
(1997) 05 MP CK 0037
In the Madhya Pradesh High Court
Case No : M.A. No. 626 of 1996

The Associated Cement Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Contract Act, 1872 — Section 72, 73
Railways Act, 1890 — Section 78B

Citation : AIR 1998 MP 241 : (1997) ILR (MP) 208 : (1998) 1 MPLJ 33

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Shobha Menon, for the Appellant; S.K. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This is an appeal u/s 23 of Railway Claims Tribunal Act, 1987 against the order dated 29th January, 1996, passed by Railway Claims Tribunal, Bench Bhopal, in O. A. No. 42/91. The disposal of this appeal shall also govern the disposal of Misc. Appeal No. 627/96, 628/96, 630/96, 631/96, 632/96, 633/96, 636/96, 637/96, 639/96, 640/96 and 641/96, as identical questions of facts and law arise in all these cases.

` The case of the appellant, in a nutshell, is as follows : The appellant manufactures cement. It has several factories for manufacturing cement at various places. One of its factories is situate at Jamul, Tah and Distt. Durg. It filed D. A. No. 42/91 before the Railway Claims Tribunal, Bench-Bhopal (hereinafter referred to as the Railway Claims Tribunal", for short), claiming that it was entitled to Rs. 10,983/- plus interest at the rate of Rs. 18% per annum, being the excess of freight collected by the officers and the servants of Union of India. According to appellant, the freight charged should have been on goods carried for actual distance from Jamul to Naya Azadpur i.e. 1294 Kilometers, but

the appellant was required to pay for a distance of 1314 kilometers. The payment of freight was made on the basis that goods shall be taken in accordance with the Rationalization Scheme via longer route. But in fact, they were taken by the shorter route. Thus, the respondent was bound to refund to the appellant the freight charged in excess for 21 kilometers. It was claimed that Indian Railways belonging to the respondent, did not carry the goods for 21 kilometers and, therefore, the respondent was not justified in withholding the excess of freight recovered from the appellant on the pretext that the goods shall be carried to 1315 kilometers instead of 1294 kilometers. The excess freight was calculated by the appellant in O. A. No. 42/91 at Rs. 10,983/-.

In the connected cases similar claims have been made by the appellant for different distances and to different destinations. However, in all these cases, the substance of claim is the same i.e. refund of excess freight charged for the distance not covered by the goods.

It is not necessary to deal with the case of the respondent before the Railway Claims Tribunal, in any detail, as the Railway Claims Tribunal has disposed of all these cases on preliminary point common to all these cases at the instance of the respondent. The respondent claimed that the claims case of the appellant is liable to be rejected on the short ground that appellant has not complied with the provisions of Section 78B of Indian Railways Act 1890 (hereinafter referred to as "the Act of 1890").

It may not be out of place here to mention that in all these cases the "cause of action" arose prior to coming in force the Railways Act 1989 (henceforth "the Act of 1989"). That Act came into force on 1st of July, 1990. Thus, this case and all the connected cases are being disposed under "the Act of 1890". It appears that the Railway Claims Tribunal had also adopted a similar approach.

The Railway Claims Tribunal appears to have held that the appellant was bound to serve notice u/s 78-B of "the Act of 1890" for the reasons, a notice under the aforesaid section was mandatory for the appellant who was claiming refund of an over-charge in respect of goods carried by Railways.

It is, therefore, necessary to reproduce Section 78-B of "the Act of 1890", as follows :--

"78-B. Notification of claims to refunds of overcharges and to compensation for losses.-- A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf --

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or

the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway :

Provided that any information "demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administration mentioned above by or on behalf of the person within that said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section be deemed to be a claim to the refund of compensation."

It is obvious that this section is mandatory in nature and, therefore, the claims of the appellant must fail if claim is for overcharge of freight. The service of notice u/s 78-B of "the Act of 1890" is a must, before person can claim refund of "over charge" or compensation for loss, destruction or deterioration or non-delivery of animals or goods. Now, the word "overcharge" has not been defined in "the Act of 1890". Therefore, ordinary dictionary meaning of the word has to be applied. Overcharge means charge more than what is actual value of anything. Strictly speaking, overcharge means to charge more than what is due to a thing or a transaction. The appellant in this case says the value of freight should be measured by distance to which the goods were in fact, carried and not on the hypothetical basis that goods were to be carried in accordance with the supposed rationalization scheme. The longer rationalized route was different than the actual shorter route as chalk is different from cheese. The longer route was costly to the appellant. The shorter was cheaper. The appellant was not charged more for the same thing. It was charged more for some thing different. Thus, the appellant was not charged more than the due charge for 1294 kilometers. It was charged for 1315 kilometers on a supposition that it was due. The extra charge was some thing undue, for this reason, the refund cannot be said for an "overcharge".

Here, the excess of money recovered from the appellant is not of the same "genus or class". Excess of freight charged was not permitted by law. The excess charge belonged to different "genus or class" because it was charged on a supposition that goods are liable to be carried by longer route under the rationalized scheme. It was actually not so. Thus, it falls in the category i.e. "money recovered when nothing was due". To such a case, Section 78-B of "the Act of 1890" did not apply.

It appears to this Court that it is the case of the appellant that in assuming that the goods were to be carried by longer and costlier route under the rationalization scheme, the servants and the officers of respondent made a fundamental error of fact going to the root of the contract. This error was transmitted by them to the appellant as it had bowed to their dictates on account of urgency in transportation of goods. The error so committed by both the parties to the agreement for transportation of goods related to a fact essential to the agreement. This mistake was not regarding the rate or value of transportation charges as the parties were ad idem on that issue. The fundamental mistake was

that goods have to be carried by a longer route under the rationalized scheme. Such a contract can be held to be void ab initio. The appellants, therefore, could claim refund only of excess aid and respondent can retain the freight for carrying the goods to actual distance on the doctrine of Quantum Meruit.

The result of the aforesaid discussion is that the impugned order dated 29th January, 1996 is set aside and the appeal is allowed. The case is remitted back to Railway Claims Tribunal, Bench Bhopal, with a direction that it should proceed to decide the case in accordance with law. The connected appeals are also allowed and the impugned orders in these appeals are also set aside. The Railway Claims Tribunal, Bench Bhopal, shall now proceed further in accordance with law. There shall be no order as to costs in all these cases.