

(2011) 01 GUJ CK 0041
In the Gujarat High Court

Case No : Letters Patent Appeal No"s. 11, 503 and 505 of 1993

Union of India (UOI) and Others

APPELLANT

Vs

Gujarat Ambuja Cements Ltd.

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 166, 166(1), 77, 77(1)
Government of India Allocation of Business Rules, 1961 — Rule 125(1)
Railways Act, 1890 — Section 27, 27A, 28, 28(1), 47

Citation : (2011) 01 GUJ CK 0041

Hon'ble Judges : S.R. Brahmbhatt, J; Jayant Patel, J

Bench : Division Bench

Advocate : J.J. Yajnik, s 1-8, for the Appellant; K.K. Shah, for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—As in the all the matters, common questions arise for consideration, therefore, they are being considered by this common Judgment. The parties shall be referred to as per their original status before the learned Single Judge namely; Petitioners and/or Respondents, as the case may be, for the sake of convenience hereinafter.

2. LPA No. 11 of 1993 arises against the order dated 27.11.1992 passed by the learned Single Judge of this Court (Coram: K.G. Shah, J.) in Special Civil application No. 475 of 1990, whereby the petition has been allowed with cost and the Respondents are directed to give benefits to the Petitioners of Rule 125(1)(b) of the Goods Tariff by charging the Petitioner freight on the basis of shortest route i.e. Khijadiya- Jetalsar- Junagadh- Veraval- Talala- Pranchi Road- Kodinar.

3. LPA No. 503/1993 arises against the order dated 29.10.1993 of the learned Single Judge (Coram: R.K. Abichandani, J.) in SCA No. 4771 of 1993, whereby the learned Single Judge, after distinguishing the above referred decision of the another learned Single Judge of this Court (Coram: K.G. Shah, J.) in SCA No. 475 of 1990, has dismissed the petition.

4. LPA No. 505 of 1993 arises against the order dated 3.11.1993 passed by the learned Single Judge of this Court (Coram: R.K. Abichandani, J.) in Special Civil Application No. 4772 of 1992, whereby the learned Single Judge, based on the above referred decision in SCA No. 4771 of 1993 has rejected the petition.

5. The relevant facts are that the original Petitioners were transporting their goods and/or the products, as the case may be, to various parts of the country from their manufacturing unit and/or the production unit. Rule 125(1)(b) of the Goods Tariff provided that whenever the goods are being transported, the tariff freight for the said route shall be charged on the basis of the shortest route. As per the Petitioners, up to December 1986 the Petitioners were being charged the freight of the shortest route. Rule 125(1)(h) of the Goods Tariff provides that the Railways may charge for the specified route if the order has been issued by the Central Government for such purpose u/s 27A of the Indian Railways Act, 1890 (hereinafter referred to as the "Act" for short). As per the Petitioners, there was no order of the Central Government u/s 27A of the Act and in spite of the same, Railways had charged the concerned Petitioners for that specified route and not for the shortest or cheapest route. Therefore, for challenging the action on the part of the Railways to charge for specified route, the original Petitioners concerned preferred writ petition with a further prayer to direct the Railways to charge as per the shortest route and to refund the difference of the amount already collected for the specified route. The Respondent Railways contended that there were General Orders (for the sake of convenience hereinafter referred to as "G.O." for short) for rationalization of the route u/s 27 of the Act and, therefore, they have charged accordingly for the specified route.

6. The G.O. Orders were issued from time to time and the same can be classified as under:

G.O. No.

