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IN THE HIGH COURT OF DELHI

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FAO No.54/2006

Union of India Appellant
through: Mr.B.S.Rajesh Agrajit, Adv.

VERSUS

M/s. Hindustan Petroleum Corp. Ltd. Respondent
through: Mr.S.P.Singh, Adv.

DATE OF DECISION:

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03.04.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Heard learned counsel for the parties.
2. Though there is a delay of 135 days in filing the appeal I have considered the merits of the controversy.
3. The appeal is directed against an order dated 26.7.2005 passed by the Railway Claims Tribunal in case No. OC-32/2001.
4. HPCL had admittedly booked for transportation a railway wagon No. CR1926103 for transshipment from Khari

Rohar Road to Shakur Basti. Admittedly the wagon was loaded with Motor Spirit in the private siding of HPCL. Admittedly a joint dip certificate at the point of destination reveal 18811 liters of motor spirit removed from the wagon.

5. Whereas UOI i.e. the Railways urged before the Railway Claim Tribunal that since the wagon was loaded at the private siding of HPCL and loading thereof not supervised by Railway Officials it could not be fastened with any liability on account of the fact that the joint dip certificate revealed that part fuel was missing as the valves of the wagon were found leaking. To put it pithily, it was the case of UOI that the staff of HPCL who loaded the wagon remained negligent in not ensuring that the valves were properly and tightly fitted.

6. Case of HPCL was that the wagon was entrusted in a proper condition with seals and valves properly secured and that tampering took place en-route.

7. The rival versions have been duly considered by the Railway Claim Tribunal. The knot has been untied with reference to the relevant provisions of the operating manual.

The same reads as under:-

“11016 – At a roadside station – (a) During transit the Guard-in-charge shall examined all such wagons at every halt, and if any of them is detected leaky he shall have it detached at the nearest station with a high level platform. After the wagon has been

detached and the signature of the Asstt. Station Master has been obtained by the Guard in his Rough Journal Book, he shall proceed with his train and continue to exercise the same vigilance in regard to the remaining such wagons.

11013 – Precautions by Guards – (a) Immediately on arrival of the train, the incoming Guard shall advise the Asstt. Yard Master/Asstt. Station Master in writing giving full particular of such wagons on his train. He shall only go off duty after obtaining signatures of the Asstt. Yard Master/Asstt. Station Master in his Rough Journal book for reference and record.

(b) Before starting, the Guard must make a thorough examination of his train to ensure that petrol wagons have no leaks, that lead seals are on and that, “dangerous, Not to be Loose Shunted” labels are affixed on both sides of such wagons. He shall fully satisfy himself that such wagons are correctly marshaled in accordance with para 1004.

(c) The Guard shall, then, advise the driver about the presence of Petrol wagons on the train and their position.

(d) he should realize that smell of petrol vapour from any wagon is a strong indication of a leak and any wagon found smelling of petrol must be thoroughly examined jointly by the Train Examiner and the Railway Protection Force staff and that only after he has received a certificate from the Asstt. Yard Master/Asstt. Station Master that the wagons are not leaking, he will consent to keep them on the train.

(e) During transit, the guard will examine all petrol wagons at every halt where time permits.”

8. Conclusion drawn from the relevant provisions of the manual is that tank wagons are loaded after they are certified fit for loading by the train examiner and if the wagon

has any leakage after loading the yard staff or the station master or the guard would not allow such a wagon to be dispatched. The corollary thereto is that the wagon must have been entrusted in a proper condition to the Railways.

9. The view taken by the Tribunal is not only reasonable but is a probable view. Suffice would it be to note that the relevant provisions of the operating manual require the yard staff or the station master or the guard to do what has been found by the Tribunal in para 8 of its decision. Para 8 of the decision of the Tribunal reads as under:-

“8. We are in agreement with the arguments advanced by learned counsel for the Applicant that the tank wagons are loaded after they are certified fit for loading by the train examiner and if the wagon had leakage after loading, the yard staff at the loading station or the station master or the guard would not have allowed the wagon to be dispatched.”

10. I find no merits in the appeal.

11. Dismissed.

April 03, 2008
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PRADEEP NANDRAJOG, J.