rate for registration of wagon demands. Rule 301, incorporated in Chapter-III if the said Tariff deal with rates and conditions for carriage of coal. The said Rule has been quoted hereinbefore, and it was contended that without the corresponding amendment there under, the other amendments as sought to be incorporated under the several sub Rules of 701, would be void and inoperative. The provisions of Rule 701 are contained in Chapter-VII of the said Tariff, which deals with general classification of goods. It was contended by the petitioners that such non in co-operation of the necessary amendment under Rule 301 of the basis thereof are only known to the respondents and they were without any intelligible differentia. In fact, it was contended that sub-Rule (c) of Rule 701 (IX) really lays down the differential between coal and other class of goods and the amendments as sought to be incorporated, would not serve the necessary purpose. The petitioners further referred to section 27 of the said Act, dealing with the duty of Railway administration to arrange for receiving and forwarding traffic without unreasonable delay and without partiality. The provisions of the said section have been quoted hereinbefore and on a reference to sections 27(1) and (4), the petitioners wanted to contend that the amendments as sought to be incorporated have really created a disparity or partiality between the goods which are required to be carried by the Railways on the rails without any partiality. It was of course, admitted by the petitioners that under the 27-A, which is to be following effect:

The Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order direct any railway administration

(a) to give special facilities for, or preference to the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such Other goods or class of goods as may be specified in the order;

(b) to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order.

(2) Any order made under subsection (1) shall cease to have effect after the expiry of six months from the date thereof, but it may be renewed from time to time.

(3) Notwithstanding anything "contained in this Act, every railway administration shall be bound to comply with any direction given under sub-section (1) and any action taken by a railway administration in pursuance of any such direction shall not be deemed to be a contravention of section 28.,

Restrictions may be imposed on public interest. But such public interest not having been appropriately disclosed, the answering respondents contended that they could take shelter under the same. The requirements of section 28 of the

said Act, have been mentioned hereinbefore and it was contended in the instant case that by the additions as impeached, undue preference has been given to commodities other than coal in "smalls" and in fact, by such act or actions, coal in "smalls", has received undue prejudice. As such, the action was claimed to be contrary to section 28 also. In the case of Raigarh Jute Mills Ltd. Vs. Eastern Railway and Another, , section 28 of the said Act, amongst others, was considered and it has been observed that;

Whoever complaints against the railway administration that the provisions of section 28 have been contravened must establish that there has been preference between himself and his goods on the one hand and the competitor and his goods on the other; and where it appears to the tribunal that such preference is "undue" preference, the complainant would be entitled to adequate relief u/s (1) (a) of the Act.

Section 28 is obviously based on principle that the power derived from the monopoly of railway carriage must be used in a fair and just manner in, respect of all persons and all description of traffic passing over the railway area. In other words, equal charges should normally be levied against persons or goods of the same or similar kinds passing over the same or similar area of the railway lines and under -the same or similar circumstances. All cases of unequal rates cannot necessarily be treated as cases of preference attracting the provisions of section 28, because the very concept of preference postulates competition between the person or traffic receiving preference and the person or traffic suffering prejudice in consequence. It is only when goods or persons can be said to be part passu that a question of preference arises and so it is where the competition between two persons or classes of goods is either admitted or proved that the question of application of section 28 would arise. Again even as between competing goods or. persons, it would not be enough to prove more preference to attract the provisions of section 28. It is only when the tribunal is satisfied that the railway has shown undue preference in favour of particular class of goods that a complaint can be successfully entertained u/s 41 (1) (a).

The initial burden to prove preference is on the complaint; but when the said burden is discharged by the proof of unequal rates as between the complaint and his competitor, it is for the railway administration to prove that the preference is not undue. In the absence of satisfactory evidence adduced by the railway administration in justification of unequal rates, the tribunal may hold that the unequal rates, the tribunal may hold that the unequal rates complained against by the complainant amounts to "undue" preference. If on the other hand, the railway administration leads evidence to show justification for the inequality of the rates, then notwithstanding the existence of unequal rates, the tribunal need not necessarily find that the administration has contravened the provisions of section 28, because it is only where "undue" preference is shown by the administration that it can be said to have contravened the said section. In considering the question as to whether the alleged preference amounts to

"undue" preference or not, the tribunal may also be entitled to consider whether the lower charge levied by the administration in respect of the competing class of goods was necessary in the interest of the public. That is the result of the provisions of section 41, sub-section (2) (i) and (ii) 28. On a reference to sections 29 and 31 of the said Act, which deal with powers of the Central Government to fix maximum and minimum rates and provisions for facilities and equal treatment where ship or boats are used, which are not part of a railway, it was also sought to be contended by the petitioners that in any case no undue preference in respect of any item of goods should be given. On a constructions of section 47 of the said Act and sub-clauses (b) (g) and (3) which are for the following effect :

(b) For providing for the accommodation and convenience of passengers and regulating the carriage of their luggage;

(g) Generally, for regulating the travelling upon, and the use, working and managements, of the railway.

(3) A rule made under this section, whether by the Central Government of a railway company, shall not take effect until it is published in the Official Gazette, and in the case of a rule made by a railway company, unless before such publication it has also received the sanction of the Central Government

it was argued that the publication of the additions was necessary and since in the instant case, no such publication has been made, the mandatory provisions of section 47 or the sub-rules as mentioned above, were not complied with. Section 54 of the said Act deal with powers for Railway administration to impose conditions for working traffic and the petitioners contended that such powers could only be used or exercised in respect of conditions as prevailing and not inconsistent with those as mentioned in section 27, 28 and 29 of the said Act and as such, the purpose additions were bad.

28. Section 55 of the said Act speaks of Lien for rates and other charges and the petitioners contended that since in view of the Lien as mentioned in the said section, the Freight or duty on account of booking of coal in "smalls" or clubbing the same, is protected, so the additions made for prepayment of freight, was not required and the same was in abuse of the powers. As such, it was also contended that the additions as made have created unreasonable restrictions and the same would thus be infringing the rights of the petitioners to carry on their business. In support of such submissions, reference was made to the determinations in the case of Satya-narayan Murarka -Vs- Union of India (Supra), which had earlier struck down the restrictions as imposed on booking of coal in "smalls" with the limitation or restrictions per station and had observed that such action was violative, not only of section 28 of the said Act but also of Articles 14 and 19 of the Constitution of India. It was therefore, contended that when in terms of section 55 of the said Act as mentioned above, the freight was safe and secured, so it was improper on the part of the Railway administration,

to ask for pre-payment of freight on the basis of the additions as made. On a reference to Rules 110, 111, and 113 of, the Goods Tariff, which were quoted hereunder;

110 (1) Except in the case of goods for which pre-payment of freight is compulsory, all freight charges must be paid either when goods are presented for despatch or at the time of delivery,

(2) Other charges have normally to be paid locally

(3) All goods are subject to lien not only for the freight, wharf age, demurrages handling and other charges on the particular goods, but also for any balance which may be otherwise due to the Railway by the owner or consignor or consignee of such goods. If the money in respect of which goods are detained be not paid, they may be sold by auction in the case of perishable goods at once and in the cases of other goods, on the expiration of 5 day's notice of the intended auction and the proceeds applied in liquidation or reduction of the amount due and expenses.

Payment of freight in case.-- Except under special arrangement, freight charges due to the Railway have to be paid in case, Rules and regulations governing payment of freight by means of other than cash may be ascertained from the Railway concerned.

113. Persons authorised to demand freight. Station Masters and Goods Clerks at the several goods stations are authorised to demand and receive freight for the conveyance of any article or thing by goods trains, and also charges incidental thereto the petitioners wanted to supplement their submissions that there having no danger for the loss of freight, the amendments as sought to be incorporated were also improper. Such submissions were also supplemented by the petitioners on a reference to Rules 1439 and 1442 of the Commercial Manual. It was stated by them that there is no reason or basis or any intelligible differential, as to why pre-payment should asked for in respect of coal in "smalls", while such prepayment, is not required in respect of coal in wagons. This according to the petitioners, also created discrimination.

