
(2013) 05 MP CK 0115

In the Madhya Pradesh High Court

Case No : W.A. No's. 611, 613, 616, 620, 628, 645, 654, 661, 809, 810 and 815 of 2012

Union of India and Others

APPELLANT

Vs

M/s. Maihar Cement

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166(3)
Railways Act, 1989 — Section 106, 106(3), 2, 2(32), 32
Railways Board Act, 1905 — Section 1, 2, 3

Citation : (2013) 3 MPJR 118

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.; M.A. Siddiqui, J

Bench : Division Bench

Advocate : N.S. Ruprah, with Mr. Atul Choudhary, for the Appellant; Aditya Adhikari, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. These appeals are arising out of the common order dated 25.4.2012 passed by writ Court in W.P. No. 469/2009 and other, by which all the connected matters were decided by the order. Considering the aforesaid, we propose to decide all the matters by this common order. For the sake of convenience the facts are taken from W.A. No. 645/2012. The controversy involved in all these cases is short one, in respect of applicability of a notification issued by the Railway Board dated 11.1.1995, by which the Railway Board had directed to delegate full powers to the General Manager to settle time barred compensation claims for refund of overcharges. In these cases the question involved is for consideration of the settlement of time barred compensation claim of the respondent for refund of the overcharges.

2. The sole contention raised by Shri N.S. Ruprah, learned counsel for the appellant/railways, is that the aforesaid circular is contrary to the provisions as contained in Section 106 of the Indian Railways Act, 1989 (hereinafter referred

to as "the Act of 1989") and no direction could not have been issued by the Railway Board directing the appellant herein to consider time barred compensation claims for refund of overcharges. That Section 106 of the Act of 1989 bars for a claim for compensation and refund of overcharges, if it is not noticed within a period of six months from the date of delivery of goods at the destination station. That the writ Court has erred in directing the appellants for consideration of claims of the respondent for refund of time barred overcharges. He has placed reliance upon two decisions of Apex Court, one reported in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, s and another judgment reported in Commnr. of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida, It is submitted by him that the order passed by the writ Court may be set aside.

3. Shri Aditya Adhikari, learned counsel for the respondent supported the order passed by the writ Court. It is submitted by him that the Circular dated 11.1.1995 was issued by the Board, in exercise of its power vested under the Indian Railway Board Act, 1905 (hereinafter referred to as "the Act of 1905"), to delegate powers to the General Manager to settle time barred compensation claims for refund of overcharges. That this order was issued by the Board in exercise of its powers vested in it u/s 3 of the Act of 1905 and the respondent were entitled to lodge their claims before the General Manager to consider and decide time barred compensation claims for refund of overcharges. That Section 106 of the Act of 1989 is applicable to the railway administration and u/s 2(32) of the Act of 1989, the Railway Board is not included as railway administration. Shri Adhikari while placing reliance on the definition as contained in Section 2(32) of the Act of 1989, submitted that Section 106 is applicable to the railway administration not to consider the time barred claims, while the Board is not included in the railway administration. The Railway Board has issued the aforesaid directions in exercise of its power u/s 3 of the Act of 1905. It is submitted by Shri Adhikari that learned Single Judge has rightly considered the matter and interpreted the Circular dated 11.1.1995 and has also rightly issued the directions to the appellants herein to consider the claims of the respondent. It is submitted by him that these appeals are without merit and the same may be dismissed.

4. To appreciate rival contentions of the parties, it would be appropriate to see the factual position. The dispute is in respect of refund of overcharges which were claimed by the respondent beyond the period of six months from the date of delivery of goods at the destination station. The Board had issued a Circular on 11.1.1995, by which the General Managers were delegated the full powers by the Board to settle time barred compensation claims, in consultation with the FA and CAO in respect of the monitory limits, for refund of overcharges. It is also not disputed that the aforesaid order has been subsequently withdrawn by the Board by another order dated 22.2.2010. In the light of the aforesaid factual position, the case may be examined.

