

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.410 of 2013**

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M/S Bhagwandas Sagarmal, a Registered Partnership Firm having its Office at D.N. Singh Road, Bhagalpur through one of its Partners Shri Binod Kumar Kishorepuria, Son of Late Sagarmal Kishorepuria, Resident of D.N. Singh Road, P.S.- Kotwali, District Bhagalpur.

.... .... Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
2. The Chief Commercial Manager, East Central Railway, Hajipur, Vaishali.
3. The Senior Divisional Railway Manager (Commercial), East Central Railway, Sonapur, Hajipur, Vaishali.
4. The Chief Commercial Manager, East Central Railway, Hajipur, Vaishali
5. The Senior Divisional Commercial Manager, East Central Railway, Hajipur, Vaishali.
6. The Goods Superintendent, East Central Railway, Naugachia, Bhagalpur.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Satyabir Bharti

For the Respondent/s : Mr. D.K. Sinha, Sr. Advocate with  
Mr. Anil Singh

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**ORAL ORDER**

5      15-02-2016              Heard Mr. Satyabir Bharti, learned counsel appearing on behalf of the petitioner and Mr. D.K. Sinha, learned senior counsel appearing on behalf of the respondents.

In the nature of the order which this Court proposes to pass, it would not require to delve deep into the merits of the case. Suffice it to say that the petitioner is a Carrying and Forwarding agent of M/s Lafarge Cement and is aggrieved by the action of the respondent - Railways in imposing demurrage charges to the tune of Rs.15,13,800/- as well as wharfage charges to the tune of Rs.6,61,600/- for delayed removal of the consignments unloaded



at the Naugachia Railway siding falling under the jurisdiction of the East Central Railway on 22.4.2010, 24.4.2010 and 26.4.2010. The petitioner had earlier come before this Court complaining of similar action giving rise to CWJC No.15081 of 2010 which was disposed of by this Court vide order passed on 2.1.2012 present at Annexure-12 with a direction to the authorities of the Railways to dispose of the claim by a speaking order. The claim of the petitioner was considered and has been disposed of by the impugned order passed on 14.5.2012 which finds enclosed with the letter of the Senior Divisional Commercial Manager, Sonpur present at Annexure- 14. The respondent authority has refused to consider the claim of the petitioner for waiver of the charges *inter alia* on grounds of failure of the petitioner to make the pre-deposits against such imposition. It is not in dispute rather is an admitted issue that while the matter remained pending before this Court the petitioner has deposited a sum of Rs.1,33,800/- against the demurrage charges of Rs.15,13,800/- as well as the entire amount of wharfage charges amounting to the tune of Rs.6,61,600/-. Both the deposits have been made by the petitioner under protest and subject to the final outcome of the proceedings. It is following the deposits that the goods have also been released in favour of the petitioner.

The only issue which falls for consideration presently as



canvassed by Mr. Bharti is that whether in view of the relevant provisions of the Railways Act and the Guidelines issued thereunder, the impositions are sustainable as according to Mr. Bharti there is no laches on the part of the petitioner which is supported from the recommendation of the Goods Incharge. According to Mr. Bharti the petitioner is entitled for a waiver of the charges and refund of the amount(s) deposited.

Although the arguments advanced is contested on merits by Mr. Sinha with reference to guidelines issued by the department but then apparently the Senior Divisional Commercial Manager, Sonapur has not addressed herself to the merits of the claim rather the claim raised by the petitioner has been disposed for the failure of the petitioner to make the predeposits of the charges in question. The petitioner by the order impugned at Annexure-14 has been directed to deposit the charges before making a plea for waiver.

In my opinion the order impugned at Annexure-14 is incapable of being upheld. The Senior Divisional Commercial Manager has failed to appreciate that the matter stood remitted under the orders of this court and thus any insistence of predeposit, in absence of any direction by this Court, is an apparent illegality.

However now that substantial deposits towards the

charges impugned have already been made by the petitioner resulting in the release of the goods I am of the opinion that the Senior Divisional Commercial Manager, Sonapur should proceed to adjudicate on the plea of waiver raised by the petitioner on merits and dispose of the same in accordance with law but after opportunity of hearing to the petitioner and without insisting on the predeposits. The claim should be disposed of expeditiously and preferably within a period of three months from the date of receipt/production of a copy of this order. Any further deposit or refund would be guided by the final outcome of the proceeding.

In result the order passed by the Senior Divisional Commercial Manager dated 14.05.2012 impugned at Annexure-14 is quashed and set aside.

The writ petition is allowed with the directions aforementioned.

**(Jyoti Saran, J)**

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