

(1954) 09 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No's. 961 and 1007 of 1953

Southern Railways and Another

APPELLANT

Vs

The Railway Rates Tribunal and Others

RESPONDENT

Date of Decision : 20-09-1954

Acts Referred:

Railways Act, 1890 — Section 28, 39, 41, 41(1)

Citation : AIR 1955 Mad 476 : (1955) 68 LW 341 : (1956) 1 MLJ 395

Hon'ble Judges : Rajamannar, C.J.;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : Advocate General and Vepa P. Sarathi, in W.P. No. 961 of 53 and V. Thyagarajan and M.A. Rajagopalan, in W.P. No. 1007 of 53, for the Appellant; A.G. and Vepa P. Sarathi in W.P. 1007 of 53 and V. Thyagarajan and M.A. Rajagopalan, in W.P. No. 961 of 53, for the Respondent

Judgement

Rajamannar, C.J.—Both these petitions filed under Article 226 of the Constitution are directed against the Railway Rates Tribunal in respect

of their proceedings on a complaint filed by a firm called the Engineering Supplies Co., Bombay, who carry on business in cast iron pipes, among

other things, against the Southern Railways and the Central Railways under Sections 28 and 41(1), Railways Act 1890.

2. The principal from and steel manufacturing centers of India are Bhadravati in Mysore and Bisco, Burnpur and Tatanagar in Bihar and Bengal.

Bisco is the place where the factory of Bengal Iron and Steel Company is situated. " The railways had been quoting special rates for the transport

of cast iron pipes to various cities and towns in the country for over 20 years. From 15-10-1949, the full tariff rate for east iron pipes from

Bhadravati to Bombay was Re. 1-1.5-1, but the special rate being charged was Re. 1-3-6. The full tariff rate from Bisco to Bombay was Rs. 3-3-

8 from 15-10-1949, but the special rate being charged was Re. 1-6-10. This rate was, however, cancelled from 1-4-1952. The complainant who

imports cast iron pipes from Bhadravati to Bombay and other stations complained to the railway that there was an undue preference shown for

Bisco, which was in contravention of Section 28, Railways Act.

The firm also applied to the railways to quote a special station to station rate from Bhadravati to Kalyan and Ambarnath, intermediate stations

between Bhadravati and Bombay. As the firm got no relief from the railways, they filed the complaint. Several reliefs were claimed by the

complainant firm, namely, that reduced station to station rates may be fixed for the carriage of cast iron pipes from Bhadravati to Bombay on the

basis of the same percentage reduction or maund mile return yielded by the Bisco Bombay rate, and from Bhadravati to Badlapur, Ambarnath and

Kalyan on an appropriate and consequential basis, that it should be declared that so long as the special rate from Bisco to Bombay and from

Bhadravati to Bombay, Poona and oilier stations remained in force, that is, upto 1-4-1952, the refusal to quote new station to station rates and the

rate charged to the complainant was unreasonable and contravened Section 28, Railways Act, and that the excess sum collected from the

complainant by the railways for traffic from Bhadravati to Bombay from 15-10-1949 and from Bhadravati to Ambarnath and Kalyan from January

1951 may be refunded, and that it should be declared that the cancellation of the special rate from Bhadravati to Poona for cast iron pipes also and

in consequence the charging of the rate of Re. 1-9-7 for cast iron pipes as against Re. 1-1-11 for all other articles of Iron and Steel. Division B,

contravened R. 28 of the Act, and that the said cancellation be directed to be withdrawn and proper station to station rates from Bhadravati to

Poona, Badlapur, Ambarnath and Kalyan should be fixed.

