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**(1958) 07 AP CK 0019**

**In the Andhra Pradesh High Court**

**Case No : Civil Revision Petition No. 470 of 1956**

The Union of India (UOI)

APPELLANT

Vs

Radhikaran Satyanarayana

RESPONDENT

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**Date of Decision : 11-07-1958**

**Acts Referred:**

Railways Act, 1890 — Section 47(1), 72(2), 72(3)

**Citation : AIR 1959 AP 17**

**Hon'ble Judges : Munikanniah, J**

**Bench : Single Bench**

**Advocate : K. Krishna Murty, for the Appellant; N. Ramamohana Rao and P.V. Govinda Rao, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Munikanniah, J.—The plaintiff in the Small Cause suit is the transferee by endorsement for value of the Railway Invoice No. 10 dated 10-9-1953 whereunder 225 bags of peas were despatched for transit from Arrah to Kakinada port. He claimed against the Union of India, owning the Southern and Eastern Railways, a sum of Rs. 562/- as damages towards the value of the stock drenched and became unfit for human consumption. The Railway Doctor, after examining the stock, certified that only 30 per cent. of 30 bags were damaged and became unfit for human consumption.

The plaintiff, therefore, confined his claim for compensation to the said 30 per cent, of 30 bags at Rs. 25/- per maund. The defendant pleaded that the goods arrived at Kakinada port on 27-9-1953, but the plaintiff took delivery only on 2-11-1953, while the plaintiff was bound to take delivery of the goods within the free time allowed without demurrage and wharfage, that the plaintiff caused undue delay and that as the goods got drenched after the reasonable time allowed for clearing the goods, the plaintiff alone has to blame himself and under Rule 31 (2) of the Goods Tariff No. 28 of the Indian Railway Conference Association, the defendant is absolved from the liability.

D. W. 2, who was the acting Chief Goods Clerk in Kakinada Port Station at the relevant period, deposed that the goods shed was in good condition and that there was heavy unprecedented rain after the goods arrived at Kakinada port. The plaintiff as P. W. I, has deposed that the stock became wet in the goods shed at Kakinada port and if the stock is wet for 15 days it gets spoiled as in this case.

The defence, therefore, is that due to the delay caused by the plaintiff in taking delivery, the goods got drenched and that though the railway has collected an amount of Rs. 844/8/0 by way of demurrage for storing the goods in their goods shed, the railways are not liable to pay the damages claimed by the plaintiff. The learned Subordinate Judge, Kakinada, who tried the suit held that Rule 31(2) is ultra vires and is repugnant to the provisions of Section 72 of the Indian Railways Act and the defendant-Railways having received the charges for demurrage, are estopped from disputing their liability as bailee and decreed the suit as prayed for. The defendant has thereupon preferred this Revision Petition to this Court.

2. The first point that arises for consideration is whether the railway administration is responsible to the plaintiff for damage done to the goods, even though the plaintiff did not take delivery of the goods promptly or within the reasonable time after the arrival of the goods at their destination. Section 72(1) of the Indian railways Act, makes the railway administration responsible as bailee under Sections 151, 152 and 161 of the Indian Contract Act.

Sub-section (3) of that Section excludes the railways from responsibility as common carriers. Therefore it is clear that the railway administration will not share any responsibility as insurers but only as bailee. Sub-section (2) of Section 72 is in the following terms :

"An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods; and

(b) is otherwise in a form approved by the Government."

It thus lays down that limiting of the responsibility of the railway administration could be by means of an agreement with the bailor. If, therefore a specific agreement is entered into by the bailor with the railway administration to the effect that the goods consigned to the railways should be taken delivery of within the free time allowed for demurrage and wharfage on railways, the responsibility of the railway administration would cease after the time so limited by that agreement.

It may not also be wrong to say that any collection of demurrage by the railway administration on account of the delay caused by the consignee in taking delivery of the goods would not by itself cast further responsibility on the railway administration u/s 72 of the Indian Railways Act.

