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**(2022) 02 JH CK 0018**

**In the Jharkhand High Court**

**Case No :** Miscellaneous Appeal No. 30 Of 2011

Union Of India — APPELLANT

Vs

M/S. Muva Industries Ltd And Others — RESPONDENT

**Date of Decision :** 10-02-2022

**Acts Referred:**
Railway Claims Tribunal Act, 1987 — Section 4(4), 16, 23, 73, 78
Code Of Criminal Procedure, 1973 — Section 21(2)

**Citation :** (2022) 02 JH CK 0018

**Hon'ble Judges :** Gautam Kumar Choudhary, J

**Bench :** Single Bench

**Advocate :** Mahesh Tewari, Anil Kumar Sinha

**Final Decision :** Allowed

## Judgement

Gautam Kumar Choudhary, J

1. This appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgement dated 16.09.2009 passed by the learned

Member (Judicial), Railway Claims Tribunal, Ranchi Bench, Ranchi in Case No. OR-70011/2007 in favour of respondent named herein directing the

appellant to refund Rs. 3,71,328/- to the respondents along with interest @ 6% per annum from 01.11.2006 till the date of payment and also cost.

2. The respondent/applicant manufactures pretressed concrete sleepers for the Indian Railways. It is the case of the respondent that with the

permission of the Railway Board, 1240 MT of special cement was purchased from M/s. Ambuja Cement Eastern Ltd. This consignment was booked

in 20 Wagons. The consignment was loaded from the site of dispatch, i.e. Bhatapara and the weight of the 20 wagons was 1241.00 M.T. Before

reaching the destination site, i.e. Jagadishpur when the consignment was re-

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weighed, it was found the net weight to be 1355.40 M.T. In view of the

overloading, a punitive charges amounting to Rs. 3,71,328/- was raised against the respondent.

3. The Respondent moved the Railway claim Tribunal for refund of the punitive charge under Section 16 of Railway Claim Tribunal Act 1987 which

has been allowed on the basis of Annexure-5 which showed that weight of the cement was 1224.96 MT recorded by the Chief Goods Clerk, MRLB-

Bhatapara under South Eastern Railways in the presence of the authorized agent of Ambuja Cement Eastern Ltd. The overloading was found en-

route without notice to the applicant was wrong.

4. The appellant earlier moved this Court in W.P.(C) No. 274 /2009 challenging the order of the Railway Tribunal which was dismissed vide order

dated 08.09.2010.

5. The appellant moved the Honâ??ble Court in L.P.A No.493 of 2010 and their Lordships vide order dated 11.01.2011 were pleased to permit the

appellant to withdraw the appeal. It was held by their Lordships that the appellant will have right to move the Appellate forum and if the appeal is filed,

then question of limitation will be sympathetically considered.

6. The order has been assailed on the ground that punitive charge for the onward distance from Bhaga to Jagdishpur, was assessed on the difference

between the net weight at Santhaldih weighbridge of 1355.40 and the chargeable weight of 1265.

7. It is argued on behalf of the appellant that by the order number RCT/DLI/ Judl.Policy/2002-2003 dated 19.11.2007 of Railways claims Tribunal,

13/15 Moldova daily, the pecuniary jurisdiction of the concerned single member bench is restricted to ☐ 2 lakhs (Rupees Two Lakhs), except in

untoward and train accident cases. According to the proviso to Section 4(4) of the Railways Claims Criminal Act 1987, the single member should have

referred/transferred the matter to a bench of two members that he is a division bench, when the nature of the matter so demands. Apart from the

jurisdictional issue raised, it is also argued that there is provision to re-weigh and there was nothing wrong on the part of the Railway authorities to

have a reweighed the consignment. During rebooking of the consignment from Bhatapara to Jagdishpur, the punitive charges were paid by respondent

without any objection and without any protest. Once the excess weight had been

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accepted and got the same rebooked, the plea against overloading

and consequent punitive charges cannot be raised. It is further argued that in LPA No. 493 of 2010, the Honâ??ble court was pleased to permit the

appellant to withdraw the appeal and the writ and therefore the order passed by Honâ??ble. the single Judge in the writ petition does not bar the

appellant from preferring the instant appeal.

8. It is submitted by the learned counsel on behalf of the respondent that Honâ?? ble single Bench in W.P.(C) No. 274 of 2010 by the order dated 8th

September 2010 had already confirmed the order of the tribunal and dismissed the writ.

