

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. 9949 of 2012 (P)

PETITIONER(S):

**DALMIA CEMENT (BHARATH) LIMITED AGED 46 YEARS
IVTH FLOOR, FAGUN MANSION, NEAR ETHIRAJ COLLEGE
CHENNAI-600008
REPRESENTED BY ITS DULY AUTHORIZED POWER OF
ATTORNEY HOLDER SRI.RANJITH JACOB MATHEWS
GENERAL MANAGER (SALES & MARKETING-KERALA).**

BY ADV. SRI.GEORGE JACOB (JOSE)

RESPONDENT(S):

- 1. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF RAILWAYS
CENTRAL SECRETARIAT, NEW DELHI-110001.**
- 2. THE DIVISIONAL RAILWAY MANAGER
SOUTHERN RAILWAY, PALAKKAD-678001.**
- 3. THE SENIOR DIVISIONAL COMMERCIAL MANAGER
SOUTHERN RAILWAY, PALAKKAD-678001.**
- 4. THE CHIEF GOODS SUPERVISOR
RAILWAY GOODS SHED, NILESWAR, KASARGODE-671314.**
- 5. THE CHIEF GOODS SUPERVISOR,
RAILWAY GOODS SHED, VALAPATTANAM, KANNUR-670010.**
- 6. THE STATION SUPERINTENDENT
VALAPATTANAM RAILWAY STATION, VALAPATTANAM
KANNUR-670010.**
- 7. THE CHIEF GOODS SUPERVISOR
RAILWAY GOODS SHED, VADAKARA, KANNUR-673104.**
- 8. THE CHIEF GOODS SUPERVISOR,
RAILWAY GOODS SHED, VADAKARA, KANNUR-673104.**
- 9. THE JOINT DIRECTOR
TRAFFIC, COMMERCIAL (RATES), RAILWAY BOARD
NEW DELHI-110001.**

**10. THE CHIEF COMMERCIAL MANAGER
SOUTHERN RAILWAY, CHENNAI-600001.**

**R1 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 POWER OF ATTORNEY DEED DATED 13-1-2011 OF THE PETITIONER AUTHORIZING SRI.RANJITH JACOB MATHEWS, GENERAL MANGER (SALES & MARKETING), COCHIN TO FILE THE WRIT PETITION.

EXHIBIT P2: TRUE COPY OF THE INTERIM ORDER DATED 16-2-2012 OF THIS HON'BLE COURT IN WPC 3950/2012.

EXHIBIT P3: TRUE COPY OF THE COMMUNICATION DATED 20-3-2012 OF THE R4 INTIMATING OF THE IMPOSITION OF ENHANCED PENAL DEMURRAGE.

EXHIBIT P4: TRUE COPY OF THE COMMUNICATION DATED 20-3-2012 OF THE R4 ENHANCING PENAL DEMURRAGE CHARGES.

EXHIBIT P5: TRUE COPY OF THE COMMUNICATION DATED 20-3-2012 OF THE R7 ENHANCING PENAL DEMURRAGE CHARGES.

EXHIBIT P6: TRUE COPY OF THE NOTIFICATION DATED 20-3-2012 ISSUED BY R8 ENHANCING PENAL DEMURRAGE CHARGES.

EXHIBIT P7: TRUE COPY OF THE NOTIFICATION DATED 19-12-2005 ISSUED BY R9.

EXHIBIT P8: TRUE COPY OF THE NOTIFICATION DATED 29-12-2005 ISSUED BY R10.

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

ANIL K.NARENDRA, J

W.P.(C.)No.9949 Of 2012

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 P3,P4 and P6 communications of the respective respondents.
- (ii) to issue a declaration that respondents 2 to 10 have absolutely no authority to require the petitioners, 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 certiorari quashing Exhibits P7 and P8 notifications of respondents 9 and 10 respectively.
- (iv) to issue a writ in the nature of mandamus or other appropriate writ or order restraining respondents 2 to 10 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

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