
(2005) 07 MAD CK 0012

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 303 of 1997

Union of India

APPELLANT

Vs

M/s. Jayakrishna Flour Mills (P) Ltd.

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Railways Act, 1989 — Section 106, 106(1), 106(2), 192, 192(a)

Citation : (2005) 07 MAD CK 0012

Hon'ble Judges : R. Balasubramanian, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : V.G. Suresh Kumar, for the Appellant; S. Subbiah, for the Respondent

Judgement

R. Balasubramanian, J.—The Railway administration is before this court in this appeal challenging the award of compensation quantified at

Rs. 1,01,510/- in favour of the respondent on an application taken out by him bearing O.A. 1/276/1994. Having regard to the point of law

involved, we are of the opinion that it is unnecessary to state the entire facts. Suffice it to state that 238 bags of wheat valued at Rs. 1,01,510/-

covered under two invoice Nos. 90 and 91, each for 119 bags were entrusted to the railway administration at Kota in Rajasthan for onward

journey to Madurai. There is no dispute that the entrustment at Kota was on 17.11.1992. Stating that the entire 238 bags of wheat were not

delivered at the place of destination, the consignee went before the Railway Claims Tribunal, Madras Bench, claiming the said sum of Rs.

1,01,510/- being the value of 238 bags of wheat not delivered. The railway, among other things, contested the claim on the ground that no notice

of claim for compensation, as contemplated u/s 106(1) of the Railways Act, 1989, hereinafter referred to as 1989 Act, was issued and, therefore,

the claim is not maintainable. This legal objection was not accepted by the Tribunal and finding that there is non delivery and the value having been

established, the Tribunal granted the compensation as prayed for. As stated earlier, it is this judgment that is in challenge in this appeal.

2. Heard Mr. V.G. Suresh Kumar, Learned Counsel for the appellant and Mr. S. Subbiah, Learned Counsel appearing for the respondent. Mr.

V.G. Suresh Kumar, Learned Counsel appearing for the appellant would submit that the notice of claim for compensation stated to have been

issued as per Ex. A. 7 was not served on the railway administration within the period of six months as contemplated under Sub-Section (1) of

Section 106 of the Railways Act 1989 and, therefore, on that short ground the claim must be rejected. Mr. S. Subbiah Learned Counsel appearing

for the respondent, on the contra, would submit that having regard to the date of entrustment namely 17.11.1992, and Ex. A.7, which is shown to

have been issued on 15.05.1993, the said date falling within the period of six months from the date of entrustment, it must be held that a notice as

contemplated u/s 106 of the Railways Act 1989 had been issued. Learned Counsel would then submit that any information demanded or enquiry

made in writing from or any complaint made in writing to, any of the Railway Administration mentioned in sub-section (1) regarding non-delivery

etc., shall for the purpose of section 106(1) of the Act be deemed to be a notice of claim for compensation. Relying on the above referred to

provision under sub-section (1) of section 106 of the 1989 Act, Learned Counsel for the respondent would submit that as the claimant by his letter

dated 13.04.1993 addressed to the Chief Goods Supervisor, Southern Railway, Goodalur Nagar Goods Shed, Madurai and by letter dated

02.05.1993 addressed to the Divisional Manager, Southern Railway, Madurai, had complained about non-delivery, it may be held that those

notices shall be deemed to be notices of claim for compensation as contemplated u/s 106(1) of the 1989 Act. Learned Counsel also submitted that

the provisions of the Railways Act regarding the notice of claim for compensation and the persons on whom notice had to be served must be read

liberally in favour of the citizen and for this purpose he relied upon judgments of the Supreme Court reported in AIR 1969 S.C. 23 (Niranjanlall vs.

Union of India) and AIR 1979 S.C. 1144 (Madras Post Trust vs. Hymanshu Internation). Then relying upon a judgment of the Allahabad High

Court reported in AIR 1981 Allahabad 18 (Union Northern Railway and another vs. Firm Anis Khan and others), the Learned Counsel would

submit that the enquiry contemplated u/s 106(2) of the Railways Act is, in the nature of things, not expected to be made to the executive head of

the railway administration concerned. If we understand the submission of Mr. S. Subbaiah, basing his reliance on the judgment of the Allahabad

High Court referred to above, it means that any information demanded or an enquiry made in writing to anybody in the railways administration

would amount to a notice of claim for compensation u/s 106(1) of the Act.