9. As far as the issue of pecuniary jurisdiction of the Tribunal is concerned, from the plain reading of the order passed in LPA No. 493 of 2010, it is

apparent that earlier order passed by the Honâ??ble single Judge in W.P.(C) No. 274 of 2010 has not been interfered with and therefore cannot be

reopened in this appeal. It was held by the Honâ??ble single Judge that the issue of pecuniary jurisdiction ought to have been raised at the earliest

stage. I also concur with this finding in view of Section 21(2) of the CPC that objection as to competence of a Court with reference to the pecuniary

limits of its jurisdiction cannot be allowed in appeal or revision unless the objection was taken in the Court of first instance at the earliest opportunity.

10. Coming to the merit of the appeal, the matter for consideration is whether the Railways had the right to reweigh the consignment and whether the

necessary procedure was followed. Section 78 of the Railways Act 1989 lays down specific power to reweigh the consignment. The provision reads

as under:-

78. Power to measure, weigh, etc.â?"Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery

of the consignment, have the right toâ?

(i) re-measure, re-weigh or re-classify any consignment;

(ii) recalculate the freight and other charges; and

(iii) correct any other error or collect any amount that may have been omitted to be charged.

From the above provision, it is manifest that the Railways was within its right to reweigh the consignment. This extract is taken from Union of India v.

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Shree Shiv Sai Steel Industries, 2019 SCC OnLine Gau 5715 : (2020) 1 Gau LR 426 : (2019) 203 AIC (Sum 20) 9 at page 428

4. A bare reading of section 73 of the Railways Act, 1989 would go to show that whenever there is an excess loading of the goods beyond

the permissible carrying capacity, the railway administration may in addition to the freight and other charges, recover from the consigners,

consignee or the endorsee, as the case may be, charges by way of penalty on such rates as may be prescribed before the delivery of the

goods. The relevant aspect of section 73 is that the recovery of the penalty that may be imposed can be made before the delivery of the

goods concerned.

The object of having the salutary provision for levying penal charges for overloading has been explained by the Honâ??ble Apex Court in Jagjit

Cotton Textile Mills v. Chief Commercial Supdt., N.R., (1998) 5 SCC 126 at page 147 while upholding the constitutionality it was observed:-

Â â??42. In our view, these contentions are not tenable. As has been noticed in our discussion on Points 1 and 2, the railway statutes

define â??maximum carrying capacityâ?; â??normal carrying capacityâ? (to be marked on the wagon); and the â??permissible carrying

capacityâ?. No wagon can be loaded beyond the maximum carrying capacity. The wagon could not ordinarily be loaded beyond the normal

carrying capacity or up to any upward variation thereof and this limit is called the permissible carrying capacity. Section 73 of the new Act

and Rule 161-A of the old Rules permit loading in excess of the permissible carrying capacity without any penal charges, now up to a limit

of 2 tonnes. (Earlier it was up to 1 tonne.) What is now subjected to a penal charge is the excess over and above the permissible level above

stated which is always below the maximum limit. In our view, this levy under Section 73 of the new Act and the old Rule 161-A is intended for

dual purposes â?" one is to see that the gross weight at the axles is not unduly heavy so that accidents on account of the axles breaking

down, could be prevented. The other reason behind the collection is that, inasmuch as the wagon has carried such excess load up to the

destination point at the other end, the replacement cost of the coaches, engines or rails or of repairs to the bridges be coveredâ??.

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11. The main ground on which the application for refund has been allowed by the learned Tribunal is that none of the representative were present at

the time when the consignment was being reweighed. The impugned order is laconic and has allowed the refund of penalty for overloading merely on

the ground that no representative was present. Section 73 specifically provides that the railway administration may reweigh the consignment and

recalculate the freight and other charges before the delivery of the goods. During rebooking of the consignment from Bhatapara to Jagdishpur the

punitive charges were paid by respondent without any objection and without any protest. In any case when the goods are en route, it will be highly

unpracticable to detain the consignment until the representative of the consignor comes and presents before re-weighment is done. Re weighment is a

statutory right of the railway administration to check all short of malpractices and a clog on this cannot be imposed by laying down unrealistic

conditionalities like presence of the consignor at the time of reweighment. Considering the length and breadth of our country and the span in which the

railways network is spread out is it possible to detain the goods train enroute till the representative arrives there? The impugned order does not cite

any rule or circular in support of such a requirement. Under the circumstance the impugned order is not sustainable and is accordingly set aside.

The appeal is allowed.

Consequently, I.A. No.453 of 2011 stands disposed of.

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