

GAHC010010212013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5028/2013

VINAYAK LOGISTIC and ANR.
A PROPRIETORSHIP FIRM REPRESENTED BY MR. PRAVESH KABRA
HAVING ITS REGD. OFFICE AT M. G. ROAD, NEAR ICICI BANK, GHY-01

2: BINOD FLOUR MILLS
A PROPRIETORSHIP FIRM REPRESENTED BY MR. BINOD KUMAR KABRA
HAVING ITS REGD. OFFICE AT M.G. ROAD
FANCY BAZAR
GHY-0

VERSUS

THE UNION OF INDIA and 6 ORS
REPRESENTED BY SECRETARY, MINISTRY OF RAILWAYS, RAILWAY
BOARD RAILWAY BHAWAN, NEW DELHI

2: THE GENERAL MANAGER
WEST CENTRAL RAILWAY
JABALPUR
MADHYA PRADESH

3: THE GENERAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON
GHY
ASSAM

4: THE CHIEF COMMERCIAL MANAGER
WEST CENTRAL RAILWAY
JABALPUR
MADHYA PRADESH

5: THE CHIEF OPERATING MANAGER
WEST CENTRAL RAILWAY

JABALPUR
MADHYA PRADESH

6:THE DIVISIONAL RAILWAY MANAGER
WEST CENTRAL RAILWAY
JABALPUR
MADHYA PRADESH

7:THE CHIEF GOODS SUPERINTENDENT
KOTA RAILWAY STATION
WEST CENTRAL RAILWAY
JABALPUR
MADHYA PRADES

Linked Case : WP(C)/208/2013

M/S NRI COAL SUPPLIERS and 3 ORS
A PROPRIETORAL FIRM HAVING ITS OFFICE AT GOALPARA AND IS
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MUJIBUR RAHMAN

2: M/S R.I. ENTERPRISE
A PROPRIETORAL FIRM HAVING ITS OFFICE AT GOALPARA AND IS
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MUJIBAR RAHMAN

3: M/S A.K. ENTERPRISE
A PROPRIETORAL FIRM HAVING ITS OFFICE AT GOALPARA AND IS
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MUJIBAR RAHMAN

4: M/S S.S. ENTERPRISE
A PROPRIETORAL FIRM HAVING ITS OFFICE AT GOALPARA AND IS
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MUJIBAR RAHMAN
VERSUS

THE UNION OF INDIA and 4 ORS
REPRESENTED BY THE SECRETARY
MINISTRY OF RAILWAYS
RAILWAY BOARD
RAILWAY BHAWAN
NEW DELHI-110001

2:THE RAILWAY BOARDS
RAIL BHAWAN
NEW DELHI-110001

3:THE JT. DIRECTOR TRAFFIC COMMERCIAL RATES
RAILWAY BOARD
RAILWAY
NEW DELHI-110001

4:THE GENERAL MANAGER
NORTH EASTERN FRONTIER RAILWAYS
MALIGAON
GHY-11
ASSAM
5:THE NORTH EASTERN FRONTIER RAILWAYS
MALIGAON
GHY-11
ASSAM

Linked Case : WP(C)/4866/2012

NORTH EASTERN COAL MERCHANTS' ASSOCIATION
AN ASSOCIATION OF PERSONS ENGAGED IN THE BUSINESS OF SALE AND
SUPPLY OF COAL HAVING ITS REGISTERED OFFICE AT JAWAHAR NAGAR
KHANAPARA GUWAHATI- 781022
REP.BY ITS PRESIDENT SRI VIJAY KUMAR SINGHAL.

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECRETARY
MINISTRY OF RAILWAYS
RAILWAY BOARD
RAILWAY BHAWAN
NEW DELHI.

2:THE RAILWAY BOARD

RAIL BHAWAN
NEW DELHI.
3:THE JOINT DIRECTOR TRAFFIC
COMMERCIAL RATES RAILWAY BOARD
RAILWAY BHAWAN
NEW DELHI.
4:THE GENERAL MANAGER
NORTH EASTERN FRONTIER RAILWAYS
MALIGAON
GUWAHATI
ASSAM.
5:THE CONTROLLER

LEGAL METROLOGY WEIGHTS and MEASURES
GOVT. OF ASSAM
ULUBARI
GUWAHATI-781007.