29. The petitioners, in respect of the unreasonable nature and character of the amendments, as purported to have been made through the additions, also contended that since movement of trade under Part-XIII of the Constitution of India, should be free and unimpaired by any unreasonable restrictions, when any such restriction is meant to be followed as laid down, that must be done on certain admitted reasons or after following duly the necessary safeguards and such safeguards not having admittedly been followed or laid down, the restrictions as imposed were also void, inoperative and bad It was contended that trading in coal, admittedly, is one of the most vital trades involving public importance and convenience. So any action, imposing restrictions on such trade, would be unreasonable. In view of the above, the petitioners further contended that the onus in this case lay very heavily on the respondents to establish the

involvement of public purpose or such interest in incorporating the proposed amendments and such onus has not been discharged at all. The petitioners specifically contended that in the process of imposing the unreasonable restrictions through the amendments by way of additions, small traders like or including the petitioners who deal in booking of coal in smalls or require them to be clubbed, would be driven out of the business and that is certainly not the intention and purport of Part-XIII of the Constitution of India, which deals with Trade, Commerce and intercourse within the territory of India. In support of their contentions as aforesaid and also for establishing the Constitutional safeguards, the petitioners made a reference to the case of Rashid Ahmed -vs- The Municipal Board, Kairna. A. I. R. 1950 S. C. 162. The petitioners in short submitted further that the additions by incorporating the amendment really meant for prohibiting the small traders, trading in Coal in Small or in having them clubbed. The petitioners contended further that the subjecting of coal, booked in smalls or restrictions imposed in the matter of clubbing them, could not also be supported on the basis of the object and back ground as disclosed by the answering Respondents. It has also been alleged that since the said Act lays down the liability and obligations of a common carrier under the provisions of the sections as mentioned hereinbefore, so the restrictions as imposed, were unreasonable as they were contrary to and inconsistent with such provisions. It was contended that although there is no restriction on clubbing, but such right has been taken away indirectly, as the effect of the amendments would be that clubbing of coal in smalls, would no longer be possible and permissible. The petitioners categorically contended that by the actions as impeached, preference to a class has been permitted and that a class of goods, like coal in small, had been subjected to a classification, which is forbidden u/s 27 A of the said Act. The petitioners also contended that when the answering Respondents have the capacity to supply wagons, they should not be allowed to impose any restrictions on the trade of the petitioners and more particularly when they have such a right under the provisions as referred to hereinbefore. Apart from the contentions as mentioned above, the petitioners also contended the steps of actions as taken, to be malafide

30. It is true that the effect of the additions as sought to be made under Rule 701(7; (IX), would be, that clubbing of coal in smalls would not be permitted although booking of coal in smalls is permitted and there is also no restrictions of clubbing or other commodities or booking of coal in wagon load. It is also an admitted fact that nobody has a right to have booking of coal and there is no restriction on the sale of coal, and booking should be subject to the availability of wagons and after following the Preferential Traffic Schedule. Coal in smalls, do really come under a category in the said Schedule which be in category "E".

31. The Respondents have appropriately contended that as mentioned above. The challenge in the instant proceedings would be against restrictions imposed on clubbing and also on "To-pay" basis. They also pointed out that on account of clubbing the petitioners have challenged the same to be violative of the

provisions of the said Act, and also of Articles 14 and 19 of the Constitution of India. It was contended by them that they had no hand in the matter of the grant of clubbing facilities to those, who have obtained injunctions as against those who have not. It was their specific contentions that they had no other alternative, but to follow the effect of injunctions as issued by this Court and in the wide form and as such, if any discrimination has been made in respect of those traders in "smalls", who have got the clubbing facilities, because of the injunctions obtained by them, and those who have not received such facilities, as they have not moved this Court and obtained orders of injunction, there could be no case of discrimination. In fact, it was contended by them that in the instant proceeding, there has been no case or any cause [of discrimination, because there is no distinction in the matter of applying the additions as impeached, in respect of senders of coal in "smalls". It was their contentions also that it is the administrative discretion of the Railway authorities to grant facilities for booking or to restrict such bookings and since such restrictions have been imposed in due discharge of the administrative discretion, no interference should be made by this Court and the notification in question is also not open to challenge. In support of their " contentions that there would be no case of any discrimination, if such discrimination occurs for complying with the orders of the Court, the Respondents relied on the determinations in the case of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, . Such determinations do really support the contentions of the Respondents. The authorities obey the orders made by the Court, that would not create discrimination against those whose cases are not pending.

