
(2014) 09 MAD CK 0344

In the Madras High Court

Case No : Writ Petition No. 12525 of 2011 and M.P. No. 2 of 2011

Suguna Poultry Farm Limited

APPELLANT

Vs

The General Manager Southern Railway

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Railways Act, 1989 — Section 30, 30(2), 87, 87(2)(I)

Citation : (2014) 09 MAD CK 0344

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—The petitioner has come forward with this writ petition challenging the impugned notification dated 21.04.2011 of the 4th respondent and consequently to forbear the respondents in any manner from illegally collecting the demurrage charges and Wharfage charges pursuant to the demand of the 5th respondent made in letter dated 04.05.2011.

2. According to the learned counsel for the petitioner the petitioner company booked a consignment to transport 2643 tonnes of maize on 28.04.2011 from Ranibennur (Karnataka) in a train load (Rake consisting of 42 wagons) to Irugur of Salem Division under Railway Receipt dated 28.04.2011. Further, according to the learned counsel for the petitioner, the expected date of arrival of goods at Irugur was on 02.05.2011 as the goods booked from Ranibennur to Irugur or Tiruppur Goods Sheds normally takes four days to ply 754 kms. However, on verification, they came to know that the goods arrived on 30.04.2011 at 23.30 hours. Further, according to him, since 1st May, being a May day and that no workers would be available, a request was made on 30.04.2011 that without paying any demurrage charges for 30th and 1st, the goods may be permitted to be cleared by paying normal charges and that the goods would be cleared on 02.05.2011. However, since the goods were not cleared and the rake was placed at Irugur at 23.00 hours on 30.04.2011 and released at 10.30 hours on 04.05.2011, demurrage charges for 87 hours was levied totalling Rs. 21,56,625/-

and by order dated 04.05.2011, the petitioner was asked to pay the same. According to the learned counsel, the action of the respondents is contrary to Section 30 of the Indian Railway Act, 1989, (hereinafter referred to as the Act), which is extracted below:-

"30. Power to fix rates: (1) The Central Government may, from time to time, by general or special order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may, by a like order, fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply".

and as per the said section, the Central Government alone is empowered to decide about the demurrage charges and the respondents have no power to do so. Further, the May day being a holiday, the Railways ought to have considered the request of the petitioner. The petitioner has approached this Court by filing this writ petition, as unfavourable reply was obtained from the Railways, questioning the Notification dated 21.04.2011 and to forbear the respondents in any manner collecting demurrage/Wharfage charges pursuant to the demand of the 5th respondent dated 04.05.2011 was the contention of the learned counsel for the petitioner.

3. A counter affidavit has been filed by the 4th respondent. According to the learned counsel for the Railways, in terms of Section clause (I) of sub section (2) of Section 87 of the Act, which is extracted below:-

"87. Power to make rules in respect of matters in this Chapter:-

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a)...

...

(I) generally, for regulating the carriage of goods by the railways" powers have been delegated to the Railway Board and hence they are entitled to impose demurrage charges, in view of Section 30 and 87(2)(I) of the Act cited supra. Further, according to him, the petitioner has not cleared the goods even on 02.05.2011 and only on 04.05.2011, the goods were cleared and hence no indulgence should be shown to him.

4. In reply, the learned counsel for the petitioner contended that even assuming

that the powers have been delegated and the CCM/COM/DRM are empowered to impose demurrage charges, the Additional Divisional Railway Manager has no power to issue the impugned notification dated 21.04.2011.

5. Heard both sides and perused the materials available on record.

6. It is an admitted fact that the goods have been transported from Ranibennur (Karnataka) to Irugur of Salem Division and it has reached Irugur on 30.04.2011 at 11.30 hours and the goods were cleared only on 04.05.2011. Further, in terms of Section 30(2) of the Act, which is extracted supra, the Railways are empowered to fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order, the conditions subject to which such rates shall apply. Clause (I) of sub section (2) of Section 87 of the Act, which is also extracted supra, empowers the Central Government by notification to recall the carriage of goods by Railways. Based on that, Rates Circular No. 74 of 2005 was issued on 19.12.2005. The relevant portion of which is extracted below:-

"3.0 Rates of demurrage Charge

3.1...

...

3.3. In case excessive congestion takes place at any terminal/steel plant, CCM/COM/DRM can increase the demurrage rates, even at progressively increasing rate subject to a maximum of six times of the prevalent rate. This penal demurrage rates should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period".

A perusal of the clause 3.3 would reveal that the same applies to any Terminal/Steel Plant. Hence, the contention of the learned counsel for the petitioner that the said Rates Circular applies only to Steel Plant is not correct. In terms of clause 3.3 of the said Circular, the Railway authorities are entitled to increase the demurrage charges. The impugned notification was issued only by ADRM and not by CCM/COM/DRM. While that be so, when the Act has empowered and powers have been delegated, and when the charges have been fixed by the officer concerned, since it is an administrative plan, the contention of the learned counsel for the petitioner that the impugned notification is bad in law cannot be accepted.

7. That apart, though I find force in the contention of the learned counsel for the respondents that the petitioner is bound to pay demurrage charges as determined by the Railways since the goods though received on 30.04.2011 at 11.30 hours, were cleared only on 04.05.2011, taking note of the fact that the goods arrived at mid-night on 30.04.2011 and there is a possibility of non availability of labour on 01.05.2011, being a May Day, though the petitioner did not evince any interest to clear the goods even on 02.05.2011, I am of the view that the case of the petitioner for waiving the demurrage and wharfage charges

for 1st May 2014 can be considered on merits, but subject to payment of the entire amount of demurrage charges by the petitioner for the remaining hours.

8. In view of the above, this writ petition is disposed of in the following terms:-

(i) the petitioner shall make an application for waiver of demurrage charges for 01.05.2011 to the respondents, within a period of 30 days from the date of receipt of a copy of this order

(ii) On receipt of such application, the respondents are directed to consider the case of the petitioner for waiver of demurrage and wharfage charges for 1st May 2014 alone, after affording an opportunity to the petitioner, on condition that the petitioner pays the entire amount of demurrage charges and wharfage charges for the remaining hours excluding 1st May 2011, after adjusting the amount already paid, if any.

(iii) The respondents shall accept the amount payable by the petitioner without prejudice to the rights of the parties and thereafter decide on the question of waiver of demurrage and wharfage charges.

(iv) The order for waiver of demurrage and wharfage charges for 1st May 2011 shall be passed by the respondents, within a period of thirty days from the date of payment of the demurrage and wharfage charges for the remaining hours by the petitioner.

(v) It is made clear that the authority can decide for waiver of demurrage and wharfage charges for 01.05.2011 based on the materials available including the attendance particulars of the respondent employees on that particular day.

No costs. Connected miscellaneous petition is closed.