

(1983) 09 CAL CK 0014
In the Calcutta High Court
Case No : A.F.O.D.No. 1053 of 1969

Union of India (UOI)

APPELLANT

Vs

Straw Products Ltd.

RESPONDENT

Date of Decision : 06-09-1983

Acts Referred:

Constitution of India, 1950 — Article 14
Railways Act, 1890 — Section 26

Citation : AIR 1984 Cal 291

Hon'ble Judges : Nani Gopal Chaudhury, J;Chittatosh Mookerjee, J

Bench : Division Bench

Advocate : Ajoy Kumar Basu, for the Appellant; Tribriwal, M.P. Chowdhury and P.L. Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

Mookerjee, J.—The Union of India representing the South-Eastern Railway Administration has preferred this appeal against the judgment and decree in favour of the respondent, passed by the learned Subordinate Judge, 6th Court, Alipore, for recovery of Rs. 33,515.81 p.

2. The plaintiff-respondent established in the year 1961 a paper mill at Jaykaypur within the State of Orissa. For the purpose of manufacturing paper at the plaintiff's said mill it was required to transport by railway large quantities of bamboo-chips, cuts, splits and splints from different stations of the defendant-Railway. It appears that during the period 23rd Oct., 1961 to Oct. 19, 1962 the plaintiff-respondent had been charged concessional railway freight in terms of the Special Freight Rate Circular No. 2-A of 1960, Ext. 2 (x), in respect of different consignments of such bamboo-chips, cuts, splits, etc. despatched and booked to the plaintiff's mill at Jaykaypur. Thereafter the Railway Administration denied the plaintiff the benefits of the said concessional rates until and unless the plaintiff applied and was granted such concessional rates on booking of bamboo-chips etc. and carried over the defendant's railways. As a condition for

extending such concessional facilities the plaintiff was made to pay to the defendant-appellant a sum of Rs. 19,542-65 p. being the difference between the full freight rates and the concessional rates which have been charged in respect of consignments booked during the period 23rd Oct., 1961 to 19th Oct., 1962. Further, pending consideration by the defendant-Railway of the plaintiff's application for granting concessional freight rates in respect of consignments of bamboo-chips etc. the plaintiff was charged full rates and a total sum of Rs. 13,973.16 p. was recovered from the plaintiff in excess of concessional rates in respect of the said different consignments booked during the period. With effect from 20th Feb., 1963 the South Eastern Railway prospectively granted the plaintiff-Company concessional freight rates in terms of the aforesaid Circular No. 2-A of 1960, Ext. 2 (x). The plaintiff-company brought the suit out of which this appeal arises for recovery of the aforesaid two sums of Rs. 19,542.65 p, and Rs. 13,973.16 p. paid in respect of the consignments booked during the aforesaid two periods-- 23rd Oct., 1961 to 19th Oct., 1962 and 19th Oct., 1962 to 19th Feb., 1963. The Union of India representing the South Eastern Railway Administration by filing a written statement contested the suit inter alia on the ground that the same was not maintainable, the suit was barred u/s 78-B of the Indian Railways Act, the suit as framed was not maintainable, and the plaintiff was not entitled to the benefit of the concessional freight rates until and unless the Railway Administration had extended to the plaintiff the benefits of the said circular.

3. The learned subordinate Judge, as already stated, has decreed the suit in favour of the plaintiff inter alia holding that the suit was maintainable, it was not barred by limitation, the provisions of Section 78-B of the Indian Railways Act had been complied with and the plaintiff had been discriminated by the defendant by refusing the benefits of the concessional freight rates.

4. Mr. Basu, who has appeared on behalf of the appellant, has submitted that the suit brought by the plaintiff respondent was not maintainable, the plaintiff's remedy, if any lay in approaching the Rates Tribunal and the Civil Court had no jurisdiction to entertain the said suit. Mr. Basu next submitted that no notice u/s 78-B of the Act was given at least in respect of the consignments booked between 19th Oct., 1962 and 19th Feb., 1963 and, therefore, in any case, the plaintiff's claim for recovery of the sum of Rs. 13,973.16 p. ought to have failed. Mr. Basu has also contested the finding of the trial Court that the plaintiff was discriminated by not extending to it the benefits of the concessional rates till its application for granting such concessional rates was allowed with effect from the 20th Feb., 1963.

5. Having given our anxious consideration in the matter we are of the view that the learned subordinate Judge has rightly decreed the suit in favour of the plaintiff-respondent. In our view, Section 26 would not be a bar to the institution of the instant suit. Chapter V of the Indian Railways Act does not provide for redress for the remedies sought for in the instant suit. The plain-tiff's claim, in

substance, was that the defendant had acted in a discriminatory manner and had denied the plaintiff equality of treatment in the matter of freight rates for transport of raw materials to the plaintiff's mill by giving all other paper mills the benefits of such concessional freight rates. Therefore, in case the plaintiff's contention is upheld, the provisions u/s 26 would not be attracted for adjudication of the plaintiff's claim and contention of violation of its right under Article 14 of the Constitution. Further, in view of the decisions of the Supreme Court reported in *Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Railway Company Ltd.*, and *Raichand Amulakh Shah Vs. Union of India (UOI)*, the Railway Rates Tribunal would have no jurisdiction to make any order in favour of the plaintiff for recovery of excess freight charges already recovered from it. The said Rates Tribunal in an appropriate case might make an order with prospective effect. Therefore, the plaintiff had no alternative remedy by way of an application before the Rates Tribunal. Further the learned Judge has correctly pointed out in the instant case the plaintiff does not challenge the rates fixed in respect of transport of the raw material but the plaintiff's contention is that it should be treated similarly with other Mills in the matter of extending benefits of concessional rates in the absence of any intelligible basis for differentiation in treatment. Therefore, the issue regarding jurisdiction has been correctly answered by the Court below in favour of the plaintiff.

6. We also approve the views taken by the trial Court on the issue of limitation. With regard to the consignments booked during the period 23rd Oct., 1961 to 19th Oct, 1962 the plaintiff was initially charged at the concessional rates and only on 14th Nov., 1962 the Railway Administration, for first time, demanded from the plaintiff payment of a total excess sum of Rs. 19,542.65 p. before the plaintiff's prayer for concessional rates could be considered. Therefore, Mr. Basu, learned Advocate for the appellant, has not seriously argued that the plaintiff's claim for Rs. 19,542.65 p. was barred by limitation or that no notice u/s 78-B of the Railways Act had been served within six months. Mr. Basu's submission has been that the other sum of Rs. 13,973.16 p. was the sum total of the rates which according to the plaintiff was paid in excess in respect of various consignments booked during the period 19th Oct., 1962 to 19th Feb., 1963. In our view the lower Court has correctly pointed out that the letter dated 20th Feb., 1964 clearly reveals that the Railway Administration had refused concessional rates with retrospective effect or in other words to refund the alleged excess payment on account of overcharges and the suit had been brought within three years from the date of such refusal. We do not agree with the submissions of Mr. Basu that the payments of the aforesaid two amounts had been voluntarily made by the plaintiff and not under compulsion. The correspondence between the parties clearly prove that after having allowed the plaintiff to transport consignments at concessional rates between the 23rd October, 1961 to 19th October, 1962 the Station Master of the station concerned, at the instance of the Railway Administration, for the first time had demanded from the plaintiff payment of excess sum of Rs. 19,542.65 p. The Railway Administration had refused

thereafter to book further consignments at the concessional rates. Upon the insistence of the Railways themselves the plaintiff had applied on the 19th October, 1962 for granting concessional rates. On the 14th Nov., 1962 the Railway Administration by a letter had demanded payment of Rs. 19,542.65 p. before considering the plaintiffs such prayer for granting concessional rate. It may be noted that at one stage of the correspondence among the officers of the Railway Administration themselves the Chief Commercial Superintendent, South Eastern Railway, himself had suggested that the plaintiff ought to be granted retrospectively the benefits of the concessional rates which were being enjoyed by all other mills. But the Chief Account Officer and the Financial Advisor, South Eastern Rly. had turned down the said suggestion and had insisted upon payment at full rates until the plaintiffs application was granted with retrospective effect. In the above view, the Court below has rightly found that after excluding the time spent in giving a notice u/s 80 of the Civil P. C. the suit was filed within the period of limitation.

7. We have already rejected the submissions of Mr. Basu that both the aforesaid sums were paid by the plaintiff company voluntarily. But the correspondence between the parties establish that the said amounts were paid under compulsion and as a condition precedent for entertaining the plaintiff's application for concessional rates. The Court below, in our view, has correctly applied the provisions of Section 78-B by holding that in the instant case the claim had been made by the plaintiff within six months of the cause of action.

8. We also agree with the trial Court that there was no intelligible basis for differently treating the plaintiff-mill in the matter of giving the benefits of the concessional rates of freight. The circular, Ext. 2 (x) no doubt specifically mentioned the different paper mills which were already in existence on the date of the issue of the said circular. But Mr. Basu has not drawn our attention to any provision of law, circular or order by which the benefits of the said special freight rates could be confined only to paper mills established prior to the issue of the said circular. The said circular itself did not prescribe that an application by the consignor or consignee mill must be made before claiming entitlement of such special freight rates. Merely because in the Orient Paper Mill's case the benefit of concessional freight rates was not given until the said paper mill had applied for the same it cannot be a tenable ground in a Court of law. We are not aware whether the other paper mills had voluntarily accepted the Railway's demand and there was no occasion for any Court of law to adjudicate the validity of the action taken in respect of the prayer made by Orient Paper Mills. Therefore, the same cannot serve as a binding precedent before a Court which is called upon to adjudicate the scope and effect of such a circular providing for special freight rates for paper mills. In our view, there was no intelligible differentia for treating the plaintiff-paper mills differently from the other paper, mills merely because the plaintiff-paper mill was started at a later point of time. Such differentiation in treatment is also not reasonable. On the other hand, it appears that it is arbitrary inasmuch as in the absence of any basis for differently treating the

plaintiff's paper mill the plaintiff should have been also given the benefits of the concessional rates. The defendant's insistence, upon prior filing of an application for obtaining benefits of special freight rates was not justified by any Jaw, order or valid circular. Therefore, on this ground the plaintiff could not be denied the benefits of the concessional rates till its application in this behalf was purported to be allowed. We accordingly concur with the findings of the trial Court that the action of the defendants was arbitrary and that they wrongfully recovered the aforesaid two amounts from the plaintiff and they are bound to refund the same.

9. We accordingly dismiss this appeal There will be, however, no order for costs. Interim orders, if any, are vacated,

10. After the appeal is dismissed Mr. Basu has prayed for a certificate under Article 133 read with Article 134A of the Constitution. But we refuse the said prayer because, in our view, the present appeal does not involve any substantial question of law which is fit to be considered by the Supreme Court of India.

N.G. Chaudhuri, J.

11. I agree.