



W.P.Nos.7317 & 7320 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	22.04.2024
PRONOUNCED ON	23.05.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.7317 & 7320 of 2022

and

W.M.P.Nos.7350, 7351, 7352 & 7354 of 2022

M/s.Sakthi Murugan Roller Flour Mills Pvt Ltd.,
Rep. by its General Manager,
P.Gunasekaran,
S.F.No.19/2, Pudupalayam,
Avinashi, Tiruppur – 641 654.

.... Petitioner in
W.P.No.7317 of 2022

M/s.Sakthi Murugan Agro Foods Pvt Ltd.,
Rep. by its Managing Director,
P.Gunasekaran,
S.F.No.19/2, Pudupalayam,
Avinashi, Tiruppur – 641 654.

.... Petitioner in
W.P.No.7320 of 2022

Vs

1. Union of India,
Represented by the Secretary to Government,
Ministry of Railways,
New Delhi.

2. The Divisional Railway Manager,
Southern Railways,
Divisional Office,
Commercial Branch,
Salem – 636 005.

.... Respondents in both W.Ps

Common Prayer : Writ Petition filed under Article 226 of Constitution of India



W.P.Nos.7317 & 7320 of 2022

praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent culminating in the order vide Notification No.SA/C.200/PDC/TUP/2022 dated 03.03.2022 and quash the same and direct the second respondent to permit the petitioner to the clear existing stocks of the petitioner without insisting on any demurrage charges and refund any excess charges levied towards demurrage.

(In both W.Ps)

For Petitioner : Mr.M.Vaidhiyanathan

For Respondents : Mr.AR.L.Sundaresan
Addl.Solicitor General of India
Assisted by Mr.R.Rabu Manohar, SCGSC

COMMON ORDER

These writ petitions have been filed challenging the order passed by the second respondent dated 03.03.2022, thereby imposed with demurrage charge.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner in both the writ petitions are engaged in the business of manufacturing and sale of Wheat Products. Therefore, the wheat is being transported during its business in bulk quantity, making use of the service provided by the respondents. Accordingly, the petitioners had booked



W.P.Nos.7317 & 7320 of 2022

consignments of wheat of 42 wagons (1 Rake) of about 2650 metric tons. The said goods were transported from various parts of the country to Tirupur Railway Station. According to the second respondent, the goods have to be cleared in the following manner :

- (i) 21 boxes – within 5 hours
- (ii) 42 boxes – within 9 hours
- (iii) 58 boxes – within 11 hours

from the time of arrival, free of cost. Failing which the second respondent is entitled to impose demurrage, which was fixed as Rs.900/- per hour per wagon.

4. The learned counsel appearing for the petitioner would submit that the petitioners are dependent on various factors while clearing the goods such as labour, truck availability, lighting facilities at the goods shed. The Tiruppur Goods shed is infested with rodents, snakes, etc., and do not have proper lighting facilities which is endangering the lives of the workmen. The goods shed can accommodate only 200 workmen at a time and the quantity received on an average is around 2650 tons which would require 150 workmen and 120 lorries to clear the goods. That apart, the Covid-19 Pandemic affected the entire clearance since it was very difficult for labourers to wear masks and maintain social distancing while clearing the goods. Therefore, these aspects had slowed down the rate of clearing. Further the distance between the goods



W.P.Nos.7317 & 7320 of 2022

shed and the storage premises of the petitioners company is about 15 kms.

Therefore, it takes atleast two hours for the lorry to be loaded, transported and unloaded. The levy of demurrage adds to the cost of the commodity which makes marketability enviable. Mere enhancing the rate of demurrage can never accelerate the clearing rate. Hence, there was no deliberate delay on the part of the petitioners.

5. The workers are available only from 8.30 a.m to 5.30 p.m. on daily basis and no workers had come forward to work after the said period. Closing of the wagon doors have also been part of the petitioners' responsibility and it takes atleast two and half hours to close them. Therefore, the said time also included while ordering demurrage charges. As per the revised demurrage charges, by a notification dated 18.02.2022, it was enhanced viz., thrice the normal rate for up to 3 hours, 4 times the normal rate for up to 6 hours and 6 times of normal rate for more than 6 hours, by the impugned notification dated 03.03.2022.

6. A perusal of the counter filed by the respondents and also the submissions made by the learned Senior Counsel reveals that the respondents had issued guidelines for implementation of penal demurrage at any terminal by the communication dated 19.05.2016 in which para 3.4.1 says in case excessive



W.P.Nos.7317 & 7320 of 2022

congestion takes place at any terminal, the respondents can increase the demurrage rates, even at progressively increasing the rate subject to a maximum of six times of the prevalent rate. It should be implemented only after giving wide publicity and due notice of 48 hours and should be applicable for the notified period. Further as per para 3.4.2, the rates can be increased by say, 2 times or 3 times or so on and not necessarily six times and one go in all cases. In fact, the respondents may decide to levy variable rates like 2 times for first three hours detention, 3 times for next twelve hours detention and so on and so forth. The respondents must judiciously evaluate the situation and the rates should be increased on merit to the extent considered justified. Levy of six times should be resorted only when situation becomes very alarming. Therefore, the demurrage is under discretion of the respondents and it will be implemented based on the performance of rake dealing at goods terminals considering the detention of rakes.

7. Based on the above terms, the respondents are empowered to impose penal demurrage when the detention of rolling stock is more and release of rakes are poor based on recommendations of operating and commercial branch. Insofar as the Tiruppur Goods Shed is concerned, all necessary facilities are provided to the labourers. The consignor or consingnee are



W.P.Nos.7317 & 7320 of 2022

responsible for labour, loading and unloading of goods carried in the wagon.

The shed is opened for 24 hours and having adequate lighting facilities.

Further, the authority had recommended to impose 3 times penal demurrage charge for a period of seven days duly giving 48 hours notice period due to poor release and more insight and the same has been displayed at Station Goods Shed Notice Board on 15.02.2022. Further due to poor release of rakes at the Tiruppur Goods Shed, competent authority had recommended to extend and impose penal demurrage on various rates with effect from 21.02.2022 to 30.03.2022.

8. Once again it was found out that there was no improvement in rake release time at Tiruppur Goods Shed. It was recommended and approved imposing penal demurrage at six times with effect from 06.03.2022 to 31.03.2022. After noticing of release of rakes, it is found that the detentions are more than the permitted free time. Once again it was recommended to further extend imposition of penal demurrage for ten days from 01.04.2022 to 10.04.2022 and collect penal demurrage upto 6 times for future wagon detentions. For a period from 11.04.2022 to 30.06.2022, variable rates of penal demurrage imposition was proposed and the same was displayed at station Goods Shed Notice Board. As far as the petitioners are concerned, now they



W.P.Nos.7317 & 7320 of 2022

paid their respective demurrage charges and the petitioners had already cleared the goods.

9. In view of the above, this Court finds no infirmity or illegality in the notification issued by the second respondent dated 03.03.2022. Both the writ petitions are devoid of merits and are liable to be dismissed. Accordingly, these writ petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

23.05.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

Lpp

G.K.ILANTHIRAIYAN. J.

Lpp

To

1. The Secretary to Government,
Union of India,
Ministry of Railways,
New Delhi.

2. The Divisional Railway Manager,
Southern Railways,



W.P.Nos.7317 & 7320 of 2022

Divisional Office,
Commercial Branch,
Salem – 636 005.

Pre-delivery order in
W.P.Nos.7317 & 7320 of 2022
and
W.M.P.Nos.7350, 7351,
7352 & 7354 of 2022

23.05.2024