

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

MONDAY THE TWELVETH DAY OF SEPTEMBER, 2016

PRESENT  
**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT**

WRIT PETITION NO. 30645 OF 2016

Between:

Azizi Courier and Cargo Services  
Represented by its Proprietor,  
Sakir Ali Azizi,  
Beleleous Road, Howrah ..... Petitioner

V/s.

Union of India  
Rep.by its General Manager  
South Central Railway  
Rail Nilayam, Secunderabad & Ors. .... Respondents

Counsel for the Petitioner: Sri Nambi Krishna

Counsel for the Respondents: Sri P. Prabhakar

The court made the following: [order follows]

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT**

WRIT PETITION NO. 30645 OF 2016

ORDER :

This writ petition is filed by the petitioner seeking mandamus to declare the action of the respondents more particularly respondent No.3 in issuing the Notice G/C/441/over-loading of VPH/22855/Exp/2015-16/1, dated 04/8/2016 for demanding payment of Rs.42,12,245/- as illegal, arbitrary, unconstitutional and contrary to the policy of the Government of India, Ministry of Railways, consequently to set aside the Notice G/C.441/over-loading of VPH/22855/Exp/2015-16/1, dated 04/8/2016 for demanding payment of Rs.42,12,245/- and to pass such other suitable orders as this Court may deem fit and proper in the circumstances of the case.

2. It is stated in the affidavit filed in support of the petition that on 29/8/2016 the petitioner loaded 369 packages in Parcel Van bearing Train No.22855 SRC [Satraganchi] to TPT [Tirupati] and as per the agreement with the party the weight of total packages is 22500 Kgs. Accordingly the petitioner paid the amount to the

respondents. In the absence of the petitioner, the said goods were shown weighed and found that the weight was 29 tonnes instead of 23 tonnes. Accordingly the petitioner paid an amount of Rs.2,69,526/- on 03/6/2016. However, on the way the train derailed due to which it caused loss to the Railway line. Accordingly, the respondent No.3 issued notice demanding an amount of Rs.42,12,245/-.

3. Vide the present writ petition, the petitioner submits that since he has paid an amount of Rs.2,69,526/- for over-loading packages, therefore, the petitioner is not liable to pay any damage if occurred due to over-loading of packages.

4. Learned counsel appearing on behalf of the respondents on advance notice submits that the goods were being carried vide agreement dated 9/7/2015, accordingly, if any dispute arises, it is resolved as under:

#### 25.0 Dispute Resolution :

Notwithstanding any provision in this policy, stipulation of Railway Act, 1989 will prevail. In case of any dispute in interpretation

of Policy, the decision of Railway Administration will be final and binding.

- a) If any dispute of difference of any kind whatsoever arises between parties hereto in connection with or arising out of this agreement parties the aggrieved party shall spell out the differences in writing and parties hereto shall promptly settlement.
- b) In the event of no amicable resolution and settlement is reached within a period of 90 days from the date from which the dispute/difference arose, demand in writing shall be made for arbitration. The dispute/difference of either party shall be referred to the sole arbitrator appointed by the General Manager, South Central Railway, who shall be a Railway Gazetted Officer not below the rank of Jr.Administrator. However, such office will not be one of those who had opportunity to deal with the matter to which the contract relates.
- c) The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matter to which the contract relates.
- d) It is a term of this agreement that in the event of the Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason. General Manager of this Railway shall appoint another person to act as Arbitrator in accordance with the terms of this agreement. Such person shall be entitled to proceed with the reference from the stage at which the processor left it.
- e) The existence of any dispute or difference or the initiation or continuance of the arbitration proceedings shall not postpone or delay performance by parties of their respective obligations pursuant to the agreement.
- f) Parties agree that the arbitrators shall determine and make an award as to costs of the arbitration proceedings.
- g) For all matter not specified under this agreement, the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder shall apply.

5. Learned counsel for the respondents submits that in view of the agreement taken place between the parties, the petitioner may approach the respondents for appointment of Arbitrator and accordingly the matter would be settled.

6. I find force in the submission of the counsel for the respondents.

7. Therefore, in view of the submission of learned counsel for the respondents, the present writ petition is not maintainable and accordingly the same is dismissed. However, liberty is granted to the petitioner to approach the respondent No.3/Senior Divisional Commercial Manager, South Central Railways, Guntakal, Ananthapur district for appointment of Arbitrator.

8. Accordingly, the writ petition is disposed of at the stage of admission. No costs.

9. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand closed.

---

**JUSTICE SURESH KUMAR KAIT.**

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT**

WRIT PETITION NO. 30645 OF 2016



Date: 12/09/2016  
Circulation No.  
Court Master: I s L