

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 7540 of 2012 (N)

PETITIONER(S):

**THE INDIA CEMENTS LIMITED AGED 56 YEARS
"ICL HOUSE"KRISHNASWAY ROAD, ERNAKULAM
REP.BY ITS MANAGER(ACCOUNTS)SRI.K.SRIDHARAN**

**BY ADVS.SRI.K.SRIKUMAR
SRI.K.MANOJ CHANDRAN**

RESPONDENT(S):

- 1. THE UNION OF INDIA
REP.BY THE SECRETARY, MINISTRY OF RAILWAYS
CENTRAL SECRETARIAT, NEW DELHI-100001**
- 2. THE RAILWAY BOARD,
REP.BY ITS CHAIRMAN, RAIL BHAVAN, NEW DELHI-100001**
- 3. THE GENERAL MANAGER
SOUTHERN RAILWAY, PARK TOWN, CHENNAI-600001**
- 4. THE CHIEF COMMERCIAL MANAGER,
SOUTHERN RAILWAY, PARK TOWN, CHENNAI-600001**
- 5. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, PALAKKAD-678001**
- 6. THE SENIOR DIVISIONAL COMMERCIAL MANAGER, SOUTHERN RAILWAY
PALAKKAD-678001**
- 7. THE STATIONSUPERINTENDENT,
SOUTHERN RAILWAY, VALAPATTANAM-670001**
- 8. THE CHIEF GOODS SUPERVISOR,
SOUTHERN RAILWAY, TIRUR, MALAPPURAM-676505**
- 9. THE COMMERCIAL SUPEVISOR,
SOUTHERN RAILWAY, VADAKARA, KOZHIKODE-673001**
- 10. THE SENIOR DIVISIONAL MANAGE,R
SOUTHERN RAILWAY, NEELESHWAR, KASARAGOD-671121**
- 11. THE SENIOR MANAGER,
ETTAKOT RAILWAY GOODS SHED, ETTAKOT-670663**

12. THE CHIEF GOODS SUPERVISION,
SOUTHERN RAILWAY, WEST HILL, KOZHIKODE-673001

13. THE CHIEF GOODS SUPERVISOR, SOUTHERN RAILWAY
KALLAI-673506

14. THE JOINT DIRECTOR
TRAFFIC, COMMERCIAL (RATES)RAILWAY BOARD
NEW DELHI-100001

R BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS
R BY SRI.C.S.DIAS,SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS

- | | |
|-----------------|--|
| EXT.P1:- | TRUE COPY OF THE NOTICE OF THE 7TH RESPONDENT DTD 20/3/2012 |
| EXT.P2:- | TRUE COPY OF THE NOTICE OF THE 8TH RESPONDENT DTD 20/3/2012 |
| EXT.P3:- | TRUE COPY OF THE NOTICE OF THE 9TH RESPONDENT DTD 20/3/2012 |
| EXT.P4:- | TRUE COPY OF THE NOTICE OF THE 10TH RESPONDENT DTD 20/3/2012 |
| EXT.P5:- | TRUE COPY OF THE NOTICE OF THE 11TH RESPONDENT DTD 22/3/2012 |
| EXT.P6:- | TRUE COPY OF THE CIRCULAR NO 74/2005 DTD 19/12/2005 AND ITS CORRIGENDUM DTD 17/1/2008 |
| EXT.P7:- | TRUE COPY OF THE NOTIFICATIN DTD 29/12/2005 |
| EXT.P8:- | TRUE COPY OF THE INTERIM ORDER DTD 14/2/2012 IN WPC NO 3634/2012. |

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

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ANIL K.NARENDRA, J

W.P.(C.)No.7540 Of 2012

DATED THIS THE 10th DAY OF DECEMBER, 2015

JUDGMENT

The petitioner has approached this Court seeking the following reliefs.

- (i) "Declare that respondents have no authority to revise the demurrage charges from Rs.100/- per wagon per hour to Rs.300/- per wagon per hour depending on the length of time the goods are to remain at the goods shed or under circumstances.
- (ii) Issue a writ of certiorari or any other appropriate writ or order calling for the records leading to Ext.P6 and P7 of the 14th and 4th respondents respectively, and to quash the same in so far as clause 3.3 therein is concerned.
- (iii) to issue a writ of certiorari or any other appropriate writ, or order calling for the records leading to Ext.P1 to P5 notices of the 7th to 11th respondents respectively, and to quash the same.
- (iv) to issue a writ of mandamus or any other appropriate writ, order or direction restraining the respondents from levying penal demurrage charges at the rate of Rs.300/- per wagon per hour as directed in Ext.P1 to P5 notices.
- (v) to pass such other order or direction which in the circumstances of this case, this Hon'ble Court deems fit."

2. Heard learned counsel for the petitioner and the learned Standing Counsel for the Railways.

3. Today, when the matter came up for hearing, it was submitted by both sides that the matter in issue has been considered by a Division Bench of this Court in intra court appeals, i.e., WA No.917/2014 & connected cases. A certified copy of the judgment dated 03.09.2014 in the aforesaid writ appeals was made available for perusal. The writ appeals were disposed of as under:

- “(1) The writ petitioners are permitted to make an application for waiver before the Station Manager/Goods Supervisor within 30 (thirty) days from today giving all details along with reasons and relevant records as necessary.
- (2) Station Master/Goods Supervisor shall forward the application for waiver of demurrage charges to the Divisional Officer with his remark within 15 (fifteen) days of receipt of the application.
- (3) The Divisional officer shall take a decision on the waiver application considering the reasons and circumstances given by the writ petitioners in the waiver application. Consequential orders be issued thereafter. In case the writ petitioners are aggrieved by the said decision, they can prefer appeal to the higher authority.”

In the light of the above, the writ petition is closed, permitting the petitioner to move as per the aforesaid direction.

**Sd/-
ANIL K.NARENDRA,
JUDGE**

//TRUE COPY//

PA TO JUDGE

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