

GAHC010226242014



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

Case No. : WP(C)/3519/2014

M/S P.P. ENTERPRISES and 4 ORS.

A PARTNERSHIP FIRM REPRESENTED BY ONE OF ITS PARTNERS SHRI
BINOD KUMAR SONTALIA, HAVING ITS OFFICE AT JAIL ROAD, FANCY
BAZAR, GHY-1, ASSAM

2: M/S. P.P. ASSOCIATES

A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT 5
H.M. MARKET
T.R.P. ROAD
FANCY BAZAR
GHY.-1

ASSAM. REPRESENTED BY ITS PROPRIETOR SHRI P.L. AGARWAL.

3: M/S. SANTOSH MUKESH TRADING PVT. LTD.

A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT FIRST FLOOR
PATODIA MARKET
T.R.P. ROAD
FANCY BAZAR
GHY.-1

ASSAM

REPRESENTED BY ONE OF ITS DIRECTOR SHRI S.P. AGARWAL.

4: M/S. SUBHKARAN SANTOSH KUMDER

A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SURANA MARKET
T.R.P. ROAD
FANCY BAZAR
GUWAHATI
ASSAM

PIN-781001

REPRESENTED BY ITS PROPRIETOR SUBHKARAN SANTOSH KUMAR.

5: M/S. KARIMGANJ SARAWGI TRADING CO.
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT EAST MARKET
DIST.-CACHAR
ASSAM
REPRESENTED BY ITS PROPPRIETOR/AUTHORIZED SIGNATORY SHRI
AJAY KUMAR JAIN

VERSUS

THE UNION OF INDIA and 7 ORS
REPRESENTED BY SECRETARY, MINISTRY OF RAILWAYS, RAILWAY
BOARD, RAILWAY BHAWAN, NEW DELHI

2:THE GENERAL MANAGER

N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM.

3:THE DIVISIONAL RAILWAY MANAGER

LUMDING
N.F. RAILWAY
LUMDING
ASSAM.

4:THE CHIEF GOODS SUPERINTENDENT

NEW GAUHATI GOODS SHED
N.F. RAILWAY
GUWAHATI
ASSAM.

5:THE CHIEF COMMERCIAL MANAGER

N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM.

6:THE CHIEF GOODS SUPERINTENDENT

KATAPADI
SOUTHERN RAILWAY
KARNATAKA.

7:THE STATION MASTER

RANGAPANI GOODS
N.F. WAILWAY
ASSAM.

8:THE FINANCE ADVISOR and CHIEF ACCOUNTS OFFICER

N.F. RAILWAY FA and CAO
MALIGAON
GUWAHATI
ASSAM

Advocate for the Petitioner : MR.A GOYAL

Advocate for the Respondent : MR. A BARKATAKI

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20-06-2023

Heard Ms. M. Sarma, learned counsel for the petitioners as well as Mr. A. Borkotoki, learned counsel for the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the demand notices dated 28.07.2005 issued by the Chief Goods Superintendent (B.G.), NF Railway, New Guwahati by which the petitioners were asked to clear the under charges for excess weight as well as regular charges thereof.

3. In brief, the case of the petitioners is that they had booked consignment of sugar from Katapadi (KPD for short), Karnataka to New Guwahati. The booking and delivery of goods are not in dispute.

4. While the consignment of sugar was enroute to Guwahati, it was weighed at Rangapani weighbridge and excess weight was found in respect of all the petitioners which was beyond the permissible weight of the wagons and accordingly, penal charges were imposed by the Chief Goods Superintendent (B.G.), NF Railway, New Guwahati for different amounts on the petitioners.

5. The petitioners had approached the Court by filing a writ petition which was numbered as WP(C) 5597/2005, wherein the Court by order dated 10.04.2013 disposed of the writ petition in terms of the decision of the Full Bench of this Court dated 02.02.2012 passed in WA 333/2010 by providing that the Railways before taking any action for realization of the penal charges shall give a right of hearing to each one of the petitioners. This Court also had recorded that the penal charges are covered by the bank guarantees. It is projected that despite several representations, the documents as sought for were not provided. Thereafter the petitioners were compelled to file another writ petition before this Court which was registered as WP(C) 6049/2013, and this Court by an order dated 18.11.2013, directed that all the relevant documents sought for by the petitioners shall be made available to them by the Railway authorities and the petitioners would be at liberty to take extracts from such documents/ to take photocopies thereof and it was provided that if some time is required for perusal of the documents and for making effective submissions the Railway authorities shall grant further 10 days time to the petitioners and it was also provided that on the re-fixed date of hearing, the petitioners shall make their submissions whereafter the railway authorities were given liberty to pass orders in accordance with law.

6. It is projected that despite the directions contained in the hereinbefore referred two writ petitions, the documents sought for were not furnished and in this regard reliance is placed on the representations dated 20.11.2013, 17.01.2014, 15.02.2014. It is projected that although the respondents claim that the required documents have been furnished, but vide letter dated 08.01.2014 although seized documents were shown to have been provided, but they have not received the photocopy of uploading tally which was brought to the notice of the Railway authorities by hereinbefore referred representations dated 17.01.2014, 15.02.2014.