3. Having regard to the submission made by the Learned Counsel on either side, we carefully went through the case laws cited as well as the

provisions of law. Clause 32 of Section 2 of the Railways Act defines the words ""Railway Administration"" as in relation to ...

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

This definition leaves no doubt at all and, therefore, wherever the expression Railway Administration occurs in the Railways Act 1989 it only

means the ""General Manager of a Zonal Railway"". Section 192 does not dilute this definition. u/s 192 of the Act, any notice or other document

required or authorised by this Act to be served on a railway administration may be served on, in addition to the General Manager, any of the

railway servant authorised by the General Manager. Having Section 2 (32) and Section 192 of the Railways Act in mind, when we read Section

106 of the Railways Act, though under that section a notice of claim for compensation has to be served on the railway administration, which means

only the General Manager, yet, in view of the provisions contained in Section 192 of the very same Act, in addition to the General Manager, the

notice may be served on any of railway servant authorised by the General Manager. Mr. V.G. Suresh Kumar, Learned Counsel appearing for the

railways administration would submit that the Chief Claims Officer of the Zonal railways namely, Southern Railway in this case, is authorised by the

General Manager to receive claim forms. Therefore it is clear from our above discussion that a notice of claim for compensation u/s 106 of the

1989 Act can be served on the General Manager of the Zonal Railway or on the railway servant authorised by the General Manager. In this case

there is no dispute that the Chief Claims Officer of the Zonal Railway namely,

Southern Railway in this case, is authorised by the General Manager to receive claim forms. On that admitted position, we cannot find fault with Ex. A.7 notice sent by the consignee to the Chief Claims Officer of the Southern Railway at Chennai. We must state here itself that the communications dated 13.04.1993 and 02.05.1993 marked in this case as Exs. A.4 and A.6 were not addressed either to the General Manager of Southern Railway or the Chief Claims Officer of the Southern Railway at Chennai. In other words, Exs. A.4 and A.6 are not addressed to the General Manager and they are also not addressed to a person authorised by the General Manager in that behalf. Section 192 of the Railways Act, 1989, authorises only such mode of service. Reading section 106 as a whole and section 192 of the Railways Act, 1989 it is clear to our mind that if any demand or enquiry made u/s 106(2) of the 1989 Act is deemed to be a notice of claim for compensation, it must be proved beyond doubt that the said enquiry or demand was made either to the General Manager of the Southern Railway or to a person authorised by the General Manager in this behalf. When a Statute prescribes the manner in which an action has to be taken, it must be taken only in that manner and in no other manner at all. Since Exs. A.4 and A.6 are not addressed either to the General Manager or to the Chief Claims Officer of the Southern Railway authorised in this behalf by the General Manager, it cannot be held legally that the notice issued under Exs. A.4 and A.6 shall be deemed to be a notice of claim for compensation u/s 106 of the 1989 Act.

4. Let us now examine whether the sending of Ex. A.7 dated 15.05.1993 to the Chief Claims Officer is in strict compliance of the requirement of section 106(1) of the 1989 Act? The entrustment of the consignment was admittedly on 17.11.1992. Ex. A.7, on its apparent tenor, shows that it is dated 15.05.1993. Mr. S. Subbiah, Learned Counsel for the consignee would submit that the mode of service of notice on the railway administration is prescribed u/s 192 of the Act. According to him, u/s 192(c) of the Act, if a notice is sent by registered post to the office address, then the date of entrustment of the mail with the post office would be taken as the date of service. Therefore, the submission is that Ex. A.7, on its apparent tenor showing the date as 15.05.1993, it must be understood that it was delivered so on the same day in the post office. To show that the

letter dated 15.05.1993 is left with the post office on 15.05.1993 itself, Learned Counsel relies upon a postal receipt as well as the

acknowledgment issued. At the back of the postal receipt, we find a postal seal as 13.09.1993. Therefore, the postal receipt by itself does not

indicate that the said letter was delivered in the post office on 15.05.1993. No doubt there is an acknowledgement card issued having the

addressee's name as Chief Claims Officer, Zonal Railway, and the addressor's name is that of the consignee. The only postal seal we have in the

acknowledgement due is 11.06.1993. Therefore, assuming for a minute without holding in favour of the respondent, on the submission made by

him based on Section 192(c) of the Railway Act, we find that there is nothing on record to show that Ex. A.7 notice was handed over at the post

office on 15.05.1993 itself.