32. On a reference to section 27 of the said Act as mentioned hereinbefore, it was contended that under the same, certainly some facilities are given to those who want to have their goods or animals moved on rails subject to the restrictions as mentioned therein. The Respondents have, on a reference to the pleadings contended that since no charge for not giving such facilities have been made, but the charge is only to the effect that facilities for maximum rate is not given, no case for any interference on the allegations as referred to hereinbefore, has been made out or for being looked into or interfered with by this Court. It was contended by them that section 27, speaks not of rates but of booking facilities and in support of such submissions, reference was made to the determinations in the case of *The Queen -Vs The Railway Commissioners Etc.*, (1889) 22 O.B.D. 642. In that case it has been observed that the mere refusal by a Railway Company to receive and forward the traffic of persons in general except upon prepayment of charges somewhat in excess of the maximum authorised rates is not a denial of "reasonable facilities", nor subjecting the senders of such traffic to "undue or unreasonable prejudice or disadvantage." It was contended by the Respondents that since the said Act is more or less the reproduction of the English Act, so the determinations as made in the case mentioned above would have due application. The constructions as given to the provisions of the concerned English Act, it was stated, thus would have the same

application in respect of the constructions of section 27 and 28 of the said Act. In that case, a determination has also " been made in respect of the meaning of the word "facilities" and on the basis of such meaning, it was contended that section 27 would thus mean clubbing of goods for freight purposes only.

33. It was then contended by the Respondents that whether section 28 of the said Act is reasonable or unreasonable, would be as question of fact or a matter of fact and for such proposition, reference was made to the determinations in the case of *Pickering Phipps -vs- London and North Western Railway Company* (1892) 2. O.B.D., whereas it has been observed that the fact that a trader has access to a competing route for the carriage of his goods may be taken into consideration by the Railway Commissioners or the Court in deciding whether lower tolls or rates charged to such trader by a railway company constitutes an undue preference within the meaning of the Act. It was further contended that since every inequality would not mean undue preference and for the purpose of finding out the discrimination in the matter of preference, questions of fact would be required to be investigated and involved this Court should not also interfere in this jurisdiction. That apart, it was submitted by the Respondents that what is undue or not, would also be a question of degree or fact and as such to find out the exact position, questions of facts would be required to be investigated and so this Court must not also interfere. The Respondents, further contended that the words undue and reasonable would be synonymous to each other and in support of such submissions they referred to the determinations in the case of *Bhupendra Kumar Datta Vs. King Emperor*, . In that case it has been observed that in a particular circumstances the reservation of a compartment for a class of passengers or intending passengers without reservation may amount to undue preference within the meaning of section 42(2). It has further been observed in that case that traffic includes not only carriage of goods only but of passengers also and the departmental rule enabling the company to reserve a compartment for a class of ordinary passengers must be a violation of the terms of section 42(2) in certain circumstances but the company has general power to regulate its traffic and arrange for the accommodation and convenience of its passengers so long as it does not bring itself within that section. It has also been observed in that case that a Railway Company has an absolute right to regulate its traffic in its own way.

34. On the question of discrimination as was urged by the petitioners, the Respondents contended that in the instant case, there was no discrimination at all. It was contended by them that discrimination if any, was not in respect of coal and if such discrimination is there, that would be in cases of commodities like coal and non-coal commodities. Since coal and non coal commodities are unequals, so it was submitted by the Respondents that the argument;; on equality as the basis for discrimination, would not also be available to the petitioners. In support of their submissions, that there cannot be any discrimination unless such discrimination is apparent between equals and not between unequals, the Respondents referred to the determinations in the case of

Ramesh Prasad Singh -vs- Stat; of Bihar and Ors., (1978) I. S. C. C. 37, wherein it has been observed that :

Doctrine of equality before law and equal protection of laws and equality of opportunity in the matter of employment and promotion enshrined in Articles 14 and 16, which is intended to advance justice by avoiding discrimination, is attracted only when equals are treated as unequals or where unequals are treated as equals. Under the Articles although hostile discrimination is forbidden, reasonable classification is not forbidden and hence equality of opportunity in matters of promotion means equality as between members of the same class of employees and not equality between the members of separate and independent classes. Though the concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment to promotion and termination to the payment of gratuity and pension, its as inherent limitation namely that equality is for equals, that is to say, those who are similarly circumstanced and are entitled to equal treatment.

