

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23285 of 2006 &
M.P.Nos.1 and 2 of 2006

M/s. Gimpex Ltd

... Petitioner

Vs.

1. Union of India,
represented by its
Secretary to Government,
Ministry of Railways
New Delhi.
2. The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan, Rafi Marg,
New Delhi 110 011.
3. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad, Andhra Pradesh.
4. The Chairman,
Vishakapatnam Port Trust,
Vishakapatnam, Andhra Pradesh.
5. The Secretary,
Railways Rates Tribunal,
Chennai

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that section 44 of the Railways Act, 1989 in so far as it restricts the power of the Railway Rates Tribunal to grant relief anterior to the date of the complaint is ultravires, unconstitutional of the Constitution of India.

For Petitioner	: Mr.M. Sriram
For Respondents	: Mr. P.T. Ramkumar
	Senior Counsel for Railways

O R D E R

The petitioner filed a Writ of declaration declaring that the section 44 of the Railways Act, 1989 in so far as it restricts the power of the Railway Rates Tribunal to grant relief anterior to the date of the complaint is ultravires and unconstitutional of Constitution of India.

2. A similar prayer challenged before this Court was heard and decided by this Court in the reported decision of (2013) 3 MLJ 387 (Jayakrishna Flour Mills Pvt. Ltd Vs. Chairman, Railway Board, Rail Bhavan, New Delhi and others), wherein, it is held as follows;

'1. Jayakrishna Flour Mills Pvt. Limited/petitioner has approached this Court with the