211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4212 of 2013 (O&M)
Date of Decision: 02.12.2016

Indian Oil Corporation Limited ...... **Appellant(s)**

Versus

Union of India ..... **Respondent(s)**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashish Kapoor Advocate
for the appellant.

Mr. Karminder Singh, Standing Counsel
for the respondent-UOI.

KULDIP SINGH J. (ORAL)

CM No.17156-CII of 2013

This is an application for condonation of delay of 80 days in re-filing the appeal.

For the reasons mentioned in the application, delay of 80 days in re-filing the appeal is condoned.

CM stands disposed of.

FAO No.4212 of 2013 (O&M)

Indian Oil Corporation, through its Law Officer-S. Qamar Ahmed, has filed this appeal against the judgment dated 31.10.2012, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh vide which, the claim application was dismissed on the ground that the Law Officer was not authorized to file the application for compensation.

The brief facts of the case required for the disposal of present appeal to be noticed are that the Indian Oil Corporation dispatched Motor Spirit (for short 'MS') (petrol) vide RR No.3706037 on 15.02.2005 from IOC Haldia to Ambala Terminal through Wagon No.WR-896644. When the

Wagon was received at Ambala Terminal, it was found that top and bottom seals were missing and two bottom seals (loco side) were also missing. The Joint Dip Certificate was prepared, according to which, it was shown that there is a shortage of 5106 litres of MS. The value of the said MS was Rs.33371.21 per kl. The Railway on the other hand repudiated the claim and stated that it was loaded by the company and delivered at the destination.

From the pleadings, following issues were framed:-

1. Whether the application has been filed by the competent and duly authorized person?
2. Whether a valid and legal notice under section 106 of the Railways Act has been served upon the respondent-railways?
3. Whether the consignment in question was received in short? If so, the extent thereof?
4. Relief.

The Railway Claims Tribunal, Chandigarh Bench, Chandigarh decided issue No.1 against the applicant holding that application was not filed by a competent person. However while deciding issue Nos.2 and 3, it was held that there was shortage of 5106 litres of MS. Therefore, the relief was declined only on the ground that application was not filed by the competent person.

I have heard learned counsel for the parties and have also carefully gone through the records.

It comes out that the applicant had filed a review application for review of judgment dated 31.10.2012 before the Railway Claims Tribunal, Chandigarh Bench, Chandigarh which was dismissed on

20.02.2013 on the ground that the applicant should approach the higher Court.

The short question arising for the consideration is as to whether the claim application was filed by a competent person?

The claim application was filed by S. Qamar Ahmed, who was working as Law Officer in Indian Oil Corporation in New Delhi Office. The Tribunal has taken a view that the said Law Officer has not produced any document to show that he was authorized by Indian Oil Corporation (IOC) to file claim application. Therefore, it was concluded that he has failed to prove that he was competent to file the application. There are two kind of authorities. One is express authority and second is implied authority. For the express authority, the documents of authority are required. However, in case of implied authority, no such document is required. S. Qamar Ahmed is admittedly working as Law Officer and during his tenure with Indian Oil Corporation he was having implied duty to protect the interest of the IOC. The cross examination of said witness shows that it was not suggested to him that he is not working as Law Officer in IOC. The cross examination further reveals that he had brought the record of the IOC and asserted that he is fully authorized for production of the said record. Here the Law Officer of IOC acted to protect the interest of the IOC in making the claim. The IOC has never claimed that it's Law Officer was not authorized. Therefore, assuming that Law Officer acted without any authorization of IOC, he being the Principal Officer of IOC, had the implied authority to protect the interest of IOC. Therefore, even on the basis of implied authority, he could file the claim application. Even before this Court, IOC has not repudiated/controverted the authority of its law officer to file the appeal. Therefore, even on the basis of implied authority, the application was filed by the competent person. Admittedly, IOC is a public corporation.

Now, the question would arise whether in such cases the application for compensation can be dismissed on technical grounds.

The matter was dealt by the Supreme Court of India in "*United Bank of India Vs. Naresh Kumar and others*" 1996 SCR 478, wherein in the suit filed by the bank which is also a public corporation, it was observed as under:-

> *"9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Civil Procedure Code, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.*
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> *10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Civil Procedure Code a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity, it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Civil Procedure Code, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the Corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of the Civil Procedure*

Code it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29, Rule 1 of the civil Procedure Code, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Civil Procedure Code. A person may be expressly authorised to sign the pleadings on behalf of the company, for example, by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour, of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer is signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

The said observations are applicable with full force to the present case also. Since the law officer, being the principal officer of the IOC had the implied authority, therefore, even without authorization, he could file the application for compensation, without having any written authority for the same, which is not repudiated/controverted by the IOC and rather affirmed by filing the application for review and then filing the present appeal.

It being so, the findings of the Tribunal on issue No.1 are set aside and the same stands decided in favour of the appellant and against the respondent.

In view of the findings, the appeal is allowed. The respondent is ordered to pay compensation of Rs.1,70,393.40 being the price of 5106 litres of motor spirit with interest at the rate of 9% per annum from the date of service of notice i.e. 21.06.2005 till payment.

(KULDIP SINGH)
JUDGE

December 02, 2016
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No