Signed by

Issued on

Come into force on

Expiry date

1/87

Chief Commercial Superintendent, RB

5.2.87

1.3.87

31.8.87

Extended upto 30.4.89

1/87

Dy. Director, Traffic and Transport, RB

17.11.87

17.11.87

30.4.89

1/89

Chief Commercial Superintendent, RB

3/24-4-89

1.5.89

30.11.89

2/89

Chief Commercial Superintendent, RB

20.10.89

15.11.89

30.4.90 Extended upto 3.5.90

1/90

Dy. Director, T.T., RB

10.5.90

15.6.90

30.11.90

7. When Special Civil Application No. 475/99 came to be heard by the learned Single Judge on behalf of the Railways, no documentary evidences were produced to show that the orders for rationalization of the routes were passed by the Central Government u/s 27A of the Act. Therefore, the learned Single Judge (Coram: K.G. Shah, J.) found that the general orders for rationalization of the routes upon which the reliance has been placed by the Railways were not u/s 27A of the Act and, therefore, the Petitioners would be entitled to the benefits of Rule 125(1)(b) of the Goods Tariff, which provides for charging of the tariff at the shortest route and, therefore, learned Single Judge held that the Respondents are only entitled to charge the freight from the Petitioners on the basis of the shortest and/or cheapest route, meaning thereby on the basis of the shortest route i.e. Khijadiya-Visavadar-Talala-Prachi Road-Kodinar. The learned Single Judge further restrained the Respondents from charging the Petitioners the freight on the basis of longest route i.e. Khijadiya--Jetalsar-Junagadh-Veraval-

Talala-Prachi Road-Kodinar on the basis of general orders produced and relied upon by the Railways and he further directed to give the benefits to the Petitioners of Rule 125(1)(d) of Goods Tariff by charging the Petitioners the freight on the basis of the shortest route i.e. Khijadiya-Jetalsar - Junagadh - Veraval - Talala - Prachi Road - Kodinagar. The learned Single Judge also directed the Respondents to refund the amount of difference of the freight between the longest of the shortest route with interest at the rate of 12% per annum on the amount of difference. It appears that thereafter the decision of the learned Single Judge (Coram: K.G. Shah, J.) was carried in LPA being LPA No. 11/1993. The Division Bench of this Court (Coram: Nainar Sundaram, C.J. and S.D. Dave, J.) dismissed the LPA by confirming the order of the learned Single Judge on 2.7.1993. The aforesaid order of the Division Bench was carried by the Union of India before the Apex Court in Civil Appeal No. 2128 of 1994.

8. Thereafter in the meantime another SCA being SCA No. 4771 of 1993 came to be filed by the other concerned Petitioners, more or less for the same prayer for directing the Respondent Railways to proceed in accordance with law by resiting or recalling or cancelling or withdrawing various general orders of 1/87, 1/89, 2/89, and 1/90, for rationalization of the routes and the prayer was also made to direct the Respondents to refund the excess rates realized on the basis of the longer route on and from 17.11.1987 onwards, after charging at the cheapest route. The prayer was also made to declare the aforesaid general orders as ultra vires the Section 27 of the Indian Railways Act. SCA No. 4772 of 2000 also came to be filed by one another Petitioner in the month of April 1993 and similar prayers were made, but limited to the general order No. 1/90, concerning to longer route via Bayana-Tundla and other consequential benefits thereof. In the litigation of both the matters on behalf of the Respondent Railways, the relevant record of the Central Government and the noting of the files were produced. The learned Single Judge (Coram: R.K. Abichandani, J.), after considering the record produced before him found that the orders of rationalization of the routes are as that of the Central Government and distinguished the earlier decision of the learned Single Judge (Coram: K.G. Shah, J.) on the ground that the necessary relevant record was not produced before him and ultimately rejected the petition vide order dated 29.10.1993 passed in SCA No. 4771 of 1993. Based on the reasoning recorded in the decision in SCA No. 4771 of 1993, the learned Single Judge also dismissed SCA No. 4772 of 1993. It appears that similar matter was also preferred being SCA No. 6945 of 1993 and the same also came up for hearing before the learned Single Judge (Coram: R.K. Abichandani, J.), who rejected the said petition vide order dated 3.11.1993 together with SCA No. 4772 of 1993. The order passed by the learned Single Judge (Coram: R.K. Abichandani, J.) was common in SCA No. 4772 of 1993 as well as SCA No. 6945 of 1993 and the pertinent aspect is that the basis of the order was the reasons recorded by the learned Single Judge in the decision in another matter being SCA No. 4771 of 1993.

