
(2007) 05 GAU CK 0044
In the Gauhati High Court

Union of India (UOI) and Others

APPELLANT

Vs

Durmeh Coal and Others

RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Railways Act, 1989 — Section 72, 73

Citation : (2007) 4 GLT 139

Hon'ble Judges : Maibam B.K. Singh, J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Judgement

I.A. Ansari, J.—By this common Judgment and order, we propose to dispose of these nine writ appeals, namely, W.A. No. 183/2001, W.A. No. 184/2001, W.A. No. 185/2001, W.A. No. 186/2001, W.A. No. 187/2001, W.A. No. 188/2001, W.A. No. 189/2001, W.A. No. 191/2001, W.A. No. 193/2001, which have arisen out of the common Judgment and order, dated 07.05.2005, passed in WP(C) 5690/2000, WP(C) 5826/2000, WP(C) 6785/2000, WP(C) 7058/2000, WP(C) 7059/2000, WP(C) 7218/2000, WP(C) 1359/2000, WP(C) 1361/2001, WP(C) 1363/2001, and WP(C) 1495/2001 respectively.

2. Before we come to the merit of these appeals, it is necessary to take note of the material facts, which have given rise to the present appeals. These facts are: W.P.(C) No. 6382/2001 (M/s N. Roy Coal Traders v. Union of India and Ors.), arose out of an application, made under Article 226 of the Constitution of India, the petitioner's case being, in brief, thus: The petitioner transports coal within and outside the State and dispatches, during the course of its business, coal through railway wagons. At times, railway wagons, loaded with coal are found to be carrying weight in excess of the permissible limits and whenever such excess load is detected in any wagon, request is made by the petitioner to the railway authorities to off-load the excess coal before the wagons reach its destination so that no overloading penalty is imposed on the petitioner by the railway authorities by taking recourse to the provisions of Section 73 read with Section 72 of the Railways Act, 1989, but the railway authorities do not unload the excess

load and/or adjust the excess load by unloading the excess quantity of coal into wagons, which may be carrying coal lesser than the quantity permitted. The petitioner, therefore, sought for directions from the Court to the railways to allow the petitioner to off-load the coal, whenever excess coal was detected. What is, however, of paramount importance to note is that the entire prayer of the petitioner, in the said writ petition, was made in anticipation of happening of certain events, namely, when the railway authority found, while carrying coal in their wagons, that the petitioner had loaded coal, in some wagons, in excess of the permissible limit and when the railway authority decided to levy penalty on the petitioner as per the Rules of the railways. The learned Single Judge of this court, having considered the case of the parties concerned, concluded that the question of off-loading of excess coal is a question covered by the provisions of Section 72 and 73 of the Railways Act, 1989, and no direction, in advance, can be passed in anticipation as to what may happen tomorrow. The learned Single Judge, however, observed that as and when overloading of coal was detected, the railway authorities shall take action as provided under the relevant provisions of the Railways Act and the Rules made thereunder. On the basis of the conclusions, so reached, and the observations, so made, the said writ petition was dismissed by judgment and order, dated 24.11.2000, aforementioned. Following this decision, a batch of writ petitions, namely, WP(C) 6959/2000, WP(C) 5690/2000, WP(C) 6788/2000, WP(C) 7058/2000, WP(C) 7059/2000, WP(C) 7218/2000, WP(C) 1359/2001, WP(C) 1360/2001, WP(C) 1361/2001, WP(C) 1363/2001 and WP(C) 1495/2001 were heard by another learned Single Judge of this Court, who, having found that the writ petitions were covered by the decision, rendered in WP(C) 6382/2000 (M/s N. Roy Coal Traders v. Union of India and Ors.), disposed of the writ petitions by making observation that the writ petitions were covered by the judgment and order, dated 24.11.2000, passed in WP(C) 6382/2000 aforementioned. However, while disposing of the writ petition, as indicated hereinbefore, the learned Single Judge further observed and directed as under:

These matters are covered by the judgment rendered by this Court in WP(C) No. 6382/2000 (M/s M. Roy Coal Traders v. Union of India and Ors.), on 24.11.2000. By following that decision mentioned above, these writ applications shall stand disposed of. But one thing is made clear that if, as submitted by the learned Counsel that in some wagons there is overloading and other wagons there is less load, is found by the Railway authority, the same may be transferred from being overloading to the wagons having less load by the petitioner. That shall be completed within the time provided by the authority and this shall be done at the risk and cost of the petitioners. It is needless to say that the respondents i.e. Union of India (Railway authorities) is also entitled to off load the excess coal, if found, by following due process of law.