The railways pleaded that the complainant, was not entitled to any of the reliefs sought, Another firm, Messrs. Hindustan Materials Ltd., Bombay,

intervened in the proceedings on the side of the complainant, and prayed for certain reliefs in respect of the rate from Bhadravati to Bombay, from

Bhadravati to Kalyan, and Ambarnath, and from Bhadravati to Poona. Several issues were framed on the pleadings. The complaint was heard fully

by the Railway Rates Tribunal. Of the three members of the Tribunal, the

President and one of the members, Mr. Roy, held that the only relief the complainant was entitled to was a declaration that from January 1951 the station to station rates for the transport of cast iron pipes in wagon loads ex Bhadravati to Ambarnath and Kalyan should have been the then prevailing station to station rate ex. bhadravati to Bombay plus the usual re-booking charges to Ambarnath and Kalyan respectively at the prevailing tariff rate, and that it was unreasonable on the part of the respondents to have refused to quote that rate, and to an order that station to station rates for cast iron pipes ex. Bhadravati to Ambarnath and Kalyan from the date of the filing of the complaint should be quoted on the same basis.

The other member, Mr. Subba Rao was of opinion that the special rate from Bhadravati to Bombay of Re. 1-3-6 per maund was proper and reasonable and that it should not be cancelled, that the rate from Bhadravati to Poona which had been cancelled should be restored, that the special rate from Bhadravati to Kalyan and Ambarnath should be restored and this should not be higher than the Bhadravati Bombay special rate, and that the complainant was entitled to a refund of the amount paid by them for the transport of cast iron pipes from Bhadravati to Kalyan and Ambarnath in excess of the former special rate. The order of the Tribunal, in accordance with the view of the majority, ran as follows:

We declare that from January 1951 the station to station rates for the transport of cast iron pipes in wagon loads (RR. W/300 B. G., W/240 M.

G., W/180 N. G.) ex. Bhadravati to Ambarnath and Kalyan should have been the then prevailing station to station rate ex. Bhadravati to Bombay

plus the usual rebooking charges to Ambarnath and Kalyan respectively at the prevailing tariff rate, and we order that future station to station rates

for cast iron pipes ex. Bhadravati to Ambarnath and Kalyan from the date of the filing of the complaint should be quoted on the same basis. The

applicant's claim for other relief is rejected. Parties to bear their own costs.

3. In W. P. No. 961 of 1953 filed by the Southern Railways and the Central Railways, they seek to have the said order of the Tribunal quashed in

so far as they granted a declaration from January 1951 and directed the charge-of rates fixed by them from a period prior to 9-10-1953, that is,

the date of the order. In W. P. No. 1007 of 1953, the complainant prays that the order of the Tribunal may be quashed and set aside (1) in so far

as the Tribunal rejected the claim for excess paid, and (2) in so far as the tribunal rejected the applicant's claim that the rate of Re, 1-3-6, for

Bhadravati to Bombay was unreasonable and contravened Section 28, Railways Act, and in so far as the Tribunal ordered that the future station to

station rate for cast iron pipes ex. Bhadravati to Ambarnath and Kalyan should be quoted from the date of the filing of the complaint. They also

sought for appropriate directions or orders of this Court (a) to make an order of refund of excess freight in accordance with the decision of the

Tribunal, (b) to declare that the rate of Re. 1-3-6 for cast iron pipes from Bhadravati to Bombay was unreasonable and violated the provisions of

Section 28, Railways Act, (c) to make an order for new station to station rate to be quoted , by the railways ex. Bhadravati to Ambarnath and

Kalyan from January 1951, and (d) to fix the station to station rates specifically in Rupees and annas and pies.

4. In the writ petition filed on behalf of the railways (901 of 1953) the main contention of the learned Advocate-General is that any order of the

Tribunal passed on a complaint can take effect and be operative only from the date of such order. They take objection to the order in so far as it

refers to dates earlier than the date of the order, namely, January 1931, and the date of the complaint, i.e., 15-2-1952. A further contention is that

the Tribunal, having held by a majority that they had no jurisdiction to order a refund of any excess freight which might have been collected by the

railways, had no jurisdiction to make an order declaring that prior to the date of the Order a certain rate should have been charged. Such a kind of

declaration would, it was submitted, lead to further claims based on it. The learned Advocate-General, apart from relying on the provisions of the

Act, also mentioned the complications and problems which might result by a retrospective readjustment of rates if the order of the Tribunal were to

take effect during, and relate to a period, anterior to the date of the order. We do not think it however proper to take these factors into

consideration in deciding what, after all, is a pure question of law depending on the construction of the material provisions of the Act.