9. It appears that as the petitions were different, LP As were different, though

the subject matter and the reasonings recorded were the same in SC As No. 4771 of 1993, No. 4772/1993 and No. 6945/1993. As recorded earlier, one of the present matters being LPA No. 503 of 1993 is preferred against the order passed in SCA No. 4771/1993, which is the main matter, wherein the detailed reasons have been recorded by the learned Single Judge (Coram: R.K. Abichandani, J.), whereas the LPA No. 505 of 1993 is preferred against the order passed in LPA No. 4772/1993. The third LPA No. 506 of 1993 was preferred against the order passed by the learned Single Judge in SCA No. 6945/1993. The pertinent aspect is that LPA No. 506 of 1993 came up for hearing before another Division Bench of this Court (Coram: M.R. Calla and J.R. Vora, J.J.) and vide order dated 10.12.1998 the Division Bench after considering the reasons recorded by the learned Single Judge in SCA No. 4771 of 1993 on the basis on which SCA No. 6945 of 1993 came to be rejected, found that the reasoning and the conclusion of the learned Single Judge cannot and must not be interfered with, since the Division Bench found that the Railways Board and its officers are working under the Railway Ministry and by the general orders, they are authorized to sign and approve the rationalization orders, even on the aspects of public interest, the Division Bench concurred with the view of the learned Single Judge (Coram: R.K. Abichandani, J.) and ultimately the Division Bench dismissed the LPA on merits vide order dated 10.12.1998.

10. It appears that thereafter the aforesaid Civil Appeal No. 2128 of 1994 came up for hearing before the Apex Court on 21st September, 2000 and at that stage it was brought to the notice of the Apex Court that in SCA No. 4771 of 1993 another learned Single Judge upon examination of the similar matter has taken the view that the orders issued with the reference to the case had, in fact, been made by the Central Government or under the authority of the Central Government since the relevant record was produced and had dismissed the petition against which LPA No. 503 of 1993 was pending. However, it appears that it was not brought to the notice of the Apex Court that based on the order of the learned Single Judge in SCA No. 4771 of 1993, another SCA No. 6945 of 1993 was also rejected, against which LPA No. 506 of 1993 was preferred and thereafter the view taken by the learned Single Judge (Coram: R.K. Abichandani, J.) has been confirmed by the Division Bench (Coram: M. R. Calla and J. R. Vora, J.J.) vide order dated 10.12.1998 and the said LPA has been dismissed. The aspect of effect of the aforesaid decision of the Division Bench in LPA No. 506 of 1993 shall be considered at the later stage, but the fact remains that the Apex Court ultimately set aside the order passed by the Division Bench of this Court (Coram: Nainar Sundaram, C.J. and S.D. Dave, J.) in LPA No. 11 of 1993 arising from another decision of the learned Single Judge (Coram: K.G. Shah, J.) and has remanded the matter to this Court for the decision of LPA No. 11 of 1993. Hence, all the appeals before us.

11. We have heard Mr. S.B. Vakil, learned Sr. Counsel with Mr. Singhvi in LPA No. 11 of 1993 and Mr. K.K. Shah, learned Counsel in LPA No. 503/1993 and Mr. J.J. Yagnik, learned Counsel for the Union of India through the Railway Ministry and

its officers in all the matters.

12. Mr. Vakil, learned Counsel appearing for the original Petitioners - Respondent herein concerned, raised the first contention that the Apex Court while remanding the matter has set aside the judgment of the Division Bench for the purpose of remand and, therefore, the view taken by the Division Bench against which the SLP was preferred is not reversed by the Apex Court. Therefore, it was sought to be contended on behalf of the Appellant concerned by the learned Counsel that the view taken by the Division Bench in its earlier decision in LPA No. 11 of 1993 would still hold the field and this Court being a Coordinate Bench would also be bound by the said decision unless it is decided to record the reasons for disagreement and then to refer the matter to the Full Bench. It was also submitted that if the view taken by the Division Bench (Coram: Nainar Sundaram, C.J. & S.D. Dave, J.) were to hold the field, the present LPA deserves to be dismissed.

13. On behalf of the Appellants, it was submitted that all the contentions are to be considered afresh, since the judgment of the Division Bench was set aside by the Apex Court.

14. Had it been a case where the Apex Court did not observe that the parties to urge all contentions that may be available to them under the law, the matter would have been different, but in the present case in the order of the Apex Court, there is specific observation to that effect. Further the decision of the earlier Division Bench, which came to be set aside by the Apex Court was based on the fact situation that, except bare assertion in the pleadings, the Respondent Railways had not ventured to place any material, much less a clinching one, to show that the general orders, in fact, were made by the Central Government in accordance with the terms of Section 27A of the Act, but now in the present LPA, the additional documents are permitted to be placed on record and they are accordingly placed on record for supporting the contention that the orders were, in fact, made by the Central Government. Whether such documents lead this Court to record the findings that the orders were, in fact, made by the Central Government u/s 27A of the Act or not is a different thing and the said aspects shall be dealt with hereinafter at the appropriate stage, but in view of these peculiar facts and circumstances that the relevant documents have been produced under the permission granted by this Court in the proceedings of the present appeal, it is not possible for us to accept the contention of the learned Counsel for the Appellant concerned that the view taken by the earlier Division Bench) Coram: Nainar Sundaram, C.J., and S.D. Dave, J.) on the basis of the situation prevailing then of non-availability of the relevant documents would lead us to the situation of binding precedent, save and except we decide to refer the matter to the Full Bench by recording the reasons for disagreement. In our view, as the documents are now permitted to be produced by way of an additional evidence in the present proceedings of appeal, the issue as to whether the orders were, in fact, made by the Central Government in exercise of the power u/s 27A

of the Act or not can be gone into after considering the relevant material on record.

15. The reliance placed upon the decision of this Court by the learned Counsel in case of *Shri Prithvi Cotton Mills Ltd. Vs. Broach Borough Municipality and Others*, is ill-founded inasmuch as, it was not a case where the view was taken by the earlier Bench at a stage where there were no relevant documents on record and thereafter when the matter was once again to be considered the documents were produced on record. Hence, the said decision is of no help to the learned Counsel for the Appellant concerned.

16. At this stage, we may record that the Apex Court in the order of remand did observe the relevant of which reads as under:

... we must bear in mind that this is not a civil dispute between two parties agitating for their rights but a matter which arises in public law and several questions affecting public interest need to be decided. Merely because the Appellant or their counsel was not diligent enough or use appropriate prudence or discretion in making relevant records available public interest should not become a casualty...

17. Under these circumstances, the contention raised on behalf of the Appellant concerned by Mr. Vakil that this Bench may follow the same view as was taken by the earlier Bench (Coram: Nainar Sundaram, C.J., and S.D. Dave, J.), treating it as a binding precedent cannot be accepted. Hence, rejected.

18. The aforesaid leads us to examine the question as to whether there was any decision of the Central Government for rationalization of the routes u/s 27A of the Act at the relevant point of time when the goods of the original Petitioner concerned were transported by the said routes. In order to examine the said aspect, reference to Article 77 of the Constitution of India would be relevant, which reads as under:

77. Conduct of business of the Government of India.

(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

19. The aforesaid Article provides that all executive action of the Government of India has to be expressly taken in the name of the President. It also further provides that if any orders or instruments made and executed in the name of the President, as may be specified in the Rules, to be made by the President, the validity of such order or instrument so authenticated shall not be called in

question on the ground that it is not an order or instrument made or executed by the President.

20. Sub-Article (3) provides for enabling power with the President to make Rules for more convenient transaction of the business of the Government of India, and for the allocation of the business amongst the Ministers. Therefore, the orders which are not expressly made in the name of the President, its authorization can be questioned, since the immunity under Article 77 would not be available, but at that stage, it would be for the Government of India to satisfy that the orders were, in fact, made by it, though expressly not stated in the name of the President. The contention that since it has not been stated in any of the general orders, which are sought to be relied upon by the Railways, it cannot be termed as that of the Central Government in view of the Article 77(1) of the Constitution of India is on the erroneous interpretation of Article 77(2) of the Constitution. If the bar of questionableness as provided under Article 77(2) of the Constitution is not available, it will be for the Court concerned to examine as to whether such orders are made by the Government of India or not and at that stage, the burden would be upon the Government of India or the authority concerned, as the case may be, to show that the decisions were taken by the competent authority as per the Rules of business and signed by the person, who had authority for such purpose. At this stage, we may refer to the decision of the Apex Court in the case of "Major E.G. Barsay v. State of Bombay AIR 1962 SC 1762 and more particularly the observations made at paragraph 25, relevant of which reads as under:

25. ... Shortly stated, the legal position is this; Article 166(1) is only directory. Though an impugned order was not issued in strict compliance with the provisions of Article 166(1), it can be established by evidence aliunde that the order was made by the appropriate authority. If an order is issued in the name of the Governor and is duly authenticated in the manner prescribed in R.(2) of the said Article, there is an irrebuttable presumption that the order or instrument is made or executed by the Governor. Any non-compliance with the provisions of the said rule does not invalidate the order, but it precludes the drawing of any such irrebuttable presumption. This does not prevent any party from proving by other evidence that as a matter of fact the order has been made by the appropriate authority. Article 77 which relates to conduct of business of the Government of India is couched in terms similar to those in Article 166 and the same principles must govern the interpretation of that provision.