5. u/s 194 of the Railways Act, 1989, a Statutory presumption of service is created when a notice is served by post. To have the benefit of this

Statutory presumption, the respondent has to prove that the notice was properly addressed and registered. Passing here for a minute, we find that

Ex. A.7 is properly addressed. We have already found that there is nothing on record to show that Ex. A.7 dated 15.05.1993 was registered on

the same day. u/s 194, the notice must not only be properly addressed but it must be registered. If both the requirements referred to above are

satisfied, then the said notice shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary

course of post. Since one of the essential requirements namely, absence of details regarding registration on 15.05.1993 is absent, there is no

question of a Statutory presumption in favour of the respondent that the notice would have been served in the ordinary course of post, it is needless

to state that the presumption u/s 194 of the Railways Act is a rebuttable presumption. The acknowledgement due available in this case namely, Ex.

A.8, contains the postal seal dated 11.06.1993. Therefore there is definite documentary evidence to show that Ex. A.7 was served on the

addressee only on 11.06.1993 and this solitary fact rebuts the Statutory presumption, if any, available to the respondent. A reading of sections

106, 192 and 194 of the Railways Act, in our opinion, would make it abundantly clear that the notice of claim for compensation must be actually

served on the railway administration.

Section 106 of the Railways Act states that, "a person shall not be entitled to claim compensation etc. unless a notice thereof is served by him

or on his behalf, etc.....

Therefore, Section 106 of the Act is very clear that there must be actual service of notice of claim for compensation. Our conclusion on the

interpretation of Section 106, namely actual service on the addressee, gets strengthened by Sections 192 and 194 as well. Section 192 of the

Railways Act contemplates three modes of service. The opening words of Section 192 are.

Any notice or other document required or authorised by this Act to be served on a railway administration may be served.....

Under the three modes mentioned therein, the first mode is by delivering it to him; the second mode is by leaving at his office and the third and last

mode is by registered post to his office address. In addition to Section 106, Section 192 of the Railways Act, 1989, also emphasis on actual

delivery. If actual delivery is not intended, then there is no need in Section 192 of the Act to say that (a) by delivering it to him or (b) by leaving at

his office. The section must be read as a whole and it cannot be divided into as many parts as possible to give each part a different meaning.

Section 192(c) of the 1989 Act must be read with section 194 of the same Act. We have already stated in the earlier portion of this order that to

avail the benefit of the Statutory presumption u/s 194 of the Act, the mail must not only be properly addressed but also registered. Section 194 of

the Act contemplates deemed service. Therefore it is clear that reading section 192(c) of the Act with section 194 of the same Act, if the claimant

had established not only that the mail was properly addressed but also registered, then a deemed service on the addressee in the ordinary course

of post is created. Under these circumstances, we have no doubt at all that actual service or deemed service as referred to above of a notice of

claim for compensation is necessary and it must be established as a fact.

6. The Railways Act, 1989, repealed the Indian Railways Act, 1890. The Supreme Court in the case reported in AIR 1969 SC Pg. 23

(Niranjanlall Vs. Union of India) and the Allahabad High Court in the case reported in AIR 1976 Allahabad Pg. 491 (Union of India vs. Firm B.P.

Dass) were dealing with cases arising under the Old Act. Therefore before considering the impact of those two judgments to the case on hand, we

would like to refer the relevant provisions in the Old Act. Under clause 6 of section 3 of the Old Act, "Railway Administration" or "administration

in the case of a railway administered by the Government means, the Manager of the Railway and includes the Government and in the case of

railway administered by "Railway Company" means the "Railway Company". We have already referred to the definition of "Railway

Administration" under clause 32 of section 2 of the New Act. Therefore under the Old Act, "Railway Administration" is defined to mean in the case

of a Government Railway, the Manager of the Railway and includes the Government. But under the New Act, the "Railway Administration" in the

case of a Government Railway is defined to mean, the General Manager of the Zonal Railway only. In AIR 1969 SC Pg. 23, the finding is that,

Bengal and Assam Railway did not have any officer of the designation of a Manager and therefore service of notice of claim on the Chief

Commercial Manager (Claims and Refunds) was held to be sufficient compliance of section 77 of the Old Act. The above referred to judgment of

the Supreme Court, in our respectful opinion, would not help us in deciding the controversy on hand, in view of the difference in the Statutory

provisions and on facts. Section 78-B of the Old Act, as it stood at the time when the Supreme Court decided the case, states that "a person shall

not be entitled to claim compensation unless his claim to refund or compensation has been "preferred" in writing by him or on his behalf to the

Railway Administration within six months from the date". The expression used in the Old Act is "preferring" a claim while u/s 106 of the New

Act, a claim notice ought to be "served" on the person mentioned in that section. There is a lot of difference between the word "preferred

occurring in section 78-B of the Old Act and the word "served" occurring in section 106 of the New Act. Section 140 of the Old Act prescribes

the mode of service of notice on the Railway Administration. That corresponds to section 192 of the present Act. u/s 140(a) of the Old Act,

delivering" the notice to the person mentioned therein is essential and u/s 192(a) of the New Act also, there is a stress on delivery. Section 140(b)

of the Old Act corresponds to section 192(b) of the New Act. The requirement of section 140(c) of the Old Act is more or less similar to the

requirement of sub section (c) of section 192 of the New Act. Section 142 of the Old Act corresponds to section 194 of the New Act. Therefore

we have no doubt at all that the judgment of the Supreme Court referred to above is in the context of the proviso to section 78-B of the Old Act

as it stood; section 140 of the Old Act and the definition of "Railway Administration under sub-section 6 of section 3 of the old Act. In AIR 1979

SC Pg. 1144 (Madras Port Trust Vs. Hymanshu International) the Supreme Court clearly held that "if a Government or a public authority takes up

a technical plea, the court has to decide it and if the plea is well founded, it has to be upheld by the court." Therefore it is clear that when the

Railway takes a plea of non-service of notice, as contemplated u/s 106 of the New Act, we have no hesitation to say that it goes to the root of the

matter and this court is duty bound to find out whether it is well founded and if it is so, the said point must be upheld.

7. In the above context, we perused the judgment of the Allahabad High Court in the case reported in AIR 1981 Allahabad Pg. 18 (Union

Northern Railway Vs. Firm Anis Khan) cited by the Learned Counsel for the respondent. In that case the notice of claim for compensation for loss

of goods was addressed to the Divisional Traffic Superintendent of a particular city and ultimately, the Commercial Superintendent acted upon it

and deputed an officer of the Department to assess the loss. In that case, the Allahabad High Court held that service of notice on the Divisional

Traffic Superintendent cannot be said to be improper under the proviso to section 78-B of the Old Act. We have already referred to the definition

of "Railway Administration" under the Old Act. Having regard to the definition of "Railway Administration" in the New Act, we are of the opinion

that the judgment of the Allahabad High Court may not be helpful for us to decide the case in favour of the consignee. In this context, it may be

useful to refer to another judgment of the Allahabad High Court in the case reported in AIR 1976 Allahabad Pg. 491 referred to supra. That was

also a case arising under the Old Act. The learned Judge held in that judgment as hereunder:

The intention of the Legislature was not that mere posting of the letter would amount to service of notice on the railway authority; notice should be

sent within six months so as to reach the railway authority in the ordinary course of post within six months; in considering the effect of section

140(c), the provisions of section 142 too has got to be considered.

Therefore the following is our conclusion:

Exs. A.4 and A.6 notices are not served on the railway administration and therefore those notices complaining about non-delivery cannot be

deemed to be notices of claim for compensation as provided for u/s 106(1) of the Railways Act, 1989; Ex. A.7 (notice) is not shown to have been

registered on 15.05.1993 itself; the Statutory presumption created u/s 194 of the Railways Act, 1989 is a rebuttable presumption and there is

rebuttal evidence placed before court by the respondent himself by exhibiting Ex. A.8, the postal acknowledgement due, which shows that Ex.

A.7/notice was served on the addressee only on 11.06.1993; actual service of notice of claim for compensation on the railway administration must

be pleaded and proved; such notice may be served either on the General Manager of the Zonal Railway or on a servant authorised in this behalf by

the General Manager; in this case Ex. A.7/notice had been addressed to the Chief Claims Officer, Southern Railway, who is an authorised railway

servant by the General Manager in this behalf; actual service of notice of claim for compensation (Ex. A.7) was served beyond the period of six

months and therefore the respondent is not entitled to compensation as it is barred for want of notice of claim for compensation u/s 106(1) of the

Railways Act, 1989.

For all the reasons stated above, we find that the judgment of the Railway Claims Tribunal is vitiated in law and accordingly, it is set aside. The

Civil Miscellaneous Appeal is allowed with no order as to costs.