These apart, the Respondents further contended that section 27A of the said Act admits priority, and such priority is also envisaged in the Preferential Traffic Schedule as mentioned hereinbefore. As such, they contended that no case of any discrimination in law or the relevant statute, has been made out.

35. Coal is admittedly an item of national importance and as such, the Respondents contended that control over such commodities, for its carriage and distribution, is required and so, to achieve the necessary result, the amendments by way of additions as impeached, have been appropriately any duly taken or made. It is the specific case of the Respondents that coal wagons can only be attached at the colliery sidings and such fact not being appropriate for other commodities, they may be allowed to be booked in smalls, the Respondents further contended that the privilege to have coal, booked in smalls, was given to the traders for the purpose of receiving "benefits of less freight, but such privilege has been misused. In any event it was pointed out that since there has been no discrimination in the matter of coal, booked in "smalls", the challenge as thrown by the petitioners, would be no avail or effect. As mentioned above, the Respondents have specifically contended that: control in the matter of booking of coal in "smalls" was necessary, to check the misuse, which was experienced, apart, from the difficulties as mentioned by them for being redressed. It is true that the petitioners have not given any particulars about the instances of clubbing, provided for any trader dealing with coal in "smalls". As mentioned 1 above, it is the specific case of the Respondents that the effect of the actions as taken or acts done by the petitioners was only to defeat the planning programme as taken in respect of coal and that too for their importance and for the benefit of the public. The Respondents have further stated that publication as required u/s 46C(a) has been made and freight benefit is linked up with the availability of the wagons. The Respondents have further contended that the restrictions as sought to be imposed in respect of booking of coal in "smalls" are reasonable

and permissible and that too for the interest of general public under article 19(5) of the Constitution of India.

36. The Respondents have further stated that since clubbing of coal is only for freight purposes and the restrictions as made, being in respect of coal as a class, there is no discrimination. It was also their case that on the basis of the prayers and pleadings, no interference should be made, because infringement of legal right has not been established. They of course, agreed that even if legal right is not involved, interference would be possible in cases of action taken without jurisdiction, in a mala fide manner or in violation of principles of natural justice. It was argued that nobody can have a legal right to carry coal in "smalls," although he may have a legal right for business or trade in coal. The Respondents have pointed out that no case for any infringement of the fundamental rights of the petitioners, has been made out and in fact, the pleadings in that respect, are also insufficient and meagre. The Respondents have further stated that no case has also been made out or established for the exercise of powers without jurisdiction by them and in fact, statements, if any are of general nature only. As mentioned above the Respondents have contended that prepayment of freight is necessary in case of clubbing of coal in "smalls", for administrative reasons. It was contended that such pre-payment of freight was evolved or directed for the convenience of realizing the freight and to avoid the difficulties in such realization and that too for the reasons as mentioned in the return to the Rules. The Respondents have stated that the concession with regard to "To-pay" has been withdrawn in respect of a class and not in a discriminatory manner and as such also, no interference is called for. It is their specific case that booking without restriction would create prejudice to the administration and the grounds of challenge in the petition are vague and indefinite. The notifications have been claimed to be made by the Central Government in public interest and following a policy for obviating the peculiar problems of booking of coal in "smalls" or for their carriages less than wagon load. It is the case of the Respondents that the restrictions as imposed, so also the withdrawal of the concession as referred to hereinbefore would increase the efficiency. The Respondents contended that the determinations as made in the case of Satyanarayan Murarka (Supra), have no application in the instant case and these cases are distinguishable from such determination as in that cases, public interest was not in issue, which is in issue in these cases.

37. The allegations of mala fide the Respondents have claimed, cannot or should not be looked into, because they are devoid of any particulars.

38. It is true that appropriate and proper particulars or materials in support of the submissions on mala fide have not been given by the petitioners. Thus the submissions made on mala fide or the charges as sought to be levelled, should fail as a determination on mala fide requires specific and appropriate or definite pleadings. I find that there is no justification in upholding the allegations of mala fide.