21. It is undisputed position that the impugned orders do not comply with the provisions of Article 77(2) of the Constitution of India. Therefore, their validity could be questioned on the ground that they are not made by the President, but the same would not be sufficient, but it will be upon the party relying upon such evidence to demonstrate by satisfactory evidence that the orders were, in fact, made by the officer concerned on behalf of the Central Government in exercise of the power conferred upon him under the Rules delegating such powers to him.

22. The President in exercise of the power under Clause 2 of Article 77 has framed the Rules and vide Notification dated 1st September, 1983 published in the gazette of 5th September, 1983 the original Rules of 1958 were amended and as per the said Rules of 1983, known as Authentication (Orders and Other Instruments) 3rd Amendment Rules, 1983. Clause 22 provides by way of substitution for authorization as under:

Clause 22.- In case of order and other instruments relating to the Ministry of Railways; by a Secretary, Additional Secretary, Joint Secretary, Deputy Secretary or Under Secretary to, by or a Joint Director, Deputy Director or an Assistant Director of the Railway Board. Rules for the Government of India (Transaction of Business) Rules 1961 framed by the President in exercise of the power under Article 77(3) of the Constitution provided that all the business allotted to the Department under the Government of India Allocation of Business Rules 1961 shall be disposed of by the General or Special Director of the Minister Incharge. Therefore, the concerned Minister can issue general or special direction for disposal of the business allotted to the Department.

23. Vide Notification dated 24.3.1908 i.e. prior to the Constitution, the Officers of the Railway Board were invested with the power of the Officers referred to u/s 47 of the said Indian Railway Act, 1890 for Railway administered by the Government. It further appears that the Ministry of Railways has issued Notification dated 18.8.1958, whereby the officers of the Railway Board namely as that of the Financial Commissioner, Member Transportation, Member Engineering, and Member Staff are to hold the position as the officers of the Railway Ministry simultaneously.

24. The aforesaid shows that if the decision is taken by the Minister in-charge of the Department or the Ministry, it would be the decision of the Government of India and as observed earlier for the Ministry of Railways, the aforesaid officers have been authorized to sign as per the Rules framed under Article 77(2) of the Constitution of India read with the amendment of 1983.

25. The next aspect is as to whether the decision is, in fact, taken by the Minister concerned for Railways Ministry at the time when the respective general orders were passed for rationalization of the routes and another aspect is as to whether the officers, who have signed the orders were duly authorized to sign such orders or not. The documents produced go to show that the noting started from 3.3.1987 was ultimately approved by the then Minister for Railway Ministry on 18.5.1987. Thereafter, the matter was once again considered and second time the noting started from 20.4.1989 and ultimately the decision was taken by the then Minister for Railway Ministry on 22.8.1989. The third time, the matter was considered and the noting started from 1.2.1990 and ultimately it was approved by the then Minister for Railway on 28.4.1990. On the aspects of delegation of power for rationalization of routes, noting started from April 30, 1990 and the concerned Minister for Railway had approved the delegation on 28.5.1990, by reconfirmation of the earlier delegations also. Therefore, it is not a matter where

there is no decision of the Central Government for rationalization of the routes or that there was no authorization for such purpose. Once the decision is taken by the Minister Incharge of the Railway Ministry, it is the decision of the Central Government. Further, as referred to herein above, if the Notification dated 24.3.1908 is read with the Notification dated 18.8.1958, the officers of the Railway Board and the officers of the Central Government, Ministry of Railway are no different, but the same. In fact, in capacity as the officers of the Central Government, they are to work as the officers of the Railway Board for the Railway Administration. Therefore, it is not possible to accept that merely because the order is signed by the officer in capacity as that of the Railway Board, the officer concerned would lose the status as that of the officers of the Ministry of Railway.

26. Unfortunately, the learned Single Judge of this Court (Coram: K.G. Shah, J.) when considered the matter on merits, the documents were not produced on record on behalf of the Railway and consequently had to hold that there was distinction between the Railway Board and the Central Government and the decision was not as that of the Railway Board. We find that as pending the appeal such documents are permitted to be on record as they were in the subsequent matter of Special Civil Application No. 4771 of 1993, which came to be decided by the learned Single Judge of this Court (Coram: R.K. Abichandani, J.), no fault can be found with the reasons recorded by the learned Single Judge (Coram: R.K. Abichandani, J.) in his order in SCA No. 4771 of 1993 for distinguishing circumstances, nor such an approach on the part of the learned Single Judge (Coram: R.K. Abichandani, J.) could be said as contrary to the binding precedent. In any case, in view of the documents produced before us and the findings recorded by us herein above that there were decisions of the Central Government for rationalization of the routes, the view taken by the learned Single Judge of this Court (Coram: K.G. Shah, J.) on the said aspects in absence of the relevant documents produced on record at that time, cannot be endorsed by us sitting in appeal when pending the appeal the documents are permitted to be produced on record and such documents show the factual position supporting the case of the Railway Administration.

27. As observed by us earlier, if the decision was of the Central Government namely; by the concerned Minister of the Railway and based on the same the orders are issued from time to time or rationalization of the routes by the officers of the Railway Board, who are also officers of the Central Government, Ministry of Railway, it cannot be said that the concerned G.O.'s were not passed by the Central Government u/s 27A of the Act. Further, the contention that since the orders are not signed by mentioning on and behalf of the President., hence, it is not an order of the Central Government cannot be accepted in view of the fact that the Railway has been able to establish that the decision from time to time was, in fact, taken by the then Minister of the Railway Ministry, who was assigned with the power as per the Rule of the business and further such orders were signed by the officers of the Railway Board, who were also officers of the

Central Government, Ministry of Railway, at the relevant point of time.

28. The next aspect, which may be required to be considered is the Rule 125(1)(b) of the Goods Tariff, which reads as under:

Rule 125(1)(b).- In the absence of specific instructions in writing from the sender or his authorized agent to the contrary, goods will be despatched by the shortest route at the charges by the cheapest route i.e. the route by which the freight charges are at the lowest.

29. The provisions of Rule 125(1)(b) of the Goods Tariff is subject to the provisions made in Rule 125(1)(h), which reads as under:

125(1)(h).- Notwithstanding anything contained in Rule 125(1)(b), on the Central Government issuing an order u/s 27(A) of the Indian Railways Act that the goods specified in the order can be carried and charged by a route specified therein, the goods will be chargeable by the specified route or any of the specified alternative routes over which such goods are actually carried, even if it is not the cheapest route.

30. Section 27A of the Indian Railways Act, 1890 reads as under:

Section 27A Power of the Central Government to give directions in regard to transport of goods by Railway Administration.- (1) The Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, direct any railway administration

(a) to give special facilities for, or preference to, to transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods, as may be specified in the order;

(b) to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order.

2. Any order made under Sub-section (1) shall cease to have effect after the expiry of six months from the date thereof, but it may be renewed from time to time.

3. Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any direction given under Sub-section (1), and any action taken by a railway administration in pursuance of any such direction shall not be deemed to be a contravention of Section 28.

31. We may state that the aforesaid provisions was in effect up to 1.7.1990 and all General Orders are issued prior thereto. G.O. No. 1/87 dated 5.2.1987, inter alia, includes the route at Sr. No. 8.2, 8.3, 8.4 and 8.5 for rationalization of the routes, which are to be considered in the present group of matters. Another G.O. dated 17.11.1987 provides for rationalization of the routes from Kodinar-Prachi-Talala-Khijadiya to be routed through via Veraval-Jetalsar. Third GO No. 1/89

dated 3.4.1989 effected from 1.5.1987 includes at Item No. 8.10 for rationalization of all the goods to be routed via Khijadiya-Jetalsar-Veraval. GO No. 2/89 at Item No. 11 dated October 20, 1989 effective from 15.11.1989 provides for all goods traffic from MG Stations to be routed by all broad-gauge or by all meter-gauge as stated therein. GO No. 1/90 dated 10.5.90, which has come into effect from 15.6.90, also provides for rationalization of routes to which the respective original Petitioners are concerned. The pertinent aspect deserves to be recorded that it is not only for the routes to which we are concerned in the present group of matters, but they related to rationalization of various other routes of different parts of the country, where the railway was and is being operated.

32. In view of the observations and the findings recorded by us, as the General Orders are supported by the decision of the Central Government and signed by the officers of the railway board, who were also the officers of the Central Government, the rationalization of the routes and the transportation of the goods through the said routes would prevail and the original Petitioners would not be entitled for the benefits of Rule 125(1)(b) i.e. the transportation through the cheapest fare or shortest route as sought to be canvassed on behalf of all the original Petitioners.