5. Firstly, the relevant provisions, which are necessary for deciding these appeals may be referred. Section 106(3) of the Act of 1989 provides thus:-

106. Notice of claim for compensation and refund of overcharge -

(1).....

(2).....

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor, has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

Section 2 sub-section 32, which is referred reads thus:-

2. Definitions-In this Act, unless the context otherwise requires -

(1).....

(2).....

.....

.....

(32) "railway administration", in relation to, -

(a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;

Sections 1, 2 and 3 of the Act of 1905, which are referred read thus:-

1 - Short Title and Construction - (1) This Act may be called THE INDIAN RAILWAY BOARD ACT, 1905; and

(2) It shall be read with, and taken as part of, the Indian Railways Act, 1890.

2. Investment of Railway Board with powers under Indian Railways Act, 1890. -

The (Central Government) may, by notification in the (Official Gazette), invest the Railway Board, either absolutely or subject to conditions, -

(a) with all or any of the powers or functions of the (Central Government) under the Indian Railways Act, 1890, with respect to all or any railways and

(b) with the power of the officer referred to in section 47 of the said Act to make general rules for railways administered by the Government.

3. Mode of signifying communications from the Railway Board. - Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction, to be given or signified on the part of the Railway Board,

for any of the purposes of, or in relation to, any powers or functions with which it may be invested by notification u/s 2, shall be sufficient and binding if in writing signed by the Secretary to the Railway Board, or by any other person authorized by the said Railway Board to act in its behalf in respect of the matters to which such authorization may relate; and the said Railway Board shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

The Circular dated 11.1.1995 of which interpretation has been made by the writ Court reads thus:-

Government of India

Ministry of Railways

Railway Board

No. TCIV/94/495C/Policy Matters

New Delhi dt. 11.1.1995

The General Manager/Refunds

All Indian Railways

Sub: Delegation of powers regarding Settlement of time barred refund cases.

Please refer to Board's letter No. 94/TC/III/3/1 dt. 12.10.1994 which is in supersession of Board's letter No. 77/TC.III/94/4 dt. 20.06.1977 under which Board have decided to delegate full powers to General Managers to settle time barred compensation claims in consultation with the FA & CAO irrespective of the monetary limit.

Since the instruction issued on 20th June 1977 were made applicable in settlement of time barred claim for refund of overcharge also vide Board's letter No. CIV/77/4950/22 dt. 02.11.1977. It is clarified that the delegation of power referred to in Board's letter no. 94/TC.III/3/1 dt. 12.10.1994 extends not only to time barred claims for compensation but also to settlement of time barred claims for refund of overcharge.

The receipt of this letter may please be acknowledged.

(It disposes of Eastern Railway's letter No. CC/RG/(Policy)/94 dt. 14.11.94).

- sd -

(H.C. Punia)

Executive Director, (P.G.)

Railway Board

6. It is not in dispute before us that Section 106 creates a bar to claim

compensation against the railway administration for refund of overcharges within six months from the date of delivery of such goods at the destination station. The aforesaid bar is against the railway administration and Section 2 sub-Section 32 defines the railway administration. As defined in the aforesaid section a Government railway, means the General Manager of a Zonal Railway. In the definition of railway administration, Board has not been included.

7. The Act of 1905 was enacted with the aims and objects for investing the Railway Board with the power and functions of the Governor-General in Council (now Government of India), under the Indian Railways Act, which can, as that Act stands, be delegated the powers to make general rules as to Government railways, which can, as Section 47 of the Act stands be exercised only by an officer to be appointed by the Central Government. The Act provides for investing the Railway Board with certain powers or functions under Railways Act 1890. The pre-amble of the Act further provides that the Railway Board has been constituted for controlling the administration of railways in India and to provide for investing such Board with certain powers or functions under the Indian Railways Act and for this purpose the Act was enacted.