39. There is admittedly no discrimination or distinction in respect of the item coal, or coal in "smalls", for their booking. So the challenges as levelled and to the effect that by the impugned additions or amendments, coal or coal in smalls, have been discriminated with other commodities or articles, appears to be without any basis of substance. Discrimination, if any, must be established to have been practised or created between equals and not between the unequals. Thus, the arguments on discrimination also appear to be without any substance. These apart, the restrictions as sought to be imposed and which have been claimed to be unreasonable, appear to me, in view of the peculiar facts of the case and the character of coal or the incidents of the carriage of the same, to be not unreasonable or without any intelligible differentia and having no nexus to the objects as claimed. The additions as sought to be made has not put coal or coal in smalls, in view of its equality and character to any unreasonable prejudice or disadvantage or at least there is no such "case for consideration amongst two equals. The facts of the restrictions as sought to be imposed is not reasonable and such basis according to me is certainly intelligible and has nexus to the object as sought to be achieved, which again can surely be claimed to be one of public purpose. I further find that there would be no case of discrimination between persons or commodities, who or which have the privilege of booking coal in smalls and clubbing them because of orders or injunctions as claimed against those who are refused such facilities for not obtaining the orders of injunctions. If the authorities are required to grant certain facilities to a class because of orders made by Courts, that would not be a case of discrimination in respect of those who have not received such facilities for want of orders of injunctions. The additions as made, in my view has not created a class distinction, as admittedly there has been no discrimination in respect of coal or coal in "smalls" viz., the equals. If there is discrimination between the equals, then certainly the Court would be justified in booking into them and not otherwise and more particularly, when the discrimination, if any, appears to be between two unequals. Coal or coal in smalls and non coal commodities are not certainly equals. Coal, because of its quality and character, cannot be equated with other commodities having different character and quality. As the Railway authorities, in view of the determinations as cited at the Bar, has certainly the right and authority to ask for prepayment of freight in respect of booking of coal in smalls and that too for the background as mentioned above and such power is included in section 27 and 28 of the said Act. As such also, the action as taken in this case, cannot be said to be violative of Article 14 of the Constitution of India.

40. Apart from the findings above, find that the power or privilege, which was given to the traders of coal in smalls, for the purposes as mentioned above, have been misused and if such misuse is sought to be checked by imposing restrictions, that would not certainly be unreasonable. The problems created by traders by purporting to disrupt the smooth supply of coal to the people, which has been done by the misuse as mentioned above, can certainly be checked and by the actions as sought to be taken by the restrictions as imposed, which, as

mentioned above, would not certainly be unreasonable or unauthorised. I am also of the view that section 27 contemplates booking facilities and not the rates as the same would mean clubbing of goods for freight purposes duly claimed and such fact appears from the determinations in the case of *The queen -Vs- The Railway Commissioners etc.* (Supra). It appears to me that regulation of traffic in the instant case should ordinarily be with the Railway authorities and there is no bar for them to follow the Preferential Traffic Schedule in terms of the provisions of the said Act. (On the facts of this case I also find the determinations in the case of *Satyanarayan Murarka*, are distinguishable).

41. The arguments on other remedy as admissible in section 41 of the said Act would certainly be a bar in maintaining an application under Article 226 of the Constitution of India ordinarily. But there may be exceptional circumstances when such other remedy in the statute would not be a bar. The cases under consideration in my view do not come under such or any exceptional circumstances. The argument on not issuing the necessary notification, as were put forward by the petitioners, in view of the subsequent publication of the same. As such, I find that the submissions of the petitioners on the aspect as mentioned above should fail.

42. Referring to the second branch of submissions of the petitioners and on the submissions on "To-pay", I find that the challenges as levelled now, is belated and that too when no appropriate explanation has been given for such a belated challenge. I further find no justification in interfering in the matter on the basis of the arguments as advanced, as the system of "To-pay", has been in force for a long time and the petitioners have acted on that basis or accepted such position without any challenge or objection. The imposition of restriction on prepayment of freight in my view is also not *ultravires* and the same is authorised, for the reasons as mentioned above.

43. For all the above reasons, the applications should fail and they are discharged. There will be no order as to costs. Although I discharge the Rules, I have it on record that the Railway authorities should may available, wagons to the respective indenters for booking of coal in smalls, loads subject to availability of wagons and after duly following the Preferential Traffic Schedule.

The prayer for stay of operation of the order as asked for, is refused.