33. Mr. Vakil, learned Counsel appearing for the original Petitioners did contend that the so-called delegation approved by the Minister concerned on 28.5.1990 is on the premise that there were earlier delegation and the papers were not traceable. He submitted that it is no delegation in the eye of law and it is required to be approved by the satisfactory evidence that there were earlier delegation by cogent evidence, which is lacking in the present case. Therefore, the contention of the learned Counsel was that the redelegation as sought to be canvassed deserves to be ignored and cannot be read with the retrospective effect. He submitted that even if it is stated to be an action ratified by the Central Government i.e. the concerned Minister of the Railway Ministry, it would not be binding to the original Petitioners and, therefore also, the so-called order cannot be said to be legal and valid in the eye of law.

34. The noting in the file, which was finally approved by the then Minister of Railway Ministry dated 28.5.1990 shows that as stated in the noting some time in the year 1974-75 the Minister of Railway had delegated these powers to the then Head of the Traffic Transportation Directorate namely; DTT, but the concerned file and papers were not traceable. Therefore, the delegation was sought to be reconfirmed and also the approval thereof. Such noting for the first time is put up on April 30, 1990 by the DDTT and has been approved up to the level of Secretary. It appears that thereafter the matter is discussed and finally approved by the then Minister of the Railway Ministry. As such when the action is taken in official capacity, the presumption would be in favour of the Railway administration, but such presumption may not be available if satisfactory evidence is brought on record to the contrary. Therefore, the burden would be

upon the original Petitioners to show that there was no delegation of power from 1974 to 1975, which is said to have been made by the concerned Minister at the relevant point of time. Further, as we have observed earlier, in respect of GO No. 1/87 dated 5.2.1987 and dated 17.11.1987, the decision is also approved by the then Minister for Railway on 18.5.1987 and thereafter for subsequent Gos on 22.8.1989 and 28.4.1990. Under these circumstances, it is not possible for us to hold that the delegation as was said to be in the year 1974-75 by the Minister concerned of the Railway Ministry was no more in existence. Further, in any case, for the decision, GO Nos. 1 and 2 of 1989 the same is ratified by the Minister concerned of the Railway Ministry on 28.5.1990. The attempt made to contend that the ratification as per the contract Act would not be binding to the third party cannot be countenanced for the simple reason that the matter is to be considered, keeping in view the exercise of the statutory power u/s 27A of the Act and not to be considered as per the provisions of the Contract Act. If an action of the authority has been ratified at least on the date when the challenge is considered by the Court, its efficacy would not be lost at the time when the Court is to grant relief. If Court finds that the authority, who had ultimate power to take the decision has approved the action of the lower authority, the reliefs can very well be declined on the said ground. Under these circumstances, the contention cannot be accepted.

35. It was next contended on behalf of the original Petitioners was that the ground of public interest as that of the letter of the then Chief Minister of the Gujarat State no more survive in view of the subsequent letter and, therefore, the orders issued even if by the Central Government could be said as arbitrary and violative of Article 14 of the Constitution of India.

36 It is not a matter where the subsequent letter of the Chief Minister of Gujarat State was not considered, but it is a matter where after considering the contents of the said letter, it was further recorded in the file as under:

3. The history of the case is that although the route from Khijadiya to Kodinar via Talala is the shorter route, the traffic due to the following reasons had to be rationalised via Khijadiya - Jetalsar - Veraval:

(i) The section passes through the Gir forest and the State Government requested the Railways not to run any train in night time, after one Gir lion was knocked and killed by a goods train.

(ii) The section is non controlled, with primitive system of interlocking.

(iii) No staff is posted for working in night time.

(iv) On the rationalised route which is fully controlled (except a short section from Veraval to Kodinar) the movement will be better.

(v) The speed of diesel-hauled trains is restricted to 30 KMPH on the entire section which has a ruling gradient of 1 in 100 between Jhar and Dhari, 1 in 120 between Satadhar and Kansiya Nos and Kansiya Nos and Gir.

(vi) The loop capacity is only forty four wheelers and if longer loads are required the loops will have to be lengthened and the stations converted from D& DK class to B class.

(vii) The crow base which is presently in Jatalser and Junagadh will also have to be established at Talala.