5. The powers and jurisdiction of the Railway Rates Tribunal are set out in Sections 34 to 40, Railways Act. Section 41 provides as follows:

Complaints against a railway administration:

(1) Any complaint that a railway administration --

- (a) is contravening the provisions of Section 28, or
- (b) is charging station to station rates or wagon load rates which are unreasonable owing to any condition attached to them regarding minimum weight, packing, assumption of risk or any other matter, or
- (c) is levying charges (other than standardised terminal charges) which are unreasonable, or
- (d) is unreasonably refusing to quote a new station to station rate, or
- (e) has unreasonably placed a commodity in a higher class, may be made to the Tribunal, and the Tribunal shall hear and decide any such complaint in accordance with the provisions of this Chapter.

(2) In the case- of a complaint under Clause (a) of Sub-section (1) --

- (i) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower rates for the same or similar animals or goods or lower rates for the same or similar services, that it charges to other traders or classes of traders, or to the traders, in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration,
- (ii) in deciding whether a lower charge does or does not amount to an undue preference, the Tribunal may, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary in the interests of the public.

(3) In the case of a complaint under Clause (d) of " Sub-section (1), the Tribunal may fix a new station to Station rate.

(4) A complaint under this section may be made jointly against two or more railway administrations.

6. For the purpose of exercising, the jurisdiction conferred on it, the Tribunal may pass such final and interim orders as the circumstances may require, including orders for the payment of costs. It shall be the duty of the Central Government or the State Government concerned on whom any obligation is imposed by any order of the Tribunal to carry it out (Section 39). u/s 42, the Tribunal is given a special power to reclassify any commodity in a higher class on the application of the Central Government. The Tribunal as well as the Central Government have the power to

reclassify any commodity in a lower class Section 28 mentioned in Section 41(1) (a) runs thus:

Prohibition of undue preference: 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, or 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.

7. The question raised by the learned Advocate-General on behalf of the railways as to the competency of the Tribunal to make any declarations

or grant any relief in respect of a period anterior to their final order has to be decided entirely on the implications of the language of the material

provisions of the Act. In our opinion, the clearest indication on this point is to be found in the tense used in Section 41(1) of the Act. In Clauses (a)

to (d), the complaints are, contravening the provisions of Section 28, charging unreasonable station to station rates or wagon loads rates, levying

unreasonable charges, or unreasonably refusing to quote a new station to station rate. The language is not "had contravened the provisions of

Section 28" or "had charged unreasonable rates or charges" or "had unreasonably refused to quote a new station to station rate". The injury

contemplated is an injury subsisting on the date of the complaint.

Even Clause (e) contemplates a similar complaint, the complaint being that the railway administration has unreasonably placed a commodity in a

higher class, implying that it continues to be so placed on the date of the complaint. On this language, it is clear that though the railway

administration might have contravened the provisions of Section 28 or charged or levied unreasonable rates or charges, during some period before

the complaint, yet if on the date of the complaint they have ceased to do so, no complaint can be made u/s 41(1). In this respect, the Tribunal's

jurisdiction is much more narrow and restricted than the jurisdiction of an ordinary Court. Take, for instance, a case in which a local body has

levied an illegal tax. The person who is aggrieved by such imposition can, within the prescribed time limit, file an action and recover the tax

collected from him. It may be that for subsequent periods the local body has

ceased to impose such illegal levies. Nevertheless, the Court can go into the question whether the tax which had been levied was lawfully imposed. The Court can, in such a case, give both a declaratory relief as well as relief by way of refund. Learned counsel for the complainant conceded this position.