7. It is projected that as documents were not received, the petitioners by their RTI application dated 15.02.2014 required certain information which were also not provided. Thereafter the petitioners have approached the Public Information Officer by letter dated 21.09.2011.

8. The learned counsel for the petitioners has referred to Annexure-XVI of the writ petition to project that the weighbridge where the weighment of the consignment was done was intermittently out of order since 02.12.2000 till 09.12.2005. By referring to the provisions of section 26(3) of the Standards of Weights and Measures (Enforcement) Act, 1985, it is submitted that the repaired weight and measure shall not be put to use unless after repairing it has been duly re-verified and stamped. Accordingly, it is submitted that the weighbridge went intermittently out of order after being non-functional from 02.12.2000 to 09.12.2005 and that the weighment in this case was done on 27.07.2005, but the weighbridge was out of order or non-functional from

24.07.2005 to 25.07.2005. Hence, it was submitted that unless the weighbridge is shown to have re-verified and stamped, the re-weighment done by the Railway authorities in the concerned weighbridge would not be sustainable. By referring to the provisions of Rule 1877 of the Indian Railway Commercial Manual, Volume-II, it is submitted that as the railway have stated to have detected overloaded wagon beyond permissible limit, the Railway administration ought to have exercised its right to offload the excess weight, which was not done but the consignment was allowed to reach the destination.

9. Accordingly, it is submitted that as the Railway authorities had not followed Rule-1877(b) of the Indian Railway Commercial Manual, Volume-II, no cognizance of excess weight can be taken up by this Court.

10. Hence, it is submitted that the Railway authorities have not been able to prove that there was any excess weight detected and therefore the imposition of penalty on the petitioners was not sustainable and accordingly, it is submitted that the show-cause notices issued to the petitioners were liable to be set aside and quashed.

11. The learned counsel for the respondents has submitted that there was no damage to the weighing scale part of the weighbridge that was sealed by the authorities of the Legal Meteorology Department and accordingly, the defects for which the weighbridge was not functioning earlier was not attributed to any defect in the weighbridge but there were minor problems which are unrelated to the weighing scale parts of weighbridge which was sealed earlier by the Legal Meteorological Department. It is submitted that a reasonable opportunity was

granted to the petitioners to make their submission during hearing but on one account or the other the petitioners had deferred the hearing and thereafter, had challenged the show-cause notices annexed in this writ petition.

12. It is submitted that all the relevant documents were provided to the petitioners vide forwarding letter dated 08.01.2014. In connection with the allegations of non-receipt of the loading tally by forwarding letter dated 08.01.2014, the learned counsel for the respondents has denied the non-furnishing of the said document to the petitioners and in this connection, he has placed reliance on the Annexure-IV to the affidavit-in-opposition filed by the respondents and it is shown that the documents were acknowledged to have been received by the learned counsel for the petitioners under his signature with the date of 08.12.2018.

13. The outward tally book maintained at the booking point was not supplied to the petitioners. It is submitted that the said document is not a vital document for the purpose of the said case. It is submitted that for the service of documents, the petitioners did not participate in the hearing and thereafter two rounds of two writ petitions as well as the present writ petition has been filed.

14. The learned counsel for the petitioners had placed reliance on the case of *Nirmal Traders v. Union of India & Ors.*, (2003) 2 GLR 429 (para-33), and it was submitted that it was the duty of the Railway authorities to prove that the weighment taken is correct. Para 33 of the said judgment is quoted below:-

33. From the above, it is also abundantly clear that the mere fact that the re-weighment has been taken at the railway weighbridge, it cannot be a reason for

imposing penalty without giving an opportunity of showing cause to the person concerned. Viewed from this angle, reliance placed by Mr. Sharma on the decision in M/s. Kamrup Forwarding Agency (1997 (2) Gauhati LT 106) (supra) to show that on account of the fact that the re-weighment in the present case has been taken at Laskar Weighbridge, which is a railway weighbridge, the weight found therein is binding on the parties is not entirely correct inasmuch as the decision in M/s. Kamrup Forwarding Agency does not categorically lay down such a law. This apart, penalty can be imposed only if overloading is proved and to prove overloading, the railways must satisfy the Court that the weighment taken is correct. There is no law that the correctness of the weighment taken in the absence of the party concerned, at a railway weighbridge, cannot be questioned by the person/party concerned."

15. In this case, the petitioners had previously filed a writ petition before this Court and this Court, by order dated 10.04.2013, passed in W.P.(C) 5597/2005, had directed that the railways, before taking action for realizing the penal charges, shall give a right of hearing to each one of the petitioners. Accordingly, armed with the said order, the petitioners had produced a copy of the said order before the (i) The Secretary, Ministry of Railways, (ii) The General Manager, NF Railway and (iii) the CCM (FM), NF Railway and demanded 7 (seven) documents, viz., (i) original forwarding notes; (ii) Loading tally book of booking and loading all wagons at booking station; (iii) copy of legible weight chart of railway weigh bridge indicating weight of break-van of the rake; (iv) copy of weighment chart of Rangapani Railway bridge with fitness certificate; (v) copy of last monthly checking register from the date of weight of rake consignment in weigh bridge at Rangapani in terms of Rule 1435 of IRCM, Vol-II of 1991; (vi) copy of show cause notice; (vii) copy of full delivery records of excess bags/ weight. Moreover, an early hearing was demanded.

