

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 9848 of 2010 (E)

PETITIONER(S):

- 1. ABRAHAM ITTOOP AND OTHERS
NATIONAL ENTERPRISES, OZHATHIL BUILDINGS
OZHATHIL ROAD, KOTTAYAM-1.**
- 2. MANOJ M.MATHEW, PROPRIETOR,
MANOJ AGENCIES, VENTHETTU BUILDINGS, OZHATHIL ROAD
KOTTAYAM-1.**
- 3. AVIRACHEN MATHEW K., A&V CARGO MOVERS,
GOOD SHEPHERD COMPLEX, GOOD SHEPHERD ROAD, KOTTAYAM-2.**
- 4. JOSEPH JOHN, PROPRIETOR,
MARS AGENCIES, PALAKKASSERIL BUILDINGS, OZHATHIL ROAD
KOTTAYAM-1.**

**BY ADVS.SRI.GEORGE JACOB (JOSE)
SMT.N.G.ANITHA**

RESPONDENT(S):

- 1. UNION OF INDIA AND OTHERS
REP. BY THE SECRETARY, MINISTRY OF RAILWAYS
GOVERNMENT OF INDIA, SECRETARIAT, NEW DELHI-110001.**
- 2. THE SENIOR DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, THIRUVANANTHAPURAM DIVISION
THIRUVANANTHAPURAM-695004.**
- 3. THE SENIOR DIVISIONAL COMMERCIAL
MANAGER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM
DIVISION, THIRUVANANTHAPURAM-695004..**
- 4. THE STATION MANAGER,
KOTTAYAM RAILWAY STATION, SOUTHERN RAILWAY,
KOTTAYAM-686001.**
- 5. THE CHIEF GOODS SUPERVISOR,
SOUTHERN RAILWAY, KOTTAYAM GOODS SHED, KOTTAYAM-686001.**
- 6. (ADDL) THE JOINT DIRECTOR, TRAFFIC, COMMERCIAL (RATES)
RAILWAY BOARD, NEW DELHI-110001.**

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**7. (ADDL) THE CHIEF COMMERCIAL MANAGER, SOUTHERN RAILWAYS
CHENNAI-600003.**

**BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS
BY SRI.N.B.SUNIL NATH,SC, RAILWAYS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1-TRUE COPY OF THE INTERIM ORDER DATED 30.9.2009 IN W.P.(C) NO.27403/2009.

EXHIBIT.P2-TRUE COPY OF THE INTERIM ORDER DATED 2.11.2009 IN W.P.(C). 31075/2009.

EXHIBIT.P3-TRUE COPY OF THE NOTICE DATED 20.3.2010 ENHANCING THE DEMURRAGE CHARGES FROM RS.100/- TO RS.300/- FROM 22.3.2010 TO 15.4.2010.

EXHIBIT.P4-TRUE COPY OF THE NOTIFICATION DATED 14.12.2006 OF THE INDIAN RAILWAYS PORTAYING RATES OF DEMURRAGE CHARGES AS FIXED BY THE CENTRAL GOVERNMENT.

EXHIBIT.P5-TRUE COPY OF THE CIRCULAR NO.74/2005 DATED 19.12.2005 ALONG WITH CORRIGENDUM DATED 17.1.2008 OF THE ADDITIONAL 6TH RESPONDENT.

EXHIBIT.P6-TRUE COPY OF THE NOTIFICATION DATED 29.12.2005 ISSUED BY THE ADDITIONAL 7TH RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

R.AV

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PA to Judge

K.ABRAHAM MATHEW, J

W.P.(C).NO.9848 OF 2010

Dated this the 6th day of November 2015

J U D G M E N T

The petitioners purchased certain goods from another State which was sent through railway, which imposed penal demurrage charges on the petitioners as they failed to clear the goods. This is challenged in this writ petition.

2. When the matter was taken up for hearing, it was submitted that a Division Bench of this Court in Writ Appeal No.917 of 2014 and connected cases has passed a judgment in an identical case and the same order may be passed in this case also. I am satisfied that the submission is reasonable.

In the result, this writ petition is disposed of as follows:

- i) The petitioners may file an application before the 5th respondent waive the penal demurrage charges within 30 days from today stating the particulars and the reasons for the

request. It shall be accompanied by necessary records.

ii) The 5th respondent shall forward the applications for waiver to the respondent concerned with his remarks within 15 days from the receipt of the applications.

iii) The respondent concerned shall take a decision on the application taking into consideration the reasons that may be given by the petitioners in their applications and the circumstances. He shall thereafter pass appropriate orders. In case the petitioners are aggrieved by the said decision, they can prefer an appeal to the authority concerned.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge