

(2002) 08 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 3002 of 1991

Union of India (UOI)

APPELLANT

Vs

Maharashtra Small Scale Industries Development Corporation
Ltd. and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 13, 15, 24

Citation : (2003) ACJ 2063 : AIR 2002 Bom 515 : (2002) 4 ALLMR 676 : (2002) 5 BomCR 434 : (2002) 4 MhLj 797

Hon'ble Judges : V.G. Palshikar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : A.N. Samant, for the Appellant; G.S. Rao, instructed by Purnand and Co., for the Respondent

Judgement

1. The Union of India has filed this writ petition seeking an authority to pronouncement of law be operated within the State of Maharashtra in relation to the provisions of the Railways, the Railway Claims Tribunal Act, 1987.

2. The undisputed facts giving rise to this petition are very brief and few. The Maharashtra Small Scale Industries Development Corporation Ltd., respondent No. 1 (herein) filed Special Civil Suit No. 138 of 1985 against the Union of India as the owner of the defendant-Railways and the respondent No. 2 i.e. M/s Ota Kandla Pvt. Ltd., Gandhidham, Gujarat. The suit was valued for damages, and compensation at Rs. 8 lakhs. The suit was filed in the Court of Civil Judge, Senior Division, Kolhapur, who transferred it to the Railway Claims Tribunal, Bombay in view of the provisions of Section 13 of the Railway Claims Tribunal Act, 1987.

3. On 18th September, 1990 the respondent No. 1 made an application to the Railway Claims Tribunal for transferring the case to the Civil Court on the ground that the suit is not triable by the Tribunal as they are claiming compensation from respondent No. 2 also. The learned Tribunal heard the matter and passed an order re-transferring the matter to the Court of Civil Judge, Senior Division,

Pune. It is this order which is challenged by the Union of India by this petition basically on the ground that the Railway Claims Tribunal Act, 1987 is a special legislation enacted by the Parliament for creating a speedy remedy of adjudicating claims, arising against or by the Railway Administration and, therefore, according to the learned counsel, the Tribunal itself should have tried the case instead of re-transferring the same to the Civil Court. It was the submission of the learned counsel that the provisions of Section 13 in particular, require authoritative pronouncement by this Court determining the course that can be resorted to by a Tribunal u/s 13 of the Act. The learned counsel submitted that there is no judgment on this point by the Bombay High Court. In these circumstances, we will have to consider respectively, the provisions of the Claims Tribunal Act and declare the law u/s 13 of The Railway Claims Tribunal Act in trying the disputes laid before it.

4. The Railway Claims Tribunal Act, 1987 (Act No. 54 of 1987) received the assent of the President on 23rd December, 1987. The preamble to the Act reads as under :--

"An act to provide for establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents, (or untoward incidents) and for matters connected therewith or incidental thereto."

5. From the preamble, it would be clear that the Act is enacted as a Special Legislation by the Parliament for the purposes of an adjudication of claims against Railway Administration. The Act, by reason of Section 1 is applicable to the whole State, it was brought into force from 8-11-1989. Section 3 of the Act provides for establishment of Railway Claims Tribunal and benches thereof. The composition of the Tribunal is prescribed, qualifications of the Chairman and members thereof are prescribed. Then, Chapter III of the Act deals with jurisdiction, power and authority of the Claims Tribunal. Section 13 reads as under:--

"13. Jurisdiction, powers and authority of Claims Tribunal. -- (1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railways Act,--

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for :-(i) Compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway; (ii) compensation payable u/s 82A of the Railways Act or the rules made thereunder; and

(b) In respect of the claims for refund of fares or part thereof or for refund of

any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway;

(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any Civil Court in respect of claims for compensation now payable by the railway administration, u/s 124A of the said Act or the rules made thereunder.

(2) The provisions of the Railways Act, 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

From the provisions above, it is crystal clear that the jurisdiction of the Claims Tribunal from the appointed day, shall be relating to all matters filed in Civil Court or otherwise pertaining to the responsibility of Railway Administration as carriers, compensation for loss, destruction, damage, deterioration of goods etc. entrusted to Railway Administration for carriage by Railway. Then, the cases for compensation payable u/s 82A of the Railways Act are also triable only by the Claims Tribunal, Claims for refund of fares or part thereof or freight or part thereof are also to be tried by this Tribunal. The section in effect, confers jurisdiction on the Railway Claims Tribunal pertaining to Railway Administration only.

6. Then, Section 15 provides the bar, which reads as under :--

"15. "Bar of jurisdiction. -- On and from the appointed day, no Court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to [in Sub-sections (1) and (1A)] of Section 13. "

From these provisions, it will be seen that from the date of commencement of this Act or from the appointed day, no other Court shall have any authority to deal with matters mentioned in Section 13. The jurisdiction of Civil Court to deal with such compensation cases against Railway Administration is therefore taken away.

7. Section 24(1) provides for transfer of pending cases. The section very clearly provides that:--

"Every suit, claim or other legal proceeding (other than an appeal) pending before any Court, Claims Commissioner or other authority immediately before the appointed day, (or as the case may be, the date of commencement of the provisions of Sub-section (1A) of Section 13) being a suit, claim or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day, (or as the case may be, the date of commencement of the provisions of Sub-section (1A) of Section 13) within the jurisdiction of the Claims Tribunal, shall stand transferred (on that day or, as the

case may be, date) to the Claims Tribunal."

8. A careful consideration of these provisions leaves no doubt regarding the scope of the Act. The Parliament desired to create an expeditious, efficacious remedy by creating Railway Claims Tribunal for that purpose and has, by this Act, transferred all proceedings pending against the Railway Administration arising out of any claim made against the Railway Administration, to the Claims Tribunal. It is obvious that the provisions of the Act abundantly make it clear that the creation of the Tribunal was with a specific purpose that purpose was to provide a separate forum for adjudication of the disputes with Railway Administration regarding its functioning in the matter of transport, either of passengers or of goods and ancillary matters arising therefore, such as railway accident, loss of goods by Railway in transit etc. What is to be dealt with by the Tribunal is made clear by the provisions of Section 13. In our opinion, therefore, the Railway Claims Tribunal is formed to administer justice in the matters of compensation, damages etc. arising out of fault of the Railway Administration. The question which now falls for consideration is therefore as to whether a claim by a plaintiff, of damages against his agent and the Railway Administration, holding both responsible for the damages, is maintainable before the Railway Claims Tribunal? Another question which arises is whether the Railway Claims Tribunal has any jurisdiction to adjudicate upon the liability or responsibility of an individual or a company unconnected with the Railway Administration?

9. On the basis of the provisions of Section 13, we have no doubt that the Special Tribunal as created by the Special enactment will have only that jurisdiction which is conferred on it by the statute. None of the provisions of Railway Claims Tribunal Act, 1987 set out any such jurisdiction in the tribunal to deal with suits of liability of an agent along with that of Railway Administration.

10. What is barred by Section 15 is trial of a claim by any other Court where that claim is covered by Section 13. Section 13 itself cannot cover claim against respondent No. 2 and, therefore, bar created by Section 15 will not work in a case where there are two defendants. In our view, such suits are not barred by Section 15 and, therefore are not liable to be transferred u/s 24 of that Act. In our opinion, therefore, the order passed by the Tribunal, retransferring the case to the Court of Civil Judge, Senior Division, Pune is liable to be maintained except with a modification that the suit should go back to the senior division, Kolhapur wherefrom it is transferred.

Petition is accordingly disposed of.

Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court.