3. Aggrieved by the directions given to the railways that they shall allow the excess load to be adjusted against the wagons, carrying less quantity of coal than the permissible limit, the railways have impugned the directions, so made,

in the present appeals.

4. We have heard Mr. S. Sarma, learned Standing Counsel for the railways, appearing on behalf of the appellants. None has appeared on behalf of the writ petitioners-respondents, though notices stand served on them.

5. In view of the fact that the provisions of Sections 72 & 73 of the Railways Act form the entire subject of controversy of the writ petitions aforementioned, we reproduce hereinbelow Sections 72 & 73 of the Railways Act, 1989.

72. Maximum carrying capacity for wagons and trucks-

(1) The gross weight of every wagon or truck bearing on the axles when the wagon or truck is loaded to its maximum carrying capacity shall not exceed such limit as may be fixed by the Central Government for the class of axle under the wagon or truck.

(2) Subject to the limit fixed under Sub-section (1), every railway administration shall determine the normal carrying capacity for every wagon or truck in its possession and shall exhibit in words and figures the normal carrying capacity so determined in a conspicuous manner on the outside of every such wagon or truck.

(3) Every person owning a wagon or truck which passes over a railway shall determine and exhibit the normal carrying capacity for the wagon or truck in the manner specified in Sub-section (2).

(4) Notwithstanding anything contained in Sub-section (2) or Sub-section (3), where a railway administration considers it necessary or expedient so to do in respect of any wagon or truck carrying any specified class of goods or any class of wagons or trucks such carrying capacity as may be specified in the notification and it shall not be necessary to exhibit the words and figures representing the carrying capacity so determined on the outside of such wagon or truck or such class of wagons or trucks.

73. Punitive charge for overloading a wagon - Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under Sub-section (2) or Sub-section (3), or notified under Sub-Section (4), of Section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account.

6. From a careful reading of Sections 72 & 73, what transpires is that Section 72 empowers the railways to fix the maximum limit of load carrying capacity for

wagons and trucks and Section 73 makes punitive provisions for loading more than the permissible limits of weight. Section 73 makes it clear that when a person loads goods in a wagon beyond its permissible load carrying capacity, the railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods. The proviso to Section 73, however, gives a discretion to the railway authorities that instead of carrying the excess load to the destination and recovering the penalty, the railways may unload the excess load and recover the cost of such unloading and also the charge for detention of the wagon from the consignee or consignor or the endorsee, as the case may be.

7. A proviso, we must bear in mind, ordinarily, create an exception to a general Rule. Viewed thus, it is clear that the substantive part of Section 73 empowers the railways to, ordinarily, carry a consignment of goods to its destination and while delivering the goods at the destination, it would be entitled to recover, in addition to the freight and other charges, penalty from the consignee or consignor or the endorsee, as the case may be, for the excess load. The proviso to Section 73, however, engrafts an exception to this general Rule by laying down that though, ordinarily, the railways may carry the overloaded wagons or trucks to the destination and charge or recover, at the destination, penalty and other charges, the railways shall also have the discretion to unload the excess load, when the excess load is detected, and recover the cost of such unloading and the charge for detention of the wagon from the consignee or consignor or the endorsee, as the case may be. What is, however, important to bear in mind is that no exercise of discretion can be arbitrary. Hence, the discretion to unload, given to the railways by the proviso to Section 73, also cannot be arbitrarily exercised.

8. What emerges from the above discussion is that the railways have the power to carry excess load to its destination and recover punitive charges, as indicated hereinabove; but the railways also have the discretion to unload the excess load, at any place, and recover the cost of unloading and also the charges for detention of the wagon from the consignee, consignor or the endorsee, as the case may be. No mandamus could have, therefore, been issued against the railways forcing them, in all cases, to adjust the excess load by unloading the excess load from one wagon and carrying the excess load, by way of such adjustment, in another wagon, having rooms. Viewed from this angle, the impugned directions are contrary to, and wholly inconsistent with, the scheme of Section 73. Such directions shall, if allowed to survive, cause serious miscarriage of justice and make the provisions of Section 73 otiose.

9. Because of what have been discussed and pointed out above, these writ appeals succeed and the directions for adjustment of excess load, given by the impugned Judgment and order, dated 07.05.2001, aforementioned, are hereby set aside.

10. The appeals shall stand disposed of in terms of the above observations and directions. No order as to costs.