The Question then is whether in a case in which there has been a charging of unreasonable rates from a time, long or short, before the date of the complaint and such charging has continued upto the date of the complaint, the Tribunal can grant a declaration relating to a period before the date of its order. If the Tribunal can, the question then will arise is there any limit to that period?

Can the Tribunal grant a declaration that the rates which were being collected, say from 1920 or from 1930, were unreasonable? Obviously, there is nothing in the Act to impose any time limit. In our opinion, this circumstance itself rather goes to show that it could not have been contemplated

that the Tribunal can grant declarations of the unreasonableness of any rate in respect of periods, in any event, before the date of the filing of the

complaint. The learned Advocate-General laid great stress on the fact that the rates being charged by the railway administration could in no sense

be "deemed to be illegal rates, merely because on a complaint the Tribunal might hold that the rates are unreasonable, lie submitted that it cannot

be said that the railway administration had been charging rates unlawfully or without due authority. It is only when the Tribunal found a particular

rate is unreasonable or that a particular rate contravenes the provisions of Section 28 that the railway administration is obliged to refrain from

charging such a rate. Till then, there is no legal impediment to the charging of such rates. We see considerable force in this argument of the learned

Advocate-General. We, however, do not agree with him on one point, namely, that the order of the Tribunal can only operate in future, that is,

from and after the date of the order. In our opinion, the order of the Tribunal can well become effective from the date of the complaint. The finding

of the Tribunal, if it is in favour of the complainant, would mean that the complainant was entitled to relief on the day on which he made the

complaint. The fact that for reasons beyond the complainant's control, the Tribunal takes time to hear and decide the complaint and pass final orders

thereon, should not adversely affect him.

The learned Advocate-General described to us some inconvenient consequences of this view. He said that the railways may have to refund the

excess over and above the rates fixed by the Tribunal. We are not now dealing with the question whether the tribunal itself can order such a refund,

or whether a refund becomes incumbent in any other manner. We fail to see how this circumstance can prevent the application of the general rule

that the final order or judgment in a case should relate back to the date of the filing of the plaint or complaint. In practice, we can well imagine the

Tribunal making an interim order that the railways may continue to charge the rates in force, subject to an undertaking to refund to the complainant

the excess, if any, which might be collected from him after the final determination by the Tribunal. All this, of course, would only arise with

reference to the particular complainant. So far as others are concerned, the order of the Tribunal would only operate from the date of the order.

This is because u/s 39 it is the duty of the Central Government or State Government to carry out any obligation imposed by an order of the

Tribunal.

8. Learned counsel for the complainant, Mr. Thyagarajan, rested his case mainly on what he described as the wide language of Section 39. Under

that section, the Tribunal, he said, can pass such final orders as the circumstances may require. His argument, indeed, based on this section, goes

beyond the grant of a mere declaration for an anterior period. It goes to the extent of a power in the Tribunal to even order refund of the amounts

collected by the railways over and above the rates as finally fixed by the tribunal. In answer to our question as to the period for which such an

order for refund could be made, learned counsel was unable to give an adequate answer. He could only fall back on the words ""as the

circumstances may require"". On this question, there was a difference of opinion among the members of the Tribunal, the President and one of the

members taking the view that the Tribunal has no power to make an Order of refund, the other member taking, a different view.

9. Our attention was drawn to the legislation in Britain and the United States, dealing with similar matters, and reference was also made to

decisions of English and American Courts, which however, turned on the

language of the particular enactment concerned. In England, the earliest Act on the subject appear to be 8 and 9 Vict. c. 20, the Railways Clauses Consolidation Act. Section 90 of that Act embodied what is often referred to as the "equality clause", that is, it provided that tolls shall be charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance shall be made in any such tolls either directly or indirectly in favour of or against any one using the railway. There was, however, no special tribunal appointed to enforce this provision.

