

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8173 OF 2015

M/s L.K. Goyal

...PETITIONER

versus

The Union of India and other

...RESPONDENTS

.....
Mr. Pramod S. Gaikwad, Advocate for petitioner
Mr. S.B. Deshpande, ASG for respondents No. 1 to 4
.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 27th JUNE, 2016.

Order :-

1. Mr. Gaikwad, learned counsel for petitioner submits that petitioner-firm was awarded contract by Railway Department with regard to laying and linking Railway track, points and crossing etc. An agreement was entered into. Total cost of the project was to the tune of Rs. 13.69 Crores. According to learned counsel for the petitioner, on or about 15-05-2015 the tractor working under the petitioner's firm carrying luggage of railway, due to technical failure got stranded in railway track. Tractor could not be removed by driver in time and collided with train No. 12655. The driver of said tractor was prosecuted. He admitted his guilt and accordingly he was convicted. He was directed to pay compensation of Rs. 35,000/- (Rupees Thirty Five Thousand) and fine of Rs. 2000/- (Rupees Two Thousand). Said amount has been paid with Railway Department.

2. Learned counsel for the petitioner submits that all of a sudden petitioner received demand letter directing the petitioner - firm to pay amount of Rs.09,42,663.23 paise (Rupees Nine Lakhs Forty Two Thousand Six Hundred Sixty Three and Twenty Three Paise). Said demand was made to the petitioner on the ground that Departmental Enquiry Committee of said accident has found said amount to be recoverable from running bills of the petitioner-firm. Learned counsel for the petitioner submits that procedure laid down under Section 114 of the Indian Railways Act, 1989 was not followed. Amount of Rs.35,000/- towards damages is already recovered, even as per relevant Rules and Act, the petitioner will not be liable to pay amount more than Rs. 2,13,500/- and same has also been stated by the petitioner along with his representation.

3. Mr. Deshpande, learned Assistant Solicitor General states that he could not receive the instruction and further states that Departmental Enquiry Committee has considered all relevant aspects of the matter and has rightly come to the conclusion.

4. From the order itself it does not appear that petitioner was issued notice or stand of the petitioner was considered. After said demand notice, the petitioner has filed application (Exhibit-E) with respondent No. 3. In case show cause notice was not issued to the petitioner then it is necessary for the respondent No. 3 to consider application (Exhibit-E) of the petitioner.

5. Considering the above, we direct respondent No. 3 to take cognizance of the application (Exhibit-E) of the petitioner and decide the same on its own merit in accordance with law, as expeditiously as possible, preferably within a period of six (06) months, from the date of order.

6. With aforesaid direction, writ petition stands disposed of. No costs.

7. At this stage, it is submitted by learned counsel for the petitioner that respondents have till date recovered the amount of Rs.2,13,500/- and requested to stay further recovery till decision on the application (Exhibit-E).

8. In view of aforesaid, in case remaining amount is not recovered then same may not recovered till decision on the application (Exhibit-E) of the petitioner.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK