

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9342/2007 with WP (C) Nos. 11974/2009
11240/2009, 11297/2009, 11524/2009, 11609/2009,
11610/2009, 11989/2009, 12129/2009, 12243/2009,
12244/2009, 12256/2009, 12265/2009, 12659/2009,
12660/2009, 13010/2009, 13162/2009, 13217/2009,
13273/2009, 13344/2009, 13364/2009, 13403/2009,
13520/2009, 13614/2009, 9755/2009, 3298/2010,
5358/2010, Cont. Case (C) Nos. 653/2008 and 897/2009**

SHRI PANKAJ MOHAN ASSOCIATES & ANR. Petitioner
Through Mr. Naveen R. Nath with
Ms. Darpan K.M. and Ms. Amita Sharma,
Advocates for Petitioners in all connected
petitions except in WP (C) 13614/2009.
Mr. S.P. Srivastava, Advocate for the
Petitioner in W.P. (C) No. 13614/2009.

versus

SECRETARY RAILWAY BOARD & ORS Respondents
Through Mr. N. Waziri, Standing Counsel
with Mr. Shoaib Haider, Advocates for
GNCTD
Ms. Geetanjali Mohan with Mr. Ketan
Madan, Advocates for the Railways with
Mr. Ajay Naulakar, Assistant Commercial
Manager/Freight, Northern Railways and
Mr. S.S. Mishra, Senior Manager, Northern
Railways.
Mr. B.V. Niren, CGSC with Mr. Abhishek
Goyal, Advocate for UOI in W.P. (C) No.
9755/2009.

CORAM: JUSTICE S. MURALIDHAR

ORDER
% **20.01.2011**

1. The Petitioners are entities that have taken on lease parcel space in
brake vans/parcel vans/Assistant Guards Cabin in the trains runs by the
Indian Railways.

2. The controversy concerns the weighment by the Railways of consignments loaded by the Petitioners on the parcel vans (hereinafter referred to as 'VPH'). This is a matter of concern to the Petitioners since overloading of VPH attracts severe penalties. Where the overloading exceeds a margin of 5% on three occasions it can entail the cancellation of the lease itself.

3. The weight of an empty VPH is known as its 'tare weight' which is usually stenciled on the VPH itself. Weighment takes place at the time of loading of the consignment on to the VPH. The Railways are entitled to re-weigh the consignments at any station enroute using an in-motion weighbridge. On detection of overloading, the Railways usually collect from the Petitioners, at the destination point and prior to delivery the excess freight charges and also the penalty for overloading. At that stage, prior to taking delivery of the consignment by making payment of the amount demanded, it is open to the Petitioners or the consignee to ask for a second re-weighment at the destination station. By a circular dated 11th December 2006, the Railways decided to permit second re-weighment of the consignments loaded in the parcel van at the destination station at the party's cost.

4. The Petitioners were not happy with the manner in which the re-weighment was done and the freight collected towards excess weight and by way of penalty. The grievance was that despite repeated requests the Railways was not acting in accordance with the circular

dated 11th December 2006. By an order dated 18th December 2007, this Court directed that in the event a request was made by the Petitioners in terms of the said circular the Railways would effect a second re-weighment of the consignments loaded parcel van at the destination station on a weighing scale, at the party's cost.

5. The Railways then brought up the issue of the practical difficulties in effecting the physical re-weighment of the consignments loaded parcel vans at busy stations like Old Delhi and New Delhi Railway Stations. In order to bring about a practical and effective procedure, this Court passed the following order on 2nd December 2009:

“1. I have heard the parties at length and considered the suggestions given by them.

2. Counsel appearing for Weights and Measures Department states that in motion weighbridges have been inspected and found to be properly calibrated and functioning properly. He, however, states that tare weight of empty wagons cannot be ascertained/verified.

3. Counsel for the respondent Railways states that the matter is pending consideration of Railways Board as well as Northern Railway Headquarters. She states that a new notification has been issued under which tolerance of 0.5 tonnes per wagon is permissible and benefit of the said notification will be available to the petitioners.

4. The main dispute is with regard to the tare weight of the wagons i.e. the empty wagon. As per the respondents tare weight is taken/verified once in 18 months. Counsel for the Petitioner, on the other hand, submits that the tare weight is incorrectly recorded as a result of which the petitioners are

saddled with penalties. In support of his contention, he relies upon the difference between the physical weighment and in motion weighment.

5. Pursuant to suggestions given by the Court, counsels for the parties have obtained instructions and it is agreed that the Railways will follow the following procedure till the next date of hearing:-

(i) In case, any of the petitioners want to dispute in-motion weight, they shall submit a complaint within two days of arrival of the wagon and pay 50% of the penalty amount demanded by the respondent, Railways.

