

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 433 of 2015

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M/s Ganga Carriers Private Limited, a company incorporated under the Companies Act, 1956 having its office at 309, Ashiana Towers, Exhibition Road, Patna-800001 through one of its authorized Signatory, Ankit Choudhary son of Shri Sanjeev Kumar Choudhary R/o 7th Floor, Kataruka Niwas, South Gandhi Maidan, Patna- 1.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway, Government of India, New Delhi.
2. The General Manager, East Central Railway, Hajipur.
3. The Chief Commercial Manager, East Central Railway, Hajipur.
4. The Divisional Railway Manager (Commercial), Sonpur.
5. The Goods Superintendent, East Central Railway, Narayanpur, Anant, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal & Ms. Aishwaiya Riti, Advocates.
For the Respondent/s (Railway)	:	Mr. D. K. Sinha, Sr. Advocate. Mr. Bindhyachal Singh & Mr. Manish Prakash, Advocates.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 16-03-2016

Head learned counsel for the parties.

The writ petition has been filed for quashing of letter dated 02.11.2014 issued by the respondent no. 5 by which demurrage charges of Rs. 8,75,460/- has been imposed and further to declare that the wharfage of Rs. 2,84,770/- was forcibly recovered by the respondent no. 5 and also for a direction to the respondent no. 5 to release the withheld stock of about 3000 bags of cement lying at the siding in question.

Learned counsel for the petitioner submits that it is a registered company incorporated under the Companies Act,



1956 and deals in the business of clearing and forwarding and acting for M/s Lafarge India Private Limited and in that capacity had hired Railway wagons for transportation of Lafarge cement on 27.10.2014 from Jojobara Siding and the consignment arrived at Narayanpur Anant Siding on 30.10.2014. Thereafter, the same was required to be cleared within a stipulated time but the siding on which it was to be unloaded was already pre-occupied by the cement belonging to Mycem Company and further the time being of *chath* festival, no labour being available, the goods were finally unloaded only on 31.10.2014. It is submitted that the objection by the representative of the petitioner's company to the respondent no. 5 on 30.10.2014 was neither accepted nor taken, forcing it to send the same through registered post. It is submitted that the facts as averred in the writ petition have not been specifically denied in the writ petition and only vague statements have been made that the objection raised by the petitioner is by way of an afterthought.

Learned counsel for the Railway submits that the instructions received by him on which the counter affidavits have been filed are not appropriate and complete. In view of the fact that averments made in the in the writ petition itself have not been properly dealt with both in the counter affidavit and supplementary counter affidavit filed by the Railway and which is admitted by learned counsel for the Railway, the Court asked him whether he would like to file further counter affidavit subject to



cost of Rs. 5,000/-, he declines and submits that the Court may proceed and decide the matter. Learned counsel submits that the objection raised by the petitioner was never so done at the relevant point of time and only by way of an afterthought the objection has been raised before the authority concerned and thus it deserves no consideration and the action of the respondents has been in accordance with law where such wharfage and demurrage charges are leviable which has been done in the present case. However, he is not in a position to controvert the specific averments of the petitioner in the writ petition itself that on 30.10.2014 when his consignment arrived the siding at which it was supposed to be kept was already pre-occupied by goods of another company namely Mycem Cement and there being no place to unload the cement, it could not be done and took some time and further there was also dearth of labourers on account of *chath* festival which added to the problem and for this he cannot be penalized.

In the facts and circumstances of the case, especially facts which have been specifically averred in the writ petition and admittedly not controverted by the Railway, the Court can only go by the materials on record and thus, upon such consideration finds that the petitioner has been able to make out a case for interference.

Accordingly, the writ petition stands disposed off with a direction to the respondents to repay the amount of Rs.

8,75,460/- and also Rs. 2,84,770/- to the petitioner within three weeks from the date of production of a copy of this order before the respondents no. 4 and 5. The Court would like to make it clear that the order has been passed on the basis of admitted position on record both from the pleadings of the petitioner as well as the Railway and also in view of the counsel for the Railway specifically declining to file further counter affidavit in the matter.

(Ahsanuddin Amanullah, J.)

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