
(1972) 07 CAL CK 0007
In the Calcutta High Court

Satyanarayan Murarka

APPELLANT

Vs

Railway Board and Others

RESPONDENT

Date of Decision : 07-07-1972

Acts Referred:

Constitution of India, 1950 — Article 1, 14, 19, 19(1)(g), 19(6)

Citation : (1972) 07 CAL CK 0007

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Madhusudan Banerjee, for the Appellant; Prasanna Kumar Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Salil Kumar Datta

1. The petitioner in this Rule is a coal merchant and carries on business inter alia of transport of coal throughout India through Railways in his firm name of Surajmal Gurudayal. The petitioner tendered coal for booking at Raniganj and Burdwan Stations along with forwarding notes in May, 1971 but the Station Master of Raniganj refused to accept the consignment endorsing that the coal would not be accepted for booking at the said station. Subsequent tender at Burdwan Station met with same fate. The petitioner contends that such acts on the part of the Railways are illegal as there is no circular or rule restricting the booking of coal. According to the Alphabetical list of Railway Stations published by the Indian Railways Conference Association the said stations are open for booking of coal. The refusal is also in violation of section 27 of the Indian Railways Act. Under the goods tariff it is obligatory on the part of the Railways to accept forwarding notes but they are allegedly refusing to accept the same. On his representation the Divisional Superintendent of the Eastern Railways, Howrah, informed him that under the order of the Joint Director, Transportation (Coal) Railway Board dated May 15, 1971 booking of coal from stations other than colliery sidings would not be permitted. The said order is unwarranted and

unlawful and against the provisions of Indian Railways Act, 1890 and the restrictions are in violation of Article 14 and 301 of the Constitution. Such restriction is also unreasonable as it violates Article 19(1)(g) of the Constitution interfering with the petitioner's fundamental right to carry on trade and is not protected by Article 19(6). On these allegations the petitioner moved this Court and obtained this Rule on June 2, 1971 calling upon the respondents to recall, rescind or set aside the orders refusing to accept coal for booking by the Eastern Railway as also the restrictions imposed by memo dated May 15, 1971 and not interfere with the business of the petitioner by not accepting the forwarding notes for booking of coal. On July 19, 1971 and interim order of injunction was issued restraining the respondents not to give effect to the impugned order of May 15, 1971 pending disposal of the Rule, while the hearing of the Rule was expedited.

2. The Rule has been opposed by the respondents who have filed an affidavit-in-opposition disputing the contentions made by the petitioner. It was stated that under the Coal Tariff of the Eastern Railway then existing, coal could be dispatched from colliery sidings only and not from any other Station. Under the Coal Tariff, part I, framed by the Eastern Railway, at page 1 all traffic in coal is to be booked under invoices showing name of the dispatching colliery as the sender in each case. Coal traffic under Rule 6 of Chapter I of the said Tariff would be offered for booking from colliery sidings and not from any other stations. These Rules have been framed u/s 54 of the Indian Railways Act. Goods Tariff No. 33, part I published by I.R.C.A. in Rule 101 Chapter I for acceptance, carriage and delivery of goods subject to variations published in the Tariff and circulars of Railway concerned. Article 1 of page 1 of the Coal Tariff envisage booking of coal from colliery sidings only. Further the Railways are running short of transport capacity for transport of coal due to various operational hazards and some traders are trying to by-pass the rules of movement of coal from sidings other than colliery sidings causing disruption of fair distribution of coal to the consumers. It is further stated that as different types of coal have different specific gravity it is essential that coal should be weighed for safety reasons and also for calculation of freight and weighment of coal cannot be done except by weighbridge. The facilities in respect of weighbridge are available only in depot-yards serving the collieries for which purposes booking of coal is only possible from colliery sidings. It was denied that there was infringement of the fundamental of legal rights of the petitioner on account of such restrictions.

3. The petitioner filed an affidavit-in-reply in which it was stated that the Coal Tariff nowhere restricted booking of coal for stations other than colliery sidings. The respondents had no authority to amend the Goods Tariff published by I.R.C.A. and Coal Tariff has no statutory force and cannot override the provisions of the Indian Railways Act. No weighment of coal is necessary prior to booking as the wagons could be loaded upto a mark which is there is all wagons. And other allegations were denied and those in the petition were reiterated.

4. After the Rule was heard in part the respondents filed an additional affidavit in June 22, 1972 bringing on record the decision which was in the meantime taken by the Central Government restricting booking of Coal in wagon loads from station other than colliery sidings and the Rules; orders and circulars following therefrom on the basis of the decision. There was revision of the Rule Nos.1 and 2 of the Eastern Railway Coal Tariff, Part I which are embodied in Annexure "A" to the said affidavit providing for loading of Coal etc. in wagon loads only from colliery sidings and prohibiting loading and booking of Coal from other stations. The Railway Board in pursuance of the said decision also inserted an additional entry "GX" in I.R.C.A. Alphabetical list of stations and existing entry "G" was substituted in its place by "GX" in all stations of Eastern Railway. The relevant orders are Annexures B and C of this affidavit. Rule 302(1) (a) of the Goods Traffic No. 3 was also amended making them subject to the local tariff and circular of the Railway Administration (Annexure D). The petitioner filed an affidavit-in-opposition to this additional affidavit of the respondents contending that the Coal Tariff has no statutory force and prior to its amendment it never restricted booking of coal from stations other than colliery sidings. The decision of the Central Government, it was contended, was also contrary to the fundamental rights guaranteed by the Constitution and the provisions of the Railways Act. the Amendment of I.R.C.A. Alphabetical list was also unwarranted as neither the Railway Board nor the Chief Commercial Superintendent had any authority to effect the amendment of the Alphabetical list which was statutory. It was further stated that the Central Government had no authority to amend the Goods Traffic No. 3, Part I, issued by I.R.C.A.

5. The petitioner on June 21, 1972 filed an application for amendment of his petition incorporating in the petition the decision of the Central Government, all circulars, orders and rules mentioned above. They were challenged as being illegal and unconstitutional on the above grounds and also on grounds referred to in the petition. It was also stated that such decisions and the rules and orders were not in public interest and it was only made for serving the interest of collieries. Mr. Prasanta Kumar Ghose appearing for the Railway Administration has opposed the amendment and has also waived service of the grounds as amended except that he has submitted that he does not admit the various allegations made in the petition. In the interest of justice it is fit and proper that this application should be allowed. It is accordingly and let the amendments referred to therein be deemed to be incorporated in the main petition.

6. It may be mentioned here that the decision of the Central Government and the Rules, circulars and order referred to above were the subject matter of challenge in C.O. No. 3080 (w) of 1972 Gouri Sankar Agarwalla v. Union of India, and the matter was argued at length by the learned advocates before me. Mr. Banerjee and Mr. Ghose have adopted the arguments which were advanced in the above matter the respective advocates. I shall however deal with such other contentions in this Rule which was not considered at the said hearing as it was not necessary. The contention relates to the statutory validity of the Eastern

Railway Coal Tariff, part I. Mr. Banerjee contends that the said tariff has no statutory basis and cannot override the provisions of the General Goods Tariff. u/s 54(1) of the Railways act it is provided as follows:

54(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 thereunder, with respect to the receiving, forwarding for delivering of any animals or goods

7. "The Railway Administration" in the case of Government Railways, under sub-section (6) of section 30 of the Railways Act, means Manager of the Railway. As it appears from the printed book produced at the time of hearing, the Coal Tariff Part I No. 1 has been issued by the General Manager and accordingly it must be deemed to have been duly issued by the Eastern Railway under the provisions of section 54(1) of the Act. There can thus be little doubt that the Coal Tariff framed as aforesaid is statutory and binding on the parties concerned. Rule 302(1)(a) of the I.R.C.A. Goods Tariff No. 33 has been amended by the Central Government which is the competent authority under the Railways Act for the purpose, making it subject to the local tariff. Accordingly the Coal Tariff will have overriding effect over the goods tariff as also on the Alphabetical list of the stations in the I.R.C.A. list. Even apart from amendment every Railway Administration has been granted power to impose conditions with regard to receiving, forwarding or delivering of any goods or animals u/s 54(1) of the Railways Act, which ensured the overriding effect of the Coal Tariff or the Eastern Railway.

8. On perusal of the relevant rules of the Coal Tariff it appears from the existing restrictions on the booking of coal that in respect of every dispatch of coal the name of the dispatching colliery is to be entered as the sender. If coal is to be allowed to be booked from other stations than colliery siding it will not be possible to enter the name of the dispatching colliery as sender and to comply with the rule. It may be remembered in this connection that in the forwarding notes submitted by the petitioner the sender's name was of the petitioner. Under the Coal Tariff it was not possible in view of the restriction in the said rule to load and book coal tendered by the petitioner. Under Rule 6 of Chapter I of the Coal Tariff referred to above rebooking of coal once booked from coal invoicing station within coal field areas of Eastern Railway received at destination is prohibited. This also clearly indicates the existing booking restrictions of coal from station other than colliery sidings. For these reasons I am of opinion that the impugned restrictions prior to the decision of the Central Government referred to above are based on statutory rules framed under the provisions of the Indian Railways Act and as such legal and valid.

9. As to the other contentions against the validity of the restrictions and also the decision of the Central Government I have referred above to my judgment which was delivered on May 23, 1972 in the case of (1) Gouri Sankar Agarwalla v. Union of India. Civil Order No. 3080(W) of 1972 In that case I have held that the restriction on loading and booking of coal wagons from stations other than

colliery sidings as also provided in the Central Government decision and the rules, orders and circulars framed thereunder are all legal valid and they are also reasonable in the circumstances. Following the judgment I hold that the said restrictions are valid and do not violate the provisions of Articles 14, 19(1)(g) and 301 of the Constitution. I further direct that the said judgment shall be deemed to be part of this judgment.

10. For the reasons aforesaid, this Rule fails and is discharged. There will, however, be no order for costs. All interim orders are vacated.

As prayed for by Mr. Banerjee, learned Advocate for the petitioner, the operation of this order is stayed for three weeks.