

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. 9696 of 2012 (J)

PETITIONER(S):

**MOHAMMED ZAKKARIYA AGED 58 YEARS
AUTHORIZED CLEARING & TRANSPORTING CONTRACTOR
FOR FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED (FACT)
AT PALAKKAD JUNCTION RAILWAY GOODS
9/224, ANEES MANZIL, PAZHAYAKOTTA
PALAKKAD-678 001.**

BY ADV. SRI.GEORGE JACOB (JOSE)

RESPONDENT(S):

- 1. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF RAILWAYS
CENTRAL SECRETARIAT, NEW DELHI-110 001.**
- 2. THE SENIOR DIVISIONAL RAILWAY MANAGER (COMMERCIAL)
PALAKKAD JUNCTION, PALAKKAD-678 001.**
- 3. THE CHIEF GOODS SUPERVISOR,
RAILWAY GOODS SHED, PALAKKAD JUNCTION
PALAKKAD-678 001.**
- 4. THE JOINT DIRECTOR
TRAFFIC, COMMERCIAL (RATES) RAILWAY BOARD
NEW DELHI-110 001.**
- 5. THE CHIEF COMMERCIAL MANAGER
SOUTHERN RAILWAY, CHENNAI-600 001.**

**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

- EXHIBIT P1. TRUE COPY OF THE COMMUNICATION DATED 20/3/2012
ENHANCING DEMURRAGE AT PALAKKAD JUNCTION
GOODS SHED.**
- EXHIBIT P2 TRUE COPY OF THE INTERIM ORDER DATED 6/12/2011
OF THIS HONOURABLE COURT IN WPC NO.32458/2011.**
- EXHIBIT P3 TRUE COPY OF THE CIRCULAR NO.74/2005 DATED
19/12/2005 OF THE 4TH RESPONDENT.**
- EXHIBIT P4 TRUE COPY OF THE NOTIFICATION DATED 29/12/2005
ISSUED BY THE THE 5TH RESPONDENT.**

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

DATED THIS THE 10th DAY OF DECEMBER, 2015

JUDGMENT

The petitioner has approached this Court seeking the following reliefs.

- (i) "to issue a writ in the nature of certiorari, or other appropriate writ or order quashing Exhibit P1 communication issued by the third respondent.
- (ii) to issue a declaration that respondents 2 to 5 have absolutely no authority to require the petitioner, if occasions arise, to pay penal demurrage charges beyond Rs.100 which is the rate fixed by the Central Government.
- (iii) to issue a writ in the nature of mandamus or other appropriate writ or order restraining respondents 2 to 5 from levying penal demurrage charges beyond Rs.100 in the absence of any fixation or alteration of rates by the first respondent as enjoined in Sections 30 and 31 of the Indian Railways Act.
- (iv) to grant such other reliefs as may be prayed for and to which this Hon'ble Court may deem just and necessary in the facts and circumstances of the case."

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