HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No.388 of 2015

JUDGMENT:

This appeal is filed aggrieved by the order dated 15.09.2014 passed by the Railway Claims Tribunal, Secunderabad Bench in OA.III No.14 of 2009, wherein the Tribunal directed the appellants herein to refund a sum of Rs.20,68,920/-, within two months from the date of the order with interest @ 9% p.a. from the date of application to the date of order.

2. The appellants herein are the respondents and the respondent herein is the applicant before the Railway Claims Tribunal.

3. The brief facts of the case are that the respondent filed application against the appellants claiming compensation of Rs.20,68,920/- stating that the respondent booked a consignment of Iron Ore from Bacheli (KRDL) to Visakhapatnam Steel Plant (VSPS) vide Forwarding Note No.000573 on 04.01.2006; that the subject consignment never reached the respondent plant but the same was diverted to M/s.National Mineral Development Corporation (NMDC) on 05.01.2006 and the said rake was tippled by NMDC on 05.01.2006, hence the respondent sought for refund of the amount charged by the appellants towards freight from the respondent which amounts to Rs.20,68,920/-.

4. The respondents filed their written statement opposing the claim on the ground that it is time barred by 66 days. The respondents also stated that no notice as envisaged under Section 106 of Indian Railways Act, 1989 was served.

5. Basing on the Exs.A1 to A5 and evidence of AW1, the trial

Court passed impugned order for refund.

6. Now, Sri P.Bhaskar, learned counsel for the appellants presses one issue i.e. regarding non issuance of notice under Section 106 of the Indian Railways Act. He submits that notice should have been issued to the Railway Administration as per Section 106 of the Railways Act and that according to Section 2(32) of the Act, the definition of 'railway administration' means the General Manager of a Zonal Railway and that in the present case, no notice is issued to the General Manager.

7. On the other hand Sri V.Ravinder Rao, learned counsel for the respondent submits that Section 106 has no application to the present case, as the present case is not about over charge, but only for refund of money paid towards freight charges, as the subject consignment of Iron ore is not delivered to the respondent. He also submits that when once there exists exchange of correspondence i.e. Exs.A1 to A5, between the parties and the said notices are in pursuance of the agreement dated 04.01.2006 which is made for transportation of Iron ore, the issuance of notice under Section 106 does not arise. In support of his contention he relied on the Judgment in **Union of India and others v. West Coast Paper Mills Limited and another** [1].

Section 106 of the Railways Act, 1989 reads as follows;

> "106. Notice of claim for compensation and refund of overcharge:- (1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf;
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> (a) To the railway administration to which the goods are entrusted for carriage; or
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> (b) To the railway administration on whose railway the

destination station lies, or the loss, destruction, damage or deterioration occurs,

within a period of six months from the date of entrustment of the goods.

Section 2(32) of the Act reads as follows;

"Railway administration", in relation to

(a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;

8. The Apex Court in **AIR 2004 Supreme Court 3079** has interpreted the word 'over charge' under Section 78 B of the Railways Act, 1890, which is almost in paramateria with Section 106 of the Railways Act, 1989, wherein it is held as follows;

> "18. the term overcharge is not defined in the Act. In its dictionary meaning "overcharge" means "a charge of a sum more than as permitted by law" (see The Law Lexicon, P.Ramanatha Aiyar, 1997 Edition, Page 1389) The term came up for the consideration of the High Court of Gujarat in M/s.Shah Raichand Amulakh (D) by his heir v. Union of India and others 1971 (12) GLR 93. Chief Justice P.N.Bhagwati (as his Lordship then was) interpreted the term by holding that "overcharge" is not a term of art. It is an ordinary word of the English language which according to its plain natural sense means any charge in excess of that prescribed or permitted by law. To be an overcharge, a sum of money must partake of the same character as the charge itself or must be of the same genus or class as a charge it cannot be any other kind of money such as money recovered where nothing is due, Overcharge is simply a charge in excess of that which is due according to law.
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> 19. In the case at hand, the freight rates notified by the Railway Administration in exercise of its statutory power to do so, so long as they were not declared illegal and unreasonable by the Tribunal under Section 41 of the Act, were legal and any one carrying the goods by rail

> was liable to pay the freight in accordance with those rates. The freight paid by the respondent was as per the rates notified. Thus, the present one is not a case of overcharge at all. It is a case of illegal recovery of freight on account of being unreasonable and in violation of Section.28 of the Act, consequent upon such determination by the Tribunal and the decision of the Tribunal having been upheld by this Court. A case of 'illegal charge' is distinguishable from the case of 'overcharge' and does not attract the applicability of Section 78B of the Railways Act."

9. In the present case the admitted facts are that the respondent has paid the amount for transportation of freight and admittedly the freight is not delivered to the respondent as such the appellant cannot retain the money paid by the respondent towards transportation of freight charges. When once the appellants have not carried out their obligation arising out of the agreement, they cannot retain the money without any basis and they have to return the same without issuance of notice. When once it is the question of 'refund', question of 'overcharge', does not arise. As held by the Apex Court referred to above, no notice is required under Section 106 of the Act and that notices were issued to the authorities in pursuance of the agreement and there was correspondence by way of Exs.A1 to A5 and the respondents never stated that the authorities whoever replied to the notices that they are not responsible nor the notices to be issued under Section 106 of the Act. In view of the same, the plea of the appellant has no legs to stand and a perusal of the impugned order also goes to show that the Tribunal also proceeded on the admitted facts. In view of the same, I do not see any error in the order passed by the Tribunal.

10. Accordingly, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

15.12.2015
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[1] AIR 2004 Supreme Court 3079