When such is the case, the crucial point that arises for consideration is whether by framing Rule 31, of the General Rules, the railway administration limits its liability even though a specific agreement has not been entered into between the bailor and the bailee as contemplated u/s 72 , Sub-section (2). The provisions of Rule 31, in so far as they are relevant, are as follows :

"Responsibility of the Railway for goods : The Railway Administration hereby gives public notice :

(1) That they are not accountable for any articles unless the same are booked and a receipt for them given by their clerk or a agent, and that when the articles are so accepted for conveyance, the responsibility of the Railway for the loss, destruction or deterioration of the articles is Subject to the provisions of Sections 72 and 74-A of the Indian Railways Act IX of 1890.

(2) That in respect of goods not removed from railway premises at station of destination within a reasonable time, the railway is not liable in any respect for any loss, destruction of or damage to such goods, arising from whatever cause notwithstanding that the railway may have warehouse or otherwise kept the goods and notwithstanding that the railway shall be entitled to be paid the authorised charges for goods so left on their premises. Normally, the free time allowed for demurrage and wharfage on railways should be considered as reasonable time for this purpose."

The purpose of Sub-rule (1) of Rule 31 as could be gathered, is mainly to make it explicit that the liability of the railway is only in regard to the goods to be carried by railway and therefore the consignor has to book and take a receipt therefor. This sub-rule does not appear to be calculated to repudiate the liability of the Railway administration arising under the provision of Section 72 or Section 74A of the Indian Railways Act.

It does not change or alter the extent, scope or nature of the responsibility of the railway for the loss, destruction or deterioration of the articles as fixed under the Indian Railways Act. In Sub-rule (2), the railway administration seeks to limit its responsibility as warehousemen to the period from the time of booking of the goods to the free time allowed for demurrage and wharfage to the consignee before delivery of the goods to him.

What is sought to be achieved by framing this rule is that though demurrage and wharfage is chargeable after the time within which the consignee is to take delivery of the goods, no responsibility thereafter exists for the railway administration to warehouse and retain the goods at the destination on behalf of the consignee or the owner.

Certainly the reason for this rule becomes clear when it is understood that a carrier need not warehouse the goods for the consignee or owner beyond the actual time required for serving the specific purpose and that any attempt by the consignee or owner to palm off the responsibility for loss, damage or destruction

to the railway administration even though the delay is attributable to the owner has to be effectively checked. Thus understood, Rule 31 would fall within the ambit of the power conferred, on the Government to frame rules u/s 47, Sub-section (1) clause (f).

3. The decisions cited at the Bar may now be noticed. In *Secretary of State v. Har Kishan Das-kura Mal*, ILR 7 Lyh 370 : (AIR 1926 Lah 575 (2)) (A), the plaintiff, who was the consignee, failed to take delivery of goods which consisted of bags containing opium till 10-7-1920 though the goods arrived at their destination on 3rd July. On that date the consignee refused to take delivery as he alleged the opium was damaged by rain. The railway authorities thereupon sold the bags by auction on 1-12-1920 and appropriated the proceeds towards demurrage.

The trial Court disallowed the plaintiff's claim for value of the goods, but granted him a decree for the price for which the bags had been sold minus the sum payable on account of demurrage. The appeal against this decision was allowed by the District Judge; but the High Court in reversing the judgment and decree of the District Judge, preferred to adopt the reasoning of the decision of the Allahabad High Court reported in *B.N.W. Railway Co. and Another Vs. Mul Chand*, which held that ;

"the consignee of goods sent by rail is bound to take delivery thereof within a reasonable time. If by his own laches he omits to do so, he cannot hold the railway company liable for any loss or damage which may accrue. Different considerations would arise if there were any evidence to show an agreement on the part of the railway company to act as warehousemen; but the mere fact of the company charging demurrage would not necessarily give rise to such an implication."