8. Section 1(2) provides that it shall be read with, and taken as part of, the Indian Railways Act, 1890. Section 2 provides that the Central Government by notification in the Official Gazette invest the Railway Board, either absolutely or subject to conditions that with all or any of the powers or functions of the Central Government under the Indian Railways Act, 1890, with respect to all or any railways and with the powers of the officer referred to in Section 47 of the Act to make general rules for railway administered by the Government. The notifications were issued in the Gazette of India, 1905, Part-I, page 232; 1906 Part-I, page 927; 1907, Part-I, page 273 and 1908, Part-I, page 169. Section three provides mode of signifying communications from the Railway Board. Any direction on the part of the Railway Board for any purpose of, or in relation to, any powers or functions with which it may be invested by notification u/s 2, shall be sufficient and binding if in writing signed by the Secretary to the Railway Board. The aforesaid provisions are very specific and gives extraordinary powers to the Railway Board for administration of the railways and the Central Government has invested the Board with the extraordinary powers.

9. Now in the light of the aforesaid provisions the Board's Circular dated 11.1.1995 may be looked into. Section 106 of the Indian Railway Act creates a bar for claim, for refund of the overcharges, if it is not noticed within a period of six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later. To meet out any difficulty in respect of refund of the overcharge, the Railway Board had issued notification dated 11.1.1995 delegating the powers to the General Manager to settle time barred compensation claims in respect of refund of overcharges. This power was exercised by the Railway Board under the provisions of the Indian Railway Board Act, 1905 to meet out the exigency for refund of the overcharges. Though, it is

contended by Shri Ruprah, learned counsel for the appellant/Railway, that in the light of Section 106 of the Act of 1989 no orders could have been issued by the Board, which were against the statute and any circular issued by the Board contrary to the provisions of Section 106 of the Act of 1989 could have been ignored. But this argument appears to be without any substance. When the Railway Boards have been vested with extraordinary powers under the Indian Railway Board Act, 1905, and exercising such powers, to meet out such exigency if the Board had issued such a circular, no fault is found on its part. Apart from this, such order has now been withdrawn by the Board on 22.2.2010. But present matter relates to the period during which the circular was in force.

10. Learned Single Judge has considered all these aspects in the impugned order and has found that such claim could have been considered by the General Manager in the light of the powers vested by the Board in the matter and directed the appellants herein to consider the claim of refund of the overcharges by the appellants. In the said order no fault is found.

11. So far as the judgment relied upon by learned counsel for the appellant in the case of Vinod Gurudas Raikar (supra) is concerned, it was a case of condonation of delay. Claim was lodged u/s 166(3) of Motor Vehicles Act, 1988 and the Apex Court held that there was no provision of condonation of delay, so delay could not have been condoned in absence of any specific powers in this regard. In the case of Commissioner of Customs, Central Excise Noida (supra) the question was in respect of condonation of delay in filing the reference application and Apex Court while considering the question held that in absence of any specific powers in this regard delay could not have been condoned u/s 5 of the Limitation Act. The aforesaid cases are not applicable in the present case in the light of factual position of the present case.

12. From perusal of the provisions as contained in the Indian Railway Board Act, 1905, we find that the Railway Board was having power and jurisdiction to issue such circular and the circular which was issued by the Board was within its jurisdiction inspite of specific powers as contained in Section 106 of the Act of 1989. If any claim was lodged when the Circular dated 11.1.1995 was in existence, that claim could have been considered and decided for refund of overcharges by the appellant.

13. In view of the aforesaid, we do not find any error in the order passed by learned Single Judge.

14. At this stage, learned counsel for the appellants/railway submitted that as Circular Dated 11.1.1995 has been withdrawn by another Circular dated 22.2.2010 then any claim beyond the aforesaid period is not to be considered. Shri Adhikari, learned counsel for the respondent has no dispute in this regard because the aforesaid Circular dated 11.1.1995 was withdrawn by another Circular dated 22.2.2010. Any claim filed after 22.2.2010 could not have been considered on the basis of the Circular dated 11.1.1995, which was already

withdrawn, with this clarification the appeals are found without merit and are dismissed with no order as to costs.