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

+ W.P.(C) 3353/2014 & CM APPL. 6895/2014

R.R. CARGO SERVICES Petitioner
 Through Mr. Ashish Mohan with Mr. Cheten
 Rai Wahi and Mr. Mohit Kumar,
 Advocates

versus

UNION OF INDIA & ORS. Respondents
 Through Mr. Jagjit Singh, St. Standing
 Counsel with Mr. N. Prashant Kumar
 and Mr. Shivanshu Bajpai, Advocates

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Date of Decision : 14th July, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. One of the primary prayers in the present writ petition is to quash Clause 1.3 of paragraph (II) of the Comprehensive Leasing Policy (as amended vide Freight Marketing Circular No. 11/2007 dated 12th April, 2007) on the ground that it is arbitrary, irrational, suffers from non-application of mind and in direct conflict with Clause 1.7 of the paragraph (II) of the same policy.

2. Mr. Ashish Mohan, learned counsel for the petitioner points out that in the Clause 1.3 of the amended policy, it is stated that Railways may in addition to the penalties stipulated in Clause 1.2 also cancel the lease of a leaseholder and additionally cancel his registration with the Divisional Railway.

3. Mr. Mohan points out that in contradistinction, Clause 1.7 provides that registration of leaseholder would only be cancelled in case of overloading for two separate contracts and that too, after a minimum of eight violations.

4. Consequently, Mr. Mohan submits that Clauses 1.3 and 1.7 are irreconcilable. Mr. Mohan emphasises that in the present instance there have been less than eight instances of overloading in two separate contracts.

5. Mr. Mohan submits that ambiguity in the policy is required to be resolved in favour of the leaseholders since the said provisions of the policy though in the nature of an administrative order, are yet penal.

6. Mr. Mohan lastly submits that if there is any irreconcilability and ambiguity in terms of the contract, the same has to be resolved in favour of the petitioner based on the principle of *contra preferentem*.

7. Since the whole controversy revolves around the interpretation of Clauses 1.3 and 1.7, the same are reproduced hereinbelow:-

“(II) Over loading

xxxx xxxx xxxx xxxx

1.3 In addition to the above penalty, Railway may terminate the contract and cancel the registration of the leaseholder in case of 4th (fourth default).

xxxx xxxx xxxx xxxx

1.7 In case of cancellation of lease on account of overloading

for 2 separate contracts (minimum of 8 violations in all), registration of the leaseholder would also be cancelled as mentioned under para (K 15).”

8. In the opinion of this Court, Clauses 1.3 and 1.7 are neither contradictory nor irreconcilable. Clause 1.3 confers discretionary powers on the authority to cancel the registration in a case of fourth default.

9. Clause 1.7 casts a mandatory duty on the Railway Authority to cancel the registration on account of eight violations. Respondent-Railways has no discretion after the eighth violation.

10. This Court can visualise various circumstances in which the discretionary power under Clause 1.3 can be exercised. For instance, overloading of a wagon by 50% of its capacity would have serious consequences in comparison to overloading to just 1% and Railways would be justified in exercising their discretionary power under Clause 1.3. In fact, in one of the batch matters, namely, **Swaminath Tiwari Vs. Union of India & Anr., W.P.(C) 8365/2014** Railways has explained the serious consequences of overloading in its counter-affidavit as under:-

“16. That the extent of heavy overloading as has been done by the Petitioner could have led to train-accidents and more importantly had put the lives of passengers travelling in the trains at grave peril. The issues related to safety of the passengers is of utmost importance for the Railways and any activity/instance which puts the lives of passengers at risk has to be dealt with very seriously and with iron hands. It is further submitted that every system has limited capacity for withstanding the load. The coach structure & under gear is designed for a defined load. If weight of parcels exceeds the limited load capacity, the system becomes prone to damage. Overloading is very dangerous in moveable coach. Impact load experienced by the coach structure during rail-wheel

interaction may lead to its failure. It is submitted that the technical aspect of failure of coach safety due to over loading are as under:-

- I. Suspensions system of coach gets suppressed beyond permissible limit in parcel portion side, which causes unevenness of coach and may lead to derailment on curves.
- II. Buffer height gets reduced beyond permissible limit, which may lead to buffers of adjacent coaches getting entangled leading to derailment.
- III. Friction forces increase between trolley frame & side bearers causing high wear of matting surfaces and hence prone to premature failure.
- IV. Braking forces of coaches is set as per their lading capacity. In overloaded condition, braking distance of that coach will increase, which may lead to overshooting of signals and accidents consequently.

All these conditions cause failure of coach sub-assemblies and unsafe running of coach, which may result in accident of train, which is dangerous for the safety of railway passengers. A copy of the letter dated 19/6/2014 issued by Sr. Divisional Mechanical Engineer/Coaching (who is the Head of the branch, maintaining the rolling stock, i.e. coaches, engine wagons, etc. at Divisional Level), regarding technical aspects of failure of coach safety due to overloading is annexed herewith and marked as Annexure R-2.”

(emphasis supplied)

11. Though Mr. Ashish Mohan, learned counsel for petitioner has sought to urge that as Clauses 1.3 and 1.7 operate in the same field of overweight it would amount to giving untrammelled discretion to the officers, yet this Court is of the view that the Authority would have to give cogent and special reasons for exercise of power under Clause 1.3 and for not waiting for eighth default under Clause 1.7.

12. In the opinion of this Court, vesting of discretion in authorities is not *per se* illegal. This is more so when the power has been conferred upon senior officers and that too, subject to appeal.

13. In any event, every norm cannot be reduced to a mathematical formula. If all norms could be reduced to a formula, then computers and not human beings would be running the administration! Consequently, the challenge to the Comprehensive Leasing Policy is dismissed.

14. In the present instance, a perusal of the appellate order passed by the Deputy Chief Commercial Manager reveals that the excess loading in one instance by the petitioner was to the tune of 68.7% over and above the permissible carrying capacity. The appellate authority has noted that the above coach was carrying passengers in addition to the parcels and excess overloading could have caused an accident. The relevant portion of the impugned order passed by appellate authority is reproduced hereinbelow:-

“7. After carefully considering the details of the case and appeal of Ms R.R. Cargo Services Ltd., I have noted the following :-

xxxx xxxx xxxx xxxx

(c) Ms R.R. Cargo Services have loaded 6.8 tonnes of parcels against a carrying capacity of 4 tonnes of the leased Second class Luggage cum Brake Van coach (SLR). Therefore, the excess loading has been 68.7% over and above the permissible carrying capacity.

(d) Ms. R.R. Cargo Services undertook repeated excessive overloading of Second Class Luggage cum Brake Van coach of Train no. 12708, Hazrat Nizamuddin to Tirupati, Sampark Kranti Express. The above coach carries passengers in addition to parcels.

(e) Overloading of parcels in a passenger carrying train is not a commercial issue alone.

(f) Excessive overloading of parcels in trains especially in passenger carrying trains is a safety hazard. Excessive overloading may cause accident to train and thereby, endanger the safety of the passengers. There have been instances of accidents to passenger carrying trains attributable to excessive overloading to parcels.

(emphasis supplied)

15. Since in the present case cogent and special reasons have been given by the appellate authority, the present petition and application are dismissed. The interim order dated 23rd May, 2014 is recalled.

MANMOHAN, J

JULY 14, 2015

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