
(1995) 02 GAU CK 0026
In the Gauhati High Court
Case No : Writ Appeal No. 27 of 1995

Union of India (UOI)

APPELLANT

Vs

Hasija Coal Traders

RESPONDENT

Date of Decision : 10-02-1995

Acts Referred:

Railways (Punitive Charges for Overloading of Wagon) Rules, 1990 — Rule 1
Railways Act, 1989 — Section 73

Citation : AIR 1995 Guw 113

Hon'ble Judges : V.K. Khanna, C.J.; Anup Deb, J

Bench : Division Bench

Advocate : B.K. Sarma and P.K. Tiwari, for the Appellant; N.M. Lahiri, G.N. Sahewalla and A.K. Goswami, for the Respondent

Final Decision : Allowed

Judgement

Khanna, C.J.—This appeal has been filed against the decision of the learned single Judge given in Civil Rule No. 639 of 1993 (Hasija Coal Traders v. Union of India).

2. We have heard Mr. B. K. Sarma assisted by Mr. P.K. Tiwari, learned counsel appearing for the Union of India and Mr. N.M. Lahiri assisted by Mr. G.N. Sahewalla and Mr. A.K. Goswami, learned counsel appearing for the contesting respondent/ petitioner.

3. The brief facts for the purpose of adjudicating the controversy raised in this appeal are that the petitioner/respondent Hasija Coal Traders is a proprietary firm carrying on the business of sale and supply of coal. The coal is being loaded from Baihata Jogighopa Railway Station. According to the petitioner/respondent there is no weigh bridge for the purpose of weighing coal loaded in wagons at the Railway Station and for the purpose of determining the carrying capacity of particular wagon, the Railway authorities have provided various measurement for wagons regarding permissible carrying capacity and if the loading is made up to a particular height then loading will not exceed the permissible carrying capacity.

After the coal is loaded in accordance with the instructions of the Railway authorities, the Railway authorities issue Railway Receipt and make endorsement including the endorsement in respect of the height measurement. It may however be detected later on that there may be more weight and load while making check at the destination station. This apprehension was based on the ground that the processes which were carried by the Railway authorities at the destination station for determination of carrying capacity amounts to arbitrariness and it cannot make the petitioner liable to penalty. If the excess loading/over loading is found either at the destination or during the journey, penalty for excess loading cannot be charged. There would be no power to levy penalty available to the Railway authorities to initiate penalty proceedings u/s 73 of the Railways Act, 1989 (hereinafter referred to as "the Act"), the reference of which will be made later in the judgment.

4. The appellant Union of India filed an affidavit-in-opposition wherein it was stated that the loading was done at the owners risk and the penalty was imposed in exercise of the powers given to the Railway authorities as provided by the Rules framed under the Act in case there was any contravention of the provisions of Section 73 of the Act.

5. The learned single Judge while relying on the decision of the Division Bench of this Court passed in Civil Rule 39 of 1984 in Darshan Kumar Mahajan v. The Station Superintendent, Chakki Bank, Northern Railway, Punjab, (1990) 2GLR (NOC) 15, has held that if the wagons are loaded according to the procedure prescribed and the Railway Receipt contains the endorsement regarding weight, the question of imposing penalty by the Railway authorities will not arise later on by rechecking but the petitioner will only be liable to pay the excess freight for such over weight or over loading.

6. At the very outset, we may first refer to the decision of the Division Bench of this Court in the case of Darshan Kumar Mahajan (supra). In our opinion, in the aforesaid case, the provisions of the Indian Railways Act, 1890 and the Rules framed thereunder were considered. The aforesaid Act, 1890 has been repealed under S. 200 of the new Railways Act, 1989. The Division Bench as at the time of adjudication of the case of Darshan Kumar Mahajan (supra) had no occasion to deal with the provisions of the present Act and the Rules made under the new Act. The relevant provisions of the present-Act in respect of Punitive Charge for overloading a wagon are under Sec. 73 of the Act which runs as follows:

"Section 73. Punitive charge for overloading 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."

7. It may be relevant to note that Section 87 of the Act empowers the Central Government by notification to make rules to carry out the purposes of the Act. Section 87(2)(d) provides:

"(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely,...

(d) rates of penalty charges u/s 73... "

In pursuance of the powers u/s 87, the Central Government had made rules for levying penalty which are known as the Railways (Punitive Charges for Overloading a Wagon) Rules, 1990.

8. From the aforesaid provisions of the Railways Act and the Rules framed thereunder it is, therefore, clear that under the statute a special power has been given to the competent authority of the Railway to levy penalty in circumstances which have been provided for in the Railways (Punitive Charges for Overloading a Wagon) Rules, 1990. It is being made clear that neither in the Civil Rule nor in the appeal challenge has been made to any provisions of the new Railways Act or the aforesaid Rules, 1990. Mr. N.M. Lahiri, learned counsel appearing for the contesting respondent has also not challenged before us the provisions of the new Act and the Rules. If that be so, it can hardly be said that there is no power of levying penalty in case the consignor has violated the provisions of the Railways (Punitive Charges for Overloading a Wagon) Rules, 1990.

9. Mr. N.M. Lahiri, Senior Advocate appearing for the petitioner/respondent has however urged that so far levy of penalty is concerned, the petitioner has never violated the norms fixed by the Railway authorities for carrying coal by the Railways. If that be so, we are of the opinion that there would be no power to attract the provisions of levying penalty on the petitioner/respondent on the ground that it has not violated the provisions of the aforesaid Rules, 1990. However, this Court is not required to express any opinion on the merits inasmuch as it has also been the case of the petitioner that up till now no penalty order has been passed by the Railways. The question whether the petitioner/respondent has violated the provisions of the Act and the Rules are questions of fact and the aforesaid questions of fact have to be determined by the competent authority of the Railways. In case the Railway authority comes to the conclusion that the petitioner has violated the provisions of the Rules, 1990, the question of levying penalty would arise. We are thus of the opinion that in view of the statutory provisions contained in the Act and the Rules, it cannot be held that penalty cannot be imposed on any consignor who has violated the provisions of the aforesaid Rules, 1990.

10. In view of what has been held by us, we are of the opinion that the view taken by the learned single Judge is not correct. The judgment and order of the learned single Judge is, therefore, liable to be set aside.

11. For the reasons stated above, the appeal is allowed. However, looking to the entire facts and circumstances of the case, the parties shall bear their own costs.