Advocate for the Petitioners : Ms. M. Kalita, Advocate

Mr. A. Z. Hazarika, Advocate

Advocate for the respondents: Mr. B. N. Gogol, SC, Railways

Mr. R. Sarma, SC, Railways

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 07.09.2023

Date of Judgment : 07.09.2023

JUDGMENT AND ORDER (ORAL)

The three writ petitions are taken up for disposal by this common judgment and order taking into account that the challenge made in the three writ petitions pertains to the Railway Board's Circular dated 16.09.2011 whereby a designated tare weight of wagons were fixed of permissible carrying capacity.

2. The petitioner in WP(C) No.4866/2012 is an Association of persons which is registered under the provisions of Societies Registration Act, 1860. The members of the said Association carry on the business of sale and supply of coal from different loading stations situated within the jurisdiction of N. F. Railways, Maligaon to all over India.

3. The petitioners in WP(C) No.208/2013 are individual proprietorship firms having their offices at Goalpara and engaged in the business of sale and supply of coal from different loading stations situated within the jurisdiction of N. F. Railways, Maligaon, Guwahati including Goalpara, Jogighopa, Bongaigaon etc. to all over India.

4. The petitioners in WP(C) No.5028/2013 are a proprietorship firms who are engaged in the business of various goods like marble, marble stone, mineral, plastic goods wall putty etc. in different parts of India and for that purpose, the petitioners used the Railways for transportation.

5. Taking into account that the challenge made in the three writ petitions is in relation to the Railway Board's Circular dated 16.09.2011 (hereinafter for the sake of convenience referred to as 'the impugned circular'), this Court finds it relevant to take note of the contents of the said impugned circular.

6. It transpires from the perusal of the impugned circular that in terms with the Railway Board's letters dated 29.07.2011 and 05.08.2011, permissible carrying capacity of different wagons were revised. This standardized permissible carrying capacity of the wagons were based on designated tare of the wagons and permissible axle load limit. It was therefore decided that the designated tare of the wagons should be taken as the bench mark for reckoning of overloading of any wagon. It was also mentioned that in those cases where the tare weightment of the empty wagons have been permitted the existing procedure for calculating permissible carrying capacity of the wagons would continue unchanged as issued by the Railway Board's letters dated 17.02.2009, 05.03.2009 and 05.08.2011. To the said impugned circular, the details of the designated design tare weight of different stocks plying on the Indian Railways as supplied by the Mechanical Engineering of the Directorate of the Railway Board was enclosed. The enclosure of the said impugned circular shows that in respect to the various types of wagons, the tare weights were fixed.

7. From a perusal of the three writ petitions, it transpires that the grievances of the petitioners to the impugned circular is on the ground that the weight of the empty goods wagons (i.e., tare weight) has been specified category-wise without reckoning the actual weight of the wagons. It was the case of the petitioners that the wagons in Indian Railways go through a lot of wear and tear during its lifetime and subsequently may lose or gain weight, and as such, the actual weight of the empty wagons and the designated tare weight as fixed by the impugned circular may vary to a large extent. The further grievances of the petitioners are that if the actual tare weight is not taken into account and it is the designated tare weight which is taken then the petitioners would be subjected to overload penalty on deemed empty weight of the wagons which would be against the principles of natural justice and violation of Articles 14, 19 (1) (g) and 21 of the Constitution. Further to that it is also the case of the petitioners that the fixation of imaginary weight of the empty wagons is directly hit by the provisions of the Standards of Weights and Measures Act, 1976, more particularly

Section 34 of the said Act and thus such an imaginary fixation of the empty wagons is liable to the set aside.

8. Upon the writ petitions being filed challenging the impugned circular, this Court had issued notice and passed an interim order to the effect that whenever the petitioners apply for transportation of their goods, the Railway Authorities would provide the actual weight specification of the empty wagons on which the coal is loaded. This interim order had been continuing since then till date.

