

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2618 of 2009

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Silver Tea Company(P)Ltd. Caltex Chowk, Kishanganj, Bihar Represented
by a Director Govinda Prasad Agrawal, s/o Ratan Lal Agrawal, P.S.
Kishanganj, District Kishanganj.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon,
District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup,
Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.
- 6.The Commercial Supervisor (Goods). N.F. Rly. Katihar.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.3358 of 2009

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Govind Lal Agarwal s/o Late Suraj Mal Agarwal, Prop. Of M/s Shree
Narayan Agarwal, Kishanganj, Bihar, P.O.+P.S.-Kishanganj, District
Kishanganj.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon,
District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup,
Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.3392 of 2009

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Ratan Lal Agarwal s/o Late Harak Chand Agarwal, Proprietor of M/s
Suman Traders, P.O. + P.S. Islampur, District Utter Dinajpur, West Bengal.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon,
District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup,
Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.3435 of 2009

Shyam Agarwal s/o Sri Madan Lal Agarwal, Proprietor of Kashipati Bhandar, Kishanganj, Bihar, P.O.+P.S. Kishanganj, District Kishanganj.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon, District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup, Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.3439 of 2009

Jadab Aich s/o Sri Krishna Kamal Aich, Prop. Of M/s Jadar Aich, P.O.+P.S. Islampur, Dsitrict Utter Dinajpur, West-Bengal.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon, District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup, Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.3299 of 2009

Sudeb Nandi s/o Sri Amulaya Cahndra nandi, Prop. Of M/s Nandi Trading Co. P.O.+P.S. Islampur, District Utter Dinajpur, West-Bengal.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon, District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup, Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.3375 of 2009

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Anand Kumar Agarwal son of Sri Hazari Mal Agarwal, Prop. Of M/s Rani Prasad Bamkal Lal, Kishanganj, Bihar, P.O.+ P.S. Kishanganj, District Kishanganj.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon, District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup, Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.3432 of 2009

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Ramesh Agarwal son of Sri Ratan Lal Agarwal, Prop. Of M/s S.G.R and Sons, P.O.+P.S. Islampur, District Utter Dinajpur, West-Bengal.

.... Petitioner/s

Versus

- 1.The Union of India through G.M. General Manager, N./F. Rly., Maligaon, District Kamrup, Assam.
- 2.The Chief Commercial Manager, N.F. Rly Maligaon, District Kamrup, Assam.
- 3.The Divisional Railway Manager, N.F. Rly. Katihar.
- 4.The Sr. Divisional Commercial manager, N.F. Rly. Katihar.
- 5.The Chief Good Supervisor, N.F. Rly. Kishanganj.

.... Respondent/s

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Appearance :

(In CWJC No.2618 of 2009, 3358 of 2009, 3392 of 2009, 3435 of 2009, 3439 of 2009, 3299 of 2009, 3375 of 209 and 3432 of 2009)

For the Petitioner/s : Mr. M.M.P.Sinha, Adv

For the Railways : Mr. Anil Kumar Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 09-01-2015 Heard learned counsel for the parties.

All these eight cases involve a common question
namely as with regard to correctness of a demand notice
directing the petitioners to make payment of

undercharges on account of integrity of a rake having been broken due to short of destination delivery for some wagons.

Mr. M.M.P. Sinha, learned counsel appearing on behalf of the petitioners in all these cases while explaining the whole thing has submitted that at the point of time when these writ applications were filed there may have been some confusion as with regard to applicability of charge of freight but then during the pendency of these writ applications Railway Board vide its letter No. TCR/1017/2008/3 New Delhi-22.04.2009, in an exactly similar case has decided the issue which also squarely covers the cases of the petitioners which reads as follows:-

"GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

RAILWAY BOARD

No. TCR/1017/2008/3 New Delhi, dated 22.04.2009

CCM

N.F. Railway

Guwahati.

Sub: Delivery of sugar booked from Ugarkhurd to New Guwahati.

Ref: NFR's letter No. C/63/POL/DIV-RB/2001 dated 16.03.2009 and 27.03.2009.

Issue regarding grant of trainload rate benefit to traffic of sugar, which was earlier booked from Ugarkhurd to New Guwahari during March, 2008 but later intercepted at Dalkola and Rangapani on party's request, was under consideration of Board.

The matter has been examined in consultation with Finance Directorate of the Ministry of Railways. It is clarified that if a rake was originally booked to one destination point and was later on diverted to two different destination points on party's request, the train load rate benefit will be admissible treating this as Two Point Rake (Covered Wagons). This is subject to compliance of all other conditions stipulated for Two Point Rake (Covered Wagons) in terms of para 5.3 of Rates Circular No. 25 of 2007 and realization of all charges, including diversion fees. The instant case may be disposed off accordingly.

Sd/-

(N.K. Parsurama)

Director, Traffic Commercial(Rates)
Railway Board"

He has also submitted that this Court in absence of any counter affidavit in all these cases may therefore direct the authorities to examine as to whether the impugned demand notices issued in all these writ

applications would still survive in the light of the
aforementioned decision of the Railway Board dated
22.04.2009.

Mr. Anil Kumar Sinha, learned counsel appearing
on behalf of the Railways having examined the
aforementioned decision of the Railway Board dated
22.04.2009, submits that he will have no objection in
disposal of these writ applications by allowing the
competent authority of the Railways to re-examine the
cases of the petitioners in the light of the abovesaid letter
of the Railway Board.

In the considered opinion of this court when
Railway Board has already taken a decision in similar
matter the same needs to be atleast examined for its
being applied in the case of the petitioner.

Let it be also noted that these writ petitions were
filed on 25.02.2009 when the aforesaid decision of
Railway Board was not in existence. Moreover the
Respondents were directed by this Court by an order



dated 26.02.2009 in C.W.J.C. No. 2618 of 2009 to file counter affidavit within three weeks while staying the operation of impugned demand notices which reads as follows:-

"Heard Mr. M.M.P. Sinha, learned counsel appearing on behalf of the petitioner and Mr. Anil Singh, counsel for the Railway.

Let this case be listed before the appropriate Bench after three weeks within top ten cases.

Pending final disposal of this writ application, no coercive step will be taken against the petitioner for realization of the impugned demand made under Annexure-1 to this writ application.

It is made clear that even if no counter affidavit is filed on the next day, this court would proceed on the basis of the averments made in this writ application and will decide the matter."

It is really unfortunate to note here that no counter affidavit has been filed in these cases till today.

That being so, all these eight writ applications are disposed of with a direction to the respondent no. 3,



Divisional Railway Manager, North Frontier Railway, Katihar and respondent no. 4, Sr. Divisional Commercial Manager, North Frontier Railway, Katihar in C.W.J.C No. 2618 of 2009, to examine the applicability of the aforementioned decision of the Railway Board dated 22.04.2009, and take a decision within a period of three months from the date of receipt/production of a copy of this order.

In order to expedite the matter, this Court would also grant liberty to the petitioners to file their separate self contained representation while enclosing a copy of the of the aforesaid decision of the Railway Board alongwith a copy of this order and the period of three months would commence from the date of filing of the representation by the petitioners.

It also goes without saying that if the Railway Board decision contained in letter no. TCR/1017/2008/3 New Delhi-22.04.2009, is found applicable in the case of the petitioners, similar order for withdrawal of the

impugned demand notices shall be issued forthwith but in the event, if for any reason the same is not found to be applicable in the case of the petitioners, the same would be intimated to the petitioners within the same period of three months.

With the aforementioned observation and direction, all these writ applications are disposed of.

(Mihir Kumar Jha, J)

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