According to Zafar Ali and Addison, JJ., who decided this case at p, 374 (of ILR Lah) : (at p. 577 of AIR) :

"It is not the business of the Railway administration to work as a warehouseman or a bailee for hire. Its proper function is that of a public carrier and it is only in connection with the performance of its duty as a carrier that it is held responsible as a bailee.

The duty as a carrier is discharged on the arrival of the goods at their destination and it is not for the Railway Administration to keep the goods after that as a warehouseman or a bailee for hire. The consignee on the other hand is expected to take delivery within a time fixed by the rules and if he neglects to do so the Railway Administration can claim demurrage and not hire."

The facts of this case also reveal that there was a specific refusal by the consignee to take delivery of the goods and the holding of the goods thereafter by the railway from 10-7-1920 has been the subject-matter of consideration by the Bench which decided the case.

In *B. N. W. Ry. Co. v. Firm Dassundhi Mal Bishambar Das*. AIR 1928 Lah 166, a

Division Bench of the Lahore High Court consisting of Shadi Lal, C. J. and Bhide, J., considered the case of the liability of: the railway administration for goods damaged during transshipment but refused to be taken delivery of by the plaintiff on the ground that the railway officials declined to make a note as regards the condition of the goods in the railway registers after the arrival of the goods at the destination.

There it was found that the plaintiff refused to take delivery under a mistaken notion of his rights and that the railway was not responsible for the consequences of his refusal to take delivery. The learned Judges point out at page 170 that :

"the liability of the railway as "Carriers" terminated when the plaintiff refused to accept delivery. In the absence of any agreement to that effect, the railway cannot be held liable even as ware-house-man thereafter. The mere fact that the railway chided demurrage does not give rise to any implication that the railway consented to act as warehouse-man" and rely upon the observations in *Chapman v. Great Western Ry. Co.*, (1880) 5 QBD 278; 49 LJQB 420 (D) which has been approved in ILR 7, Lah 370: (AIR 1926 Lah 575 ) Achhru Ram, J. in deciding the case reported in *Vidya Sagar v. Governor-General-in-Council*, AIR 1949 Lab 166 dealt with the claim alleged by the plaintiff who delivered three baskets of bangles to be taken to Lahore and delivered to themselves.

The consignment arrived at Lahore on 8-10-1941. On 18-11-1941, the railway receipt was presented by the plaintiffs when with the exception of six pairs of bangles the rest of the goods were found missing. The plaintiffs, therefore, sued for compensation for non-delivery of the remaining goods. The defence contended that the railway administration is not liable if the plaintiffs did not ask for delivery within 24 hours after the arrival of the consignment by reason of the provisions of Rule 28(2) of Goods Tariff Part I.

In agreeing with the Judge of Small Causes Court, Lahore, who dismissed the suit, Achhru Ram, J. after noticing that the plaintiffs allowed a period of about six weeks to expire before they asked for delivery of the goods, observed at p. 167:

"The liability of the railway administration ..... remained in force only for the period during which the goods remained in transit and for a reasonable time "after their arrival at the destination. After the expiry of such reasonable time there was no legal obligation imposed on the railway administration to look after the goods or to account for them."

This conclusion, the learned Judge held, flows independently altogether of the provisions of Rule 28 (2) relied upon by the railway administration, The application of the principles of the decisions in *B.N.W. Railway Co. and Another Vs. Mul Chand*, to a case of a plaintiff who failed to take delivery of the goods within a reasonable time is indeed based upon the consideration that failure to take delivery within a reasonable time also tantamounts to refusal.

4. In another set of cases beginning with *Governor-General-in-Council v. Jagannath*, AIR 1943 Lah 244 , Dhawan. J. considered the further condition laid down in Rule 28 (2) of the Goods Tariff, Part I-A and at p. 274 held that :

"the further condition laid down in Rule 28(2) that the railway is not liable in respect of any loss, destruction, deterioration or damage to such goods arising from whatever causes if the goods are not removed within the time allowed free of demurrage and wharfage is not a condition affecting delivery. It is a condition exempting the railway from its liability for loss. Such a condition cannot be held to be valid because it not only exceeds the rule making power of the railway but is also inconsistent with the liability imposed on the railway u/s 72 , Railways Act."