Section 2, Railway and Canal Traffic Act, 1854 (17 and 18 Vict. c. 31) provided inter alia that no railway company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company of any particular description of traffic in any respect whatsoever. This is sometimes referred to as the "undue preference clause. Section 3 specifically conferred a right on any company or person complaining against any railway company of any violation or contravention of this provision to seek redress in a Court of law. But the jurisdiction of the Court on" such a complaint was limited, for that section only provided that it shall be lawful for such Court or Judge to issue a writ of injunction or interdict restraining such company or companies from further continuing such violation or contravention of this Act, and enjoining obedience to the same,

By Section 6, Regulation of Railways Act, 1873 (36 and 37 Vict. C. 48) the jurisdiction of the Court was transferred to the Railway Commissioners. But the extent of the jurisdiction was identical with that which the Courts had under the Act of 1854, that is to say, the jurisdiction was confined to the issue of an injunction or interdict. u/s 8, Railway and Canal Traffic Act, 1888 (51 and 52 Vict. C 25) the jurisdiction and powers, which were vested in the Railway Commissioners, were transferred to and vested in the railway and canal commission, newly established by that Act. Section 12 of this Act for the first time conferred power on the commission to award damages including repayment of overcharges.

That section ran thus:

Where the Commissioners have jurisdiction to hear and determine any matter,

they may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as they find him to have sustained; and such award of damages shall be in complete satisfaction of any claim for damages, including repayment of overcharges, which, but for this Act, such party would have had by reason of the matter of complaint Provided that such damages shall not be awarded unless complaint has been made to the Commissioners within one year from the discovery by the party aggrieved of the matter complained of. The Commissioners may ascertain the, amount of such damages either by trial before themselves, or by directing an inquiry to be taken before one or more of themselves or before some officer of their Court.

10. Before the enactment of this provision, it had been held sometimes that an action for money "" had and received could be brought by a person who had been charged in contravention of Section 90 of the Act of 1843 or of Section 2 of the Act of 1854, to recover the amount of overcharges

paid by such person though there were doubts expressed whether such right of action would exist under the Act of 1854. In -- G. W. Rly. Co. v.

Sutton", (1869) 4 II. L, 226 (A) referring to Section 90 of the Act of 1845, Blackburn J. observed:

I think it appears from the preamble of the 00th section of the Railways Clauses Consolidation Act, 1845, that the Legislature was of opinion that

the changed state of things arising from the general use of railways made it expedient to impose an obligation on railway companies acting as

carriers beyond what is imposed on a carrier at common law. And if this be borne in mind, I think the construction of the proviso for equality is

clear, and is, that the defendant may, subject to the limitations in their special Acts charge what they think fit, but not more to one person than they,

dining the same time, charge to others under the same circumstances, And I think it follows front this that if the defendants do charge more to one

person than they charge to others, the charge is, by virtue of the statute, extortionate; and I think that the rights and remedies of a person made to

pay a charge beyond the limit of equality imposed by the statute on railway companies acting as carriers on their line must be precisely the same as

those of a person made to pay a charge beyond the limit imposed by the Common Law on ordinary carriers as being more than was reasonable.

In -- "L. & N. W. Rly. Co. v. Evershed", (1876) 3 A. C. 1029 (B), both Section 90 of the Act of 1845 as well as Section 2 of the Act of 1854

were invoked, and a person paying a rate which offended against both these provisions was held to be entitled to recover back in an action for

money had and received the difference he had paid under protest. Lord Blackburn treated the question as settled by the decision in (1869) 4 II. L.