9. In all the three writ petitions, the respondent Railways have filed the affidavit-in-opposition. The contents of the affidavit-in-opposition being parimateria, this Court finds it relevant to take note of the affidavit-in-opposition filed in WP(C) No.5028/2013. It has been mentioned in the said affidavit-in-opposition that in terms with the Railway Board's letters dated 29.07.2011, 05.08.2011, 12.03.2012, 30.03.2012, 19.07.2012 and 26.07.2012, permissible carrying capacity of different wagons have already been conveyed. It was, therefore, mentioned that the Board's letter dated 16.09.2011 which is the impugned circular, instructions were issued that the standardized permissible carrying capacity of the wagons are based on the designed tare of the wagons and the permissible axle load limit. It was also conveyed that in cases where the tare weight of the empty wagons have been permitted, the existing procedure for calculating the permissible carrying capacity of the wagons continues unchanged as issued by the Board's letters dated 17.02.2009, 05.03.2009 and 05.08.2011. Subsequent to the impugned circular, there is another communication issued by the Railway Board wherein it was mentioned that the instructions contained in the impugned circular would come into effect only after issuance of a revised JPO. Thereupon, the matter was reviewed and vide the Railway Board's letter dated 31.08.2012, it was decided that the instructions issued vide the impugned circular are to be given effect from 01.09.2023 on the basis of the gross load limit which are detailed hereinunder:-

Sl. No.	Route	Permissible Gross Load Limit of Wagon*
1	25 t axle	100.0 t
2	CC+8+2	91.6 t

3	CC+6+2	89.6 t
4	CC+4+2 (expected	88.0 t
	CC+6)	

* inclusive of loading tolerance

10. It was further mentioned that in terms with the Railway Board's letters dated 29.07.2011 and 05.08.2011, the permissible carrying capacity of different wagons were revised. This standardized permissible carrying capacity of the wagons were based on the designed tare of the wagons and permissible wagon load limit. Further to that, it was also mentioned that the new standardized tare weight is based on actual designed tare and the prevailing permissible carrying capacity of the wagons is also based on this designed tare weight on one hand, the parties are availing this permissible carrying capacity (which based on its designed tare weight, not on stencil tare weight). On the contrary, the petitioners are complaining in the declaration of this actual designed tare weight. Further, it was also mentioned that the permissible carrying capacity of the wagons is not lowered as the permissible gross load limit of the wagons has been enhanced to take care the designed tare weight in all routes. It was further mentioned that in N.F. Railways, the route in question is CC+6+2 wherein the permissible gross limit of the wagons now as per the impugned circular is 89.6 tones instead of the earlier 89.28 tones. The Railways are charging on the basis of the permissible weight of the wagons. There is no change either in chargeable weight or in the penalty for overloading, and as such, there arises no question of loss due to change in the tare weight. It was further mentioned that the tare weight as per the impugned circular is based upon the actual designed tare weight and gross axle load limit of the wagons, and as such, the designed tare weight is not imaginary as claimed in the writ petition. It was further stated that the Railways are charging on the basis of the chargeable weight of the wagons. So there is no question of loss due to change in tare weight. Further to that, it was mentioned that there is no question of restraining the merchants from getting benefit of loading tolerance and they would continue to enjoy it as per the extant Rules which permits one tone only. It was also mentioned that the new permissible gross load limit of the wagons is also inclusive of loading tolerance which is clearly mentioned in the Railway Board's letter dated 31.08.2012, and as such, there arises no question of any sort of violation under Section

34 of the Standards of Weights and Measures Act, 1976. Further to that, it was also mentioned that as per Section 72 of the Railways Act, 1989, the Railways have been empowered to fix the maximum carrying capacity. In paragraph No.6 of the said affidavit-in-opposition, it was categorically stated that there is minimum variation in respect of wagon's tare weight at the time of manufacturing (depending on scientific and engineering facts) which was circulated by the Railway Board's letter dated 20.02.2007. But such variation is not affecting the charging pattern as the Railways is charging for chargeable weight only, the Railways is not charging for tare weight.

11. It further reveals from the records that the petitioners have filed affidavits-in-reply wherein it is again repeated that the impugned circular has been issued in a mechanical manner without actually taking the tare weight at the time of issuing the notification and without considering the fact that the tare weight varies from wagon to wagon even in the same type of wagons, and as such, the permissible gross load limit in respect of CC+6+2 routes exceeds even when the loading is within the permissible carrying capacity and thereby unloading the alleged excess goods or imposing penalty. It was further mentioned that tare weight of the wagons cannot be considered as the fixed weight as the weight varies significantly from wagon to wagon even in the factory at the time of manufacturing of those wagons which includes the patching of new iron plates to fix up damages, broken arms etc. and some of the goods like cement, coal, tar, limestone, dry fly ash, coal etc. get stuck to the floors and the walls of the wagons and as a result of which a large variants in the tare weight of the wagons is found in two different wagons of the same type and in such a case, when the tare weight is fixed by the respondent authorities, the fixation of the gross load limit of the wagons inclusive of loading tolerance is absolutely irrational.