He concludes by saying:

""a bailee may contract himself out of the obligation u/s 151, Contract Act, but it is not open to him to put an end to his obligation by a rule made by himself which also is beyond his rule making power."

and that :

"there is nothing in Section 47 which empowers the railway to frame rules exonerating the railway from its liability as bailee, nor would such a rule be consistent with the responsibility of the railway u/s 72 of the Act."

With respect to the learned Judge. I am unable to see that any part of Rule 28 (2), which correspond to Rule 31 (2) referred to above, denies the liability of the railway administration as bailee u/s 72 . As for the making of the rules u/s 47(1) (f), the terms and conditions contemplated therein may also, in my opinion, comprise the conditions that the railway administration will act as warehousemen but retain the goods thereafter on other terms for the defaulting consignee on payment of demurrage.

Viewed in this light, the rule framed cannot be one exonerating the railway from its liability as bailee as long as it acted as a carrier or warehouseman. A Bench of the Calcutta High Court in *Chhatumull Chowthmull Vs. Union of India (UOI)*, had to consider the effect of the wording in Section 47. Sub-section (1), Clause (f), with reference to Rule 3 of the Rules for wharfage.

It came to the conclusion that the collection of wharfage created a contract of bailment and that when the charges are realised from the consignee by the railway administration, the latter could not repudiate the liability as warehousemen. It therefore held that the plaintiff could succeed in such a case, but did not consider the effect of Rule 31 in arriving at this conclusion.

In *Union of India v. Firm of M/s. Parikh Shankarlal Jethalal*, AIR 1956 Nag 255 , the Nagpur High Court considered Rule 29 Sub-rule (2) in Goods Tariff, Part I-A, which is replaced by R, 31 and the liability of the railway administration for destruction of the goods consigned by the plaintiffs. As the fire gutted the railway

goods shed and there was consequent loss to the goods, the plaintiffs sued the railway administration.

The defence was that the consignees having delayed in applying for the delivery were not entitled to any damages at all and relied upon the said rule. The learned Judges there assumed that Rule 29(2) reducing the liability is not ultra vires, but held that the administration have not discharged their obligation in the matter of laying all the relevant material before the Court and dismissed the appeal. However, at p. 256 it is observed:

"Even if the Railway Administration ceased to be a bailee because of the delay by the consignees in taking delivery of the consignments they could not by virtue of the impugned rule, be free from all responsibility in the matter. After the lapse of reasonable time the Administration, though no longer bailees became under the rule warehousemen and as such liable for the damage caused by the negligence of their employees."

I must confess that it is rather difficult for me to follow this reasoning so as to make the railway administration the warehousemen, though they are no longer bailees u/s 72 of the Indian Railways Act. It is also pertinent to note that in this connection, the administration suffered the goods to be left at the station only on account of the default committed by the consignee.

No other cases have been cited before me. It is clear that the weight of authority is in favour of holding that charging demurrage by itself would not necessarily give rise to an implication that the railway administration acted as warehousemen, and that having regard to Section 47, Sub-section 1 Clause (f), Rule 31(2) is not outside the powers of the Government.

5. It follows from the aforesaid discussion that the plaintiff who had defaulted to take delivery of the consigned goods within a reasonable time after the arrival of the goods at the destination, is not entitled to succeed if it is not known what the damage caused to the goods is, when the goods remained with the railway administration after hooking and before the free time allowed to take delivery without paying demurrage or wharfage.

The result is, the petition has to be allowed and the suit dismissed. As to costs, the fact that demurrage has been collected by the railway administration and that the rain deterred either party to take the necessary precaution will, in my opinion, justify an order that both parties should bear their own costs.