(ii) The Railways within 21 days thereafter will carry out fresh tare reading of the wagon concerned and inform the petitioner five days in advance about the date, time and place of tare reading by sending SMS and other modes. In case petitioner is not present, the respondent Railways will furnish print outs of the reading.

(iii) After re-reading of the tare weigh, 50% of the penalty amount will be either refunded by the Railways or paid by the petitioner.

6. This is purely an interim order and is being passed without prejudice to the rights and contentions of the parties.

7. This order is also being passed in view of the difficulty expressed by the respondent Railways in carrying out the physical re-weighment at Railway Stations in Delhi. According to the respondent, Railways, physical re-weighment has resulted in operation problem due to lack of space. The interim order passed earlier is modified to the extent indicated above and it is clarified that the physical re-weighment will not be necessary till the next date of hearing.

List again on 4th February, 2010.

Dasti to the counsel for the parties under Signature of the Court Master.”

6. An application being CM No.15727 of 2009 filed subsequently in W.P.(C) No. 13162 of 2009 for modification of the order dated 2nd December 2009 was disposed of by an order dated 17th December 2009 which reads thus:

“CM No. 15727/2009

I do not see any reason to vary the order dated 2nd December, 2009 and direct physical re-weighment. One of the reasons why direction for physical re-weighment was not accepted and modified was that this had resulted in operational problem due to lack of space at the railway stations in Delhi.

Learned counsel for the respondents, who appears on advance notice, states that they shall carry out in-motion weighment of the loaded wagon as well as actual tare weight after the goods have been unloaded in the presence of the petitioner. Learned counsel for the petitioner will be informed about the date and time when the said exercise will be undertaken on telephone. At least six hours notice will be given to the petitioner for this purpose.

Charges for re-weighment will be borne initially by the petitioner but in case complaint made by the petitioner is found to be correct, the said amount will be reimbursed by the Railways within seven days.

Learned counsel for the petitioner states that the respondents are not refunding the balance penalty amount even after tare weight is taken and an amount is to be refunded in terms of the order dated 2nd December, 2009. The respondents will send refund cheque by registered post within seven days after tare weight is taken. In case refund cheque is not sent within

seven days from the date tare weight is taken, the respondent shall be liable to pay interest @ 12% per annum from the date of deposit till payment. Similarly, the petitioners will make payment of any additional amount payable after tare weight is taken within seven days of intimation and in case they do not make the said payment within seven days, they will be liable to pay interest @ 12% per annum from the date demand was raised.

The application is disposed of.”

7. The Petitioners filed an affidavit dated 3rd February 2010 highlighting the discrepancies in the tare weight as indicated on the VPH and that as detected on re-weighment. The grievance was that the in-motion weighbridges used by the Railways were not properly calibrated. The Petitioners further contended that the Weights and Measures Department of the Government of the National Capital Territory of Delhi (GNCTD) were not equipped to test and certify the weighment procedures in respect of in-motion weighbridges.

8. Further directions were issued by this Court on 21st April 2010 to the Weights and Measures Department of the GNCTD to verify the calibration of the in-motion weighbridges used by the Railways. The order passed by this Court on 21st April 2010 reads as under:

“1. Mr. N. Waziri, learned counsel appearing for the Standard Weights and Measures Department, GNCTD has produced a note titled ‘Procedure for Verification of In-motion Weigh Bridge’. It appears that the testing of the in-motion weigh bride is usually done only by running one of the railway test wagons with a declared tare weight across the machine. If it tallies with the declared weight the machine is certified to be in order.

2. In the considered view of this Court, in order to verify if the calibration of an in-motion weigh bridge is in order, the Weights and Measures Department will have to test at random at least three wagons of the railways which are operational and which contain the declared tare weights.

3. The officials of the Weights and Measures Department of GNCTD will undertake this exercise on any date between 24th April 2010 and 27th April 2010. It is directed that the officers of the Northern Railways will fully cooperate in the exercise. It is open to the representatives of the Petitioners to be present when this exercise is undertaken. They will be intimated in advance by the GNCTD.

4. Mr. Waziri, learned counsel states that the report of the Weights and Measures Department will be placed before the Court on the next date of hearing.

5. It is clarified that in para 5 (i) of the order dated 2nd December 2009 the words “arrival of the wagon” is not restricted to the arrival of the wagon at New Delhi. It will include any other location if the wagon in question has proceeded to that location from New Delhi.

6. List on 5th May 2010.

7. A copy of this order be given dasti to the learned counsel for the parties under the signature of the Court Master.”

9. On 5th May 2010, the Weights and Measures Department of the GNCTD filed an affidavit enclosing a copy of the inspection report dated 26th April 2010. The conclusion in the report was that the weighing of test wagon on the in-motion weight bridge was found to be within the maximum permissible error margin of 1%. As regards weight of loaded goods wagon and VPH/VPU empty wagon no significant variation was found in different readings.