16. By a communication dated 07.08.2013, hearing was scheduled on 22.08.2013 at 11.00 hours at Office of Divisional Commercial Manager,

Lumding. On receipt of the notice, by advocate's notice dated 17.08.2013, requested for deferment of hearing on the pretext of some agitation and for re-scheduling of hearing at NF Railway Headquarter at Maligaon. Thereafter, the petitioners had again approached this Court by filing W.P.(C) 6049/2013 and this Court by order dated 18.11.2013, directed that the petitioners or their representatives shall appear before the Divisional Commercial Manager, Lumding on 20.11.2013, as already scheduled and also directed the railway authorities to provide the petitioners with all relevant documents sought by them within 10 (ten) days, with liberty to take photocopies or to take extracts therefrom.

17. Thereafter, vide advocate's notice dated 20.11.2013, the petitioners again made a request for supplying copies as per letter dated 04.06.2013 and 24.06.2013 and to grant them 10 days time to make effective submissions. This was followed by another advocate's notice dated 21.11.2013 by registered post. Thereafter, except the photocopy of the loading tally, other documents were furnished to the learned advocate for the petitioner vide forwarding letter dated 08.01.2014. By advocate's notice dated 17.01.2014, demand for supplying loading register was reiterated and it was pointed out that after break-down of weigh bridge on 25.07.2005, no statutory fitness certificate was received and that railway supply certificate dated 12.03.2005 had no force and demand for document was reiterated, which was followed by advocate's notices dated 15.02.2014. On 15.02.2014, the petitioner had also applied for documents through RTI application from CPIO, RTI Cell, Railway Board.

18. In respect of the grievance of the petitioner that the weigh bridge at Rangapani was non-functional from 24.07.2005 to 25.07.2005 and therefore, without re-verification certificate from the officials of the Legal

Metrology Department, the weighment done on 26.07.2005 was invalid, the Court is constrained to hold that *ex facie*, the claim of the petitioner has no merit because although the said weigh bridge remained non-functional on quite a large number of days from 02.12.2000 to 25.07.2005, but the petitioners could not show that the said weigh bridge at Rangapani had remained non-functional due to machine error, or tampering of seal of the authorities of Legal Metrology, requiring re-calibration or re-verification or re-stamping by the Legal Metrology Department. From 01.06.2005 to 10.06.2005, the weigh bridge remained non-functional due to "digitizer problem (Up and Down)". From 16.06.2005 to 24.06.2005, the weigh bridge remained non-functional owing to "track switch problem (Up)". From 03.07.2005 to 22.07.2005, the weigh bridge remained non-functional owing to "track switch problem (Up)". From 24.07.2005 to 25.07.2005, the weigh bridge remained non-functional owing to "track switch problem (Dn)". None of the grounds for which the weigh bridge had remained non-functional was remotely related to weigh bridge. In this connection, to understand the things in common man's language, we may cite an example of a fan remaining non-operational not because of any defect, but because of its electric switch was defective. For such a defect, a weigh bridge would not require any re-calibration or re-verification or re-stamping by the authorities of the Legal Metrology Department.

19. The second point of the petitioners is that the extract of loading register was not provided. It is not disputed that the railway receipt issued for the consignment in issue were all booked on the basis of "said to contain" remark. Thus, even if the loading register is produced, it would not help either the petitioners or the railways.

20. In this case, the petitioners had never demanded re-weighment of the consignment to dispute the claim of the respondents. The railways had weighed the consignment at Railway weigh bridge at Ramgapani. In the pretext of securing a right of hearing, the petitioner had approached this Court, but did not participate in the hearing and sought for an adjournment on date fixed by this Court. On one pretext or the other, although the petitioners had approached this Court on three occasions, they did not participate in the hearing. Therefore, the conduct of the petitioners appear to be far from bona fide and the indelible impression of the Court is that the intention of the petitioners is only to delay the matter arising out of demand made by the railway authorities for penal charges of Rs.3,03,376/- vide letters dated 28.07.2005.

21. Nonetheless, as this Court, by order dated 10.04.2013, passed in W.P.(C) No. 5597/2005, had allowed the petitioners an opportunity to be heard, the Court is of the considered opinion that one last opportunity be granted to the petitioners and/or their authorised representative to make their submissions before the Divisional Commercial Manager, Lumding within 12.07.2023 with prior appointment with the said authority. The hearing would be held on the basis of documents already provided to the petitioners.

22. It is made clear that if the petitioners fail to appear and participate in the hearing within the date allowed, the petitioners would not be entitled to any further opportunity and the right of being heard personally would be lost and forfeited without any further reference to this Court and/or any other authority in the NF Railway and thus, the demand made by the railway authorities for penal charges would become enforceable by the NF Railway in accordance with law.

23. This writ petition thus stands partly allowed to the extent as indicated above. The parties are left to bear their own cost.

JUDGE

Comparing Assistant