12. This Court further finds it relevant to take note of an additional affidavit filed on 23.08.2013 in WP(C) No.4866/2012. In the said additional affidavit it was mentioned that the premise for taking designed tare weight as the bench mark was that the concept of "designed tare weight" is based on standard parameters. It was mentioned that during the wagon building process, for calculating the tare weight of the wagons, the standard parameters are taken into consideration, and as such, constitute the basis principle of fixing the tare weight and PCC wagons. It was further mentioned that the concept of designed tare

weight is beneficial for both customers and Railway. Customers in advance know the tare weight of each wagon which are to be loaded and can make arrangement of loading the commodity according to the permissible carrying capacity of the wagons whereas in case of stenciled weight, customer can know the tare weight of each wagon only after physical supply of the wagons. It was also mentioned that the permissible gross load limit for different routes is a limit of gross weight of a wagon which can be allowed depending upon the type of the route. In the said additional affidavit, it was also mentioned that punitive charges for overloading comes into picture when payload of the wagon (i.e., gross weight of wagon designed tare weight) exceeds, the permissible carrying capacity of the wagon and loading tolerance. There is no change in the method of calculation of punitive charges for overloading and the benefit of loading tolerance. Further, it was stated that earlier "stenciled tare weight" of the wagon was being considered and now "designed tare weight" of the wagon is taken. There is no disadvantage caused to the customers for considering designed tare weight in lieu of the stenciled tare weight to reckon the overloading of the wagons. Further to that, it was mentioned that weighment of each empty wagon in order to ascertain the actual tare weight of the wagon is not operationally feasible, the implicit detention to rolling stocks would effect systemic fluidity critically.

13. I have heard the learned counsels for the parties and perused the materials on record. From a perusal of the impugned circular, it transpires that the designed tare weight has been fixed as a bench mark of the wagons, the details of which have been mentioned in the enclosure to the impugned circular. It reveals from the record that there is minimal variation in respect of wagons tare weight at the time of manufacture (depending on scientific and engineering facts) which have already been circulated vide the Railway Board's letter dated 20.02.2007. Under such circumstances, it cannot be said that the fixation of the designed tare weight on the wagons, the list of which has been enclosed to the impugned circular is merely based upon imagination or without any basis. The same has been done on the basis of scientific and engineering facts as is revealed at the time of manufacture of the wagons. It is also seen from the Board's letter dated 31.08.2012 that permissible gross load limit of wagons inclusive of loading tolerance for CC+6+2 route which is the applicable route for N.F. Railways is 89.6 tones. Under such circumstances, when the customers are aware of the

designed tare weight of the wagons in question, it would be more convenient to the customers while loading the goods for transportation. Therefore, it cannot be said that the fixing the designed tare weight as a bench mark violates the mandate of Articles 14, 19 (1) (g) and 21 of the Constitution.

14. This Court further finds it relevant to take note of that although there is an allegation made that it violates Section 34 of the Standards of Weights and Measures Act, 1976, but nothing could be discerned either from the pleadings or from the submission of the learned counsel for the petitioners as to how Section 34 of the Standards of Weights and Measures Act, 1976 is violated. This Court also cannot be unmindful of the fact that taking into account the innumerable amount of transportation carried out by the Railways, it would be next to impossible to weigh each of the empty wagons every time and obtain the tare weight and thereupon give it for loading. It is the opinion of this Court that unless serious prejudice is shown to have caused to the petitioners on the basis of taking the designed tare weight as the bench mark, the question of interference with the policy of the Railways vide the impugned circular cannot be interfered with.

15. At this stage, this Court finds it very pertinent to mention that all the three writ petitions have been filed on the basis of apprehension and not a single instance has been brought before this Court during the passage of the last 10 years when the writ petitions have been pending which have resulted in causing serious prejudice in view of the designed tare weight being taken as a bench mark. Consequently, this Court does not, therefore, find any justifiable reason to interfere with the impugned circular dated 16.09.2011 as well as the consequential circular dated 30.08.2012 by which the impugned circular dated 16.09.2011 was brought into effect from 01.09.2012.

16. Accordingly, all the instant writ petitions being devoid of merit, stand dismissed. Interim orders accordingly stands vacated.

JUDGE

Comparing Assistant