10. The Petitioners then represented to the Railways for a further testing and calibration of the in-motion weigh bridges by the National Physical Laboratory ('NPL'). The petitions were adjourned to elicit the response of the Railways.

11. After hearing the submissions of learned counsel for the parties today, this Court is of the view that the further test report of the NPL will not serve the purpose since the statutory authority which has to certify the correctness of the in-motion weighbridge is the Weights and Measures Department of the GNCTD which functions under the Standards of Weights and Measures (Enforcement) Act, 1985 read with the Standards of Weights and Measures (General) Rules, 1987. That authority has already certified that the in-motion weighbridges meet the required standard as to accuracy.

12. It was then submitted by Mr. Naveen R. Nath, learned counsel for the Petitioners, that the arrangements put in place by this Court by the orders dated 2nd December 2009 and 17th December 2009 may be directed to be continued hereafter and that the writ petitions be disposed in terms thereof. Mr. Nath, however, highlighted two more issues which required resolution.

13. The first concerns granting of the benefits of tolerance of 0.5 tonne per wagon in terms of Freight Marketing Circular No. 21 of 2009 dated 13th October 2009. Clause 2.1 of the said circular reads as under:

“2.1 A tolerance of 0.5 tonnes on permissible carrying capacity may be permitted to take care of weighment scale variation.”

14. The submission on behalf of the Petitioners is that the above clause should be interpreted to mean that 0.5 tonne would be added to the permissible carrying capacity and thereafter it would be determined whether the tare weight plus the weight of the consignment is in excess of the permissible carrying capacity. Ms. Geetanjali Mohan, learned counsel appearing for the Railways, on instructions, states that the understanding of the Railways is that only where the total weight of the loaded VPH is in excess of the permissible carrying capacity up to 0.5 tonne that the benefit of the said circular is given. Where the excess weight is over 0.5 tonne, the Petitioners have to pay for the entire excess weight. The Railways have, in an affidavit dated 30th November 2009, while enclosing a copy of the circular dated 13th October 2009 explained: “Hence the Railway is providing margin of error over and above the carrying capacity i.e. if the weight is within the margin, no penalty is imposed on the lease-holder.”

15. Learned counsel for the Petitioners has placed a sampling of the reweighment done of the tare weight of different VPHs in terms of the order dated 2nd December 2009 passed by this Court. It appears that in a significant number of instances, a difference in tare weight has been detected substantiating the case of the Petitioners that the tare weight stenciled on to the VPH is inaccurate. In many instances, the inaccuracy exceeds 5%. In other words, it is not as if the tare weight

that has been stencilled on the VPH is always accurate. This is to be borne in mind while interpreting the circular dated 13th October 2009.

16. This Court notes that the purport of the circular dated 13th October 2009 was to give a benefit of 0.5 tonne variation to the lease holder. In light of this objective, Clause 2.1 of the Circular dated 13th October 2009 has to be understood as requiring the Railways to add 0.5 tonne to the permissible carrying capacity while determining whether there has been an overloading of the VPH concerned. The submission of the Petitioners in this regard merits acceptance.

17. The other issue concerns the haulage charges which have been collected by the Railways from the Petitioners who seek a second re-weighment irrespective of the result of such re-weighment. The contention on behalf of the Railways is that on account of the busy traffic in New Delhi and Old Delhi Railway Station, when a demand is made for a second re-weighment the wagons have to be taken to Tughlakabad. It is submitted that since the re-weighment is done at the instance of the lease-holder, the charges thereof have to be borne by such lease-holder.

18. It appears to this Court that an equitable way of resolving the issue is to direct that the lease-holder who asks for the second re-weighment be required to bear the haulage charges only when his challenge to the in-motion weighment by the Railways fails. Where the lease-holder's claim is found to be substantiated as a result of the second re-

weighment, the haulage charges shall be borne by the Railways. This is consistent with this Court's order dated 17th December 2009 where it was observed: "Charges for re-weighment will be borne initially by the Petitioner but in case the complaint made by the Petitioner is found to be correct, the said amount will be reimbursed by the Railways within seven days."

19. In W.P. (C) Nos. 9342 of 2007 and W.P. (C) 13614 of 2009, the Petitioners state that the overloading was within a margin of 3% despite which the Railways have levied and collected penal charges. In other words, the overloading was up to 3% for which the normal lumpsum leased freight has to be charged for the excess but no penalty is to be charged. It is directed that in both W.P. (C) Nos. 9342 of 2007 and 13614 of 2009, the Railways will examine the above claim of the Petitioners and if the Petitioners are right in their submissions the Railways will refund the penalty collected within a period of eight weeks.

20. The writ petitions are accordingly disposed of in terms of the orders dated 2nd December 2009, 17th December 2009 and the present order. The pending applications and contempt petitions are also disposed of.

S.MURALIDHAR, J

JANUARY 20, 2011
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