* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: March 22, 2016

\+ LPA 701/2015

PALOGIX INFRASTRUCTURE PVT. LTD. & ANR. ..... Appellants

Versus

UNION OF INDIA & ORS. .... Respondents

\+ W.P.(C) 6239/2013

PALOGIX INFRASTRUCTURE PVT. LTD & ANR ..... Petitioners

Versus

UNION OF INDIA MINISTRY OF RAILWAY & ORS ..... Respondents

Counsel for the appellant/petitioner: Mr.Rajiv Nayyar, Sr.Adv. with Mr.Prateek Jalan, Mr.Shatadru Chakraborty with Ms.Kartika Chaudhary, Advs.

Counsel for the respondent: Mr.Jagjit Singh with Mr.Preet Singh, Advs. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R
16.02.2016

: **Ms. G. ROHINI, CHIEF JUSTICE**

1. W.P.(C) No.6239/2013 was initially allowed by the learned Single Judge by order dated 15.04.2015. However, on an application being C.M. No.16562/2015 filed by the respondents seeking clarification of the order dated 15.04.2015, the learned Single Judge recalled the order dated 15.04.2015 and directed to post the petition for hearing afresh. Aggrieved by

the said order in CM No.16562/2015 dated 29.09.2015, the petitioner in W.P.(C) No.6239/2013 filed LPA No.701/2015.

2. Pursuant to the notice directed by us in LPA No.701/2015, appearance has been entered on behalf of the respondents. After hearing the learned counsel for both the parties to some extent, we thought that it would be appropriate to hear the main writ petition itself instead of going into the correctness of the recall order dated 29.09.2015 passed by the learned Single Judge. The learned counsel for both the parties consented for the same and accordingly, we have called for W.P.(C) No.6239/2013. Thus, the writ petition has also been listed before us along with LPA.

3. We have heard the learned counsel for both the parties.

4. The petitioner No.1 is a company engaged in the business of Railway logistics. In terms of Private Freight Terminal Scheme dated 31.05.2010 (hereinafter referred to as 'PFT Scheme') published by the Central Government, Ministry of Railways, the petitioners have applied and were granted permission to set up Greenfield Private Freight Terminal at different locations and have been continuing as logistics service providers in Rail Cargo Services. While so, the Government of India, Ministry of Railways issued Circular dated 22.03.2013 regarding adjustment in base freight rates effective from 01.04.2013. The said Circular reads as under:

Rates Circular No.6 of 2013

GOVERNMENT OF INDIA
RAILWAY BOARD

No.TCR/1078/2013/07

New Delhi, dated 22.03.2013

The General Managers,
All Indian Railways

Sub: Adjustments in Base Freight rates effective from 01.04.2013.

1. Sanction of the Central Government is hereby accorded for the following adjustments in Base Freight rates with effect from 01.04.2013.

1.1 Disbanding the practice of levying Terminal Charges in case of freight traffic handled at Railway-owned goods sheds/terminals and the same shall not be levied in addition to Base Freight (Refer Rates Circular No.92 of 2007 and last revision in the service vide Rates Circular No.30 of 2012).

1.2 Levying of tariffs as per the revised Base Freight Rate Table enclosed herewith.

2. Zonal Railways should ensure that requisite number of copies of the revised Freight Rates Tables (Goods Tariff No:46, Part-II) are collected from the General Secretary, IRCA and distributed in time.

3. Steps should also be taken to ensure that all relevant personnel are made conversant with the aforesaid revisions, related instructions, etc. promptly. Commercial Inspectors (CMIs) and Traffic Inspectors of Accounts (TIAs) may be deputed to goods sheds/stations/sidings etc. for ensuring correct implementation of the instructions, particularly during the initial phrase.

This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

Sd/-
(Mahender Singh)
Deputy Director, Traffic Comml. (Rates)
Railway Board

5. The petitioners filed W.P.(C) No.6239/2013 with a prayer to quash the said Circular contending *inter alia* that the same is not in accordance with the PFT Scheme.

6. Pending writ petition, the petitioners were permitted to make a representation before the Railways and accordingly, a representation was made by the petitioners on 01.01.2014. The said representation was disposed of by the Ministry of Railways / Railway Board by order dated 01.01.2014.

7. A counter affidavit has been filed on behalf of the Railways on 13.08.2014 stating that the Circular dated 22.03.2013, which has been challenged in the writ petition was only in respect of Terminal Charges of Goods Shed of Railway and goods booked by the Railway and that the said Circular/Policy does not affect the business of the petitioners in any manner and that the petitioners are trying to confuse the whole issue by giving incorrect interpretation to the Circular.

8. In terms of the directions of the learned Single Judge dated 04.09.2014, an additional affidavit has been filed on behalf of the respondents reiterating the stand taken by them in their counter affidavit as to the applicability of the Circular dated 22.03.2013.

9. Sh.Rajiv Nayyar, the learned Senior Counsel appearing for the writ petitioners, therefore, submits that the writ petition may be allowed as prayed for in the light of the stand taken by the respondents in their counter affidavit/additional affidavit.

10. It is submitted by Sh.Jagjit Singh, the learned Standing Counsel appearing for the respondents that though it is a fact that the impugned Circular dated 22.03.2013 does not affect the rights granted to the petitioners as their rights are covered by the Railway Board Policy dated 31.05.2010, since the impugned Circular dated 22.03.2013 deals with the levy of tariff also as per the revised Base Freight Rate Table enclosed therewith, it is necessary to clarify that the right of the Railways to demand the freight charges on the basis of the said Base Freight Rate Table is not affected in any manner whatsoever.

11. Having carefully gone through the pleadings in the writ petition, we found that the grievance of the petitioners was regarding the withdrawal of terminal charges under the impugned Circular dated 22.03.2013. They never raised any grievance about the Base Freight Rates fixed in the impugned Circular dated 22.03.2013.

12. Therefore, we are of the opinion that the writ petition can be disposed of recording the statement of the respondents that the Circular dated 22.03.2013 to the extent of withdrawal of terminal charges has no application to the petitioners. It may also be mentioned that the impugned Circular dated 22.03.2013 states that the practice of levying terminal charges has been disbanded in case of freight traffic handled at Railway Owned Goods Sheds/Terminals. Admittedly, the petitioners are not maintaining the Railway Owned Goods Sheds/Terminal.

13. Therefore, we dispose of the writ petition recording the statement of the respondents that the rights accrued to the petitioners as per the Railway Board's policy dated 23.04.2012 and 31.05.2010 are not affected in any

manner whatsoever by virtue of the Circular dated 22.03.2013. So far as the levy of tariff is concerned, we make it clear that we have not expressed any opinion and it is open to the petitioners to work out the appropriate remedy as available under law in case of any grievance regarding the revised base freight rate.

14. W.P.(C) No.6239/2013 is accordingly disposed of.

15. LPA No.701/2015 is dismissed as infructuous.

CHIEF JUSTICE

JAYANT NATH, J.

MARCH 22, 2016/pk