

GAHC010014442017



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

Case No. : MFA/42/2017

UNION OF INDIA and 2 ORS
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-11

2: UNION OF INDIA

REPRESENTED BY THE GENERAL MANAGER
SOUTH EASTERN RAILWAY
GARDEN REACH
KOLKATA-43

3: THE CHIEF GOODS SUPERINTENDENT
SOUTH EASTERN RAILWAY
OCL SIDING
P.O. RAJGANGPUR
DIST. SUNDERGARH
PIN 770017 ORISS

VERSUS

M/S S.D. EASTERN BHUTAN COALS CO LTD and ANR
SOHIL NIWAS, 3RD FLOOR, CHATTRIBARI, GUWHATI-1, NOW SHIEFTED AT
RAM KUMAR PLAZA MARKET, 1ST FLOOR CHATTRIBARI ROAD,
GUWAHATI-1, ASSAM.

2:SR. MANAGER DISPATCH C REPRESENTING
M/S OCL INDIA LTD. OCL SIDING
P.O. RAJGANGPUR
DIST. SUNDERGARH
PIN 770017 ORISS

Advocate for the Petitioner : SC, NF RLY

Advocate for the Respondent : MS.M SHARMA

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mrs. U. Chakraborty,
Advocate.

For the Respondents : Ms. M. Sarma,
Advocate.

Date of Hearing : 08.02.2024.

Date of Judgment : 09.04.2024.

JUDGMENT AND ORDER (CAV)

Heard Mrs. Uma Chakraborty, learned counsel representing the appellants as well as Ms. M. Sarma, learned counsel appearing for the respondents.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and order dated 01.09.2016 passed in by the learned Railway Claims Tribunal, Guwahati Bench in O.A.-III 244/2011.

3. In this appeal, two questions are to be answered. They are –

(1) Whether the Railway authorities can recover punitive charges after delivery of goods? and

(2) Whether the Railways can levy terminal charges for loading of goods in all stations?

4. The Tribunal answered these questions in negative.

5. I have considered the submissions made by the learned counsel of both sides.

6. Section 73 of the Railways Act of 1989 is relevant at this stage. It reads as under:

“73. Punitive charge for overloading a wagon.—

Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited

under sub-section (2) or sub-section (3), or notified under sub-section (4), of section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:"

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account."

7. Therefore, the Railways can lawfully demand punitive charges for overloading, if it is detected at the forwarding station or at any place before destination station.

8. Here, the question arises that after unloading of the goods at the destination station, whether the Railways can claim punitive charges for overloading?

9. According to Section 73 of the Railways Act, the Railways cannot charge punitive charges after unloading of the goods at the destination station. Therefore, I am of the considered opinion that the learned Tribunal has correctly held that Railways cannot charge punitive charges after delivery of goods.

10. Regarding the second question, there is no quarrel with the proposition that there are 50 specific stations having all the infrastructures for loading and unloading of goods and if any of those 50 stations are used, then only the Railways can charge terminal charges. For other stations, Railways cannot levy terminal charges. The Railways has to refund the terminal charges.

11. I am of the considered opinion that the Railway Claims Tribunal has rightly answered this question in negative.

12. Under the aforesaid circumstances, I find that there is no merit in this appeal and the appeal stands dismissed accordingly.

Send back the LCR.

JUDGE

Comparing Assistant