(viii) In case the traffic has to be run via Visawdhar-Khijadiya section, additional C&W facilities will have to be developed. The facilities already developed on the alternative route will become infructuous.

(ix) Conversion of Veraval-Rajkot section from MG to BG is under consideration and any expenditure incurred to develop Kodinar-Talala section would become infructuous.

4. With the coming up of two Cement Plants and a Chemical factory near Kodinar, the traffic has so increased and that it will not be possible to handle the additional traffic in day long hours.

The differential between the two routes is only 75 Kms.

5. Moreover, W. Rly. Has also stated that night running of the goods trains on this section was never in force since 1954. Only in case of emergencies like, accidents, breeches etc., some movement had to be allowed as a very special case.

6. Therefore, the rationalisation of this route was an operational necessity and was not resorted to purely on the ground of the request of the Conservator of Forest, Government of Gujarat. In view of this, perhaps it will be necessary to continue with the present rationalised route.

7. Case is put up for orders and as per the decision a draft reply from MOS(R) to Chief Minister of Gujarat will be put up.DDTT 13.6.89

37. It appears that thereafter the matter was considered and approved by the Minister on 22.8.1989. Under these circumstances, it cannot be said that merely because by subsequent letter of the Hon"ble Chief Minister of the State, the ground did not exist. The relevant factors have been taken into consideration and thereafter an opinion is formed that the rationalization of route is in the public interest. Hence, the decision cannot be said to be arbitrary or violative of Article 14 of the Constitution of India as sought to be canvassed.

38. In view of the aforesaid, we find that the view taken by the learned Single Judge of this Court (Coram: K.G. Shah, J.) in SCA No. 475 of 1990 was in absence of the relevant documents produced by the Railway at the relevant point of time, whereas the view taken by the another learned Single Judge of this Court (Coram: R.K. Abichandani, J.) is after considering the relevant documents, which were produced on behalf of the Railway in SCA No. 4771/1993. So far as LPA No. 11/93 is concerned all such documents, which were produced in the proceedings of SCA No. 4771 of 1993 are permitted to be produced and, as

observed earlier, we have considered the same. Under these circumstances, the views taken by the learned Single Judge (Coram: R.K. Abichandani, J.) in SCA No. 4771 of 1993 deserve to be confirmed and the view taken by another learned Single Judge (Coram: K.G. Shah, J.) in SCA No. 475 of 1990 cannot be sustained, keeping in view the facts and circumstances of the present proceedings of the LPA No. 11/1993.

39. The aforesaid is coupled with the circumstances that based on the view taken by the learned Single Judge of this Court (Coram: R.K. Abichandani, J.) in SCA No. 4771 of 1993, SCA No. 6945 of 1993 came to be disposed of by very learned Single Judge (Coram: R.K. Abichandani, J.) and in LPA No. 556 of 1993 arising from the said decision in SCA No. 6945 of 1993 Coordinate Bench of this Court (Coram: M.R. Calla and J.R. Vora, J.J.) in its decision dated 10.12.1998 has confirmed the view of the learned Single Judge (Coram: R.K. Abichandani, J.) in SCA No. 6495 of 1993, after considering the reasons recorded in the decision of the learned Single Judge in SCA No. 4771 of 1993.

40. In view of the aforesaid observations and discussion, LPA No. 11 of 1993 deserves to be allowed and the decision of the learned Single Judge in SCA No. 475 of 1990 is set aside and consequently SCA No. 475 of 1990 shall stand dismissed. Hence, ordered accordingly.

41. LPA No. 503 of 1993 deserves to be dismissed. Hence, dismissed accordingly.

42. LPA No. 505 of 1993 consequently, in view of the dismissal of LPA No. 503 of 1993, also deserves to be dismissed. Hence, dismissed accordingly. Considering the facts and circumstances, there shall be no order as to costs.

FURTHER ORDER:

After the pronouncement of the order, Mr. Shah, learned Counsel appearing in LPA No. 11 of 1993, prays that the operation of this order be stayed for some time, so as to enable his client to approach before the higher forum. He further states that his client shall continue with the Bank Guarantee if the operation is stayed for some time.

Considering the facts and circumstances, the bank guarantee given by interim order shall continue for a period of eight weeks from today and upon compliance of the said condition, the operation of the present order and judgment shall remain in abeyance for a period of six weeks. The bank guarantee will be renewed on or before 29.1.2011.