226 (A). The proposition which he reaffirmed was that ""money extorted by inequality of charge was to be recovered in exactly the same way as if

it had been money extorted by making an unreasonable charge, that is to say, by an action for money had and received,"" In -- "Alexander Murray

v. Glasgow and Section W. Rly. Co.," 4 R. & Con. Traff Cas. 436 (C), a different note was struck by the Court of Session. It was there held that

undue preference within the meaning of Section 2 of the Act of 1854 would not sustain an action at law for its infringement. The Lord President

said:

The conclusion, therefore at which I have arrived is, that an action to recover damages or to seek pecuniary redress for a contravention of the

second section of the Act of 1854 will not lie.

The Lord President distinguished the case in (1876) 3 A. C. 1029 (B)" on the ground that it should be treated only authority on the Act of 1845.

In "Denaby Main Colliery Co. v. Manchester, Sheffield and Lincolnshire Rly. Co., (1886) 11 A.G 97 (D), Lord Halsbury L. C. expressed a

doubt on the point, though it was not necessary to decide the question. The noble Lord said:

I think it unnecessary to consider whether it is accurate to assume that no cause of action could arise out of the breach of the second section of the

Act of 1854. It may well be that no application to any Court other than the Railway Commission for a relief against a breach of that section is

permitted by the Act. It may be that no action will lie expressly for a breach of that section, but it is a matter for consideration (and I wish to

reserve my right to consider it if the question should here-after arise) whether a railway company, having committed a breach of that section, and

having in committing that breach extorted money for carriage which by law they were not entitled, the Ordinary remedies at law for extortion may

not be applicable.

11. We are not concerned in this case to decide the question whether an action would lie in a Court of law for the recovery of any overcharges made in contravention of the Railways Act and whether any decision of the Tribunal on the complaint made to them would furnish the aggrieved party with a cause of action. That question will have to be dealt with when it arises when the effect of Section 26, Indian Railways Act may also have to be considered. That section says that except as provided in the Act, no suit shall be instituted or proceeding taken for any thing done or any omission made by a railway administration in violation or contravention of any provision of Chap. V. All that we can gather from the statute law of England as interpreted in the decisions is that a special tribunal corresponding to the Railways Rates Tribunal here can have jurisdiction and power to award damages or refund overcharges only when such jurisdiction and power are conferred by a specific statutory provision. In the absence of such a specific provision, any remedy which the aggrieved party would have can only be at Common law.

12. The provisions in the Interstate Commerce Act in the United States does not carry us any further than this, for there is specific provision there for the award of damages. Section 2 prohibits and declares unlawful unjust discrimination in the charge of rates, and Section 3 prohibits undue or unreasonable preference or advantage to any particular person or company or firm, etc. Section 8 expressly enacts that a common carrier will be liable to the person injured by anything done which had been prohibited by the provisions of the Act for the full amount of damages sustained in consequence of any such violation of the provisions. Section 9 confers on the aggrieved party the right to recover such damages in one of two ways, namely, either by complaint to the Interstate Commerce Commission, or by suit in any Court of competent jurisdiction. Only, the party is compelled to effect in each case which one of the two methods of procedure he would adopt. There are no provisions in the Indian Railways Act which has given similar power to the Railway Rates Tribunal or a similar right to the aggrieved person,

13. Reference may be made to one fact on which some reliance was placed by the President of the Tribunal in construing Section 59 of the Act, namely, the difference in the language of Section 196(3), Government of India Act, 1935, defining the powers of the Railway Tribunal which was

contemplated to be constituted u/s 196(1). That, section, in so far as it is material for our purpose, ran thus: ""The Tribunal may make such orders

including interim orders, orders varying or, discharging a direction or order of the authority, Orders for the payment of compensation or damages

and of costsas the circumstances of the case may require

In Section 39, the power to make orders for the payment of compensation or damage's is omitted and the omission is not without significance. We

agree with the learned President that so far as it goes this fact supports the view which the majority of the Tribunal took, and with which we agree,

namely, that Section 39 does not confer a power on the Tribunal to make an order for payment of compensation or damages or make an order of

refund of overcharges.

14. In W. P. No. 1007 of 1953, filed by the complainants, their learned counsel pressed upon us three points. The " first is that the Tribunal has

the power to make an order for refund of overcharges. This we have already dealt with.

15. He next contended that the Tribunal erred in not fixing the station to station rate u/s 43(1) at a definite figure. It may be recalled that what the

tribunal did was to declare, that the station to station rates ex Bhadravati to Ambernath and Kalyan should be the then prevailing station to station

late ex. Bhadravati to Bombay plus the usual re-booking charges to Ambernath and Kalyan respectively at the prevailing tariff rate. The objection

on behalf of the complainant is that the Tribunal should not have fixed what will be a fluctuating rate depending on the other rates but should have

fixed a definite rate; in other words, he said, what the Tribunal is empowered to fix is a rate and not a formula. We see no substance in this

contention. Consistent with their reasoning, the Tribunal very properly fixed a rate which would be correlated to the Bombay Bhadravati rate. It

was said that the special rate from Bhadravati to Bombay might be increased in the future and with it the rate from Bhadravati to Ambernath and

Kalyan would also rise. This complaint he is not entitled to make, because otherwise there may be a charge of undue discrimination.

16. The complainant's learned counsel's next argument related to the charge that the Bhadravati Bombay rate contravened Section 28, Indian

Railways Act when compared with the Bisco-Bombay rate. The grievance is based

on the following facts: From Bisco to Bombay, a distance of 1155 miles, while the tariff rate per maund is Rs. 3-4-0, the special rate is Re. 1-6-10; whereas from Bhadravati to Bombay, covering a distance of 643 miles, while the tariff rate is Re. 1-15-5, the special rate is Re. 1-3-6. The undue discrimination is said to be made out by working out the proportionate rate per maund per mile. The Tribunal, after discussing several relevant circumstances, held that the complainant's grievance was not well founded, and there was no contravention of Section 28. One such circumstance was that whereas the entire distance from Bisco to Bombay is served by the Broad Gauge, the distance from Bhadravati to Bombay is made up of about 500 odd miles upto Poona served by the Metre Gauge, and the remaining 120 miles by the Broad Gauge; and there is a difference in the working expenses of the railways for hauling one ton of goods over one mile on the Broad Gauge and one mile on the Metre Gauge. There is also the circumstance that in the Bhadravati-Bombay route the goods have necessarily to be transhipped at Poona from the Metre Gauge wagon to the Broad Gauge wagon. Apart from these and other circumstances, we think that the test proposed by the complainant is not a sound and infallible test. In the case of unequal distances, it is fallacious to draw an inference merely on an artificially worked out proportionate charge per mile. The rate between two stations covering an extent of 10 miles need not necessarily be exactly 1/10 of the rate between two stations covering 100 miles. In this view, we need not make any comment on the other ground on which also the Tribunal came to the conclusion that there was no contravention of Section 28, namely, that actually the rate from Bhadravati to Bombay is less than the Bisco-Bombay rate by Re. 0-3-4 per mile. There is, however, one other circumstance which really makes this question academic. It is admitted that the special rate from Bisco to Bombay has been cancelled from 1-4-1952 and is no longer in existence. As we have held that the Tribunal has no power to make an order for refund of overcharges, it is obvious that the complainant cannot claim any relief "in futuro" as the offending ground of discrimination has itself disappeared. It might have been a different matter if the Tribunal had power to order a refund. The contention of the complainant also fails.

17. In the result, W. P. No. 1007 of 1953 is dismissed with costs. Advocate's fee

Rs. 500. W. P. No. 961 of 1953 is allowed to this extent,
namely, that the order of the Tribunal, in so far as it made any declaration for a period before the date of the filing of the complaint, that is, from January 1951 upto the date of the filing of the complaint, is hereby quashed. This is contained in the first part of the order. There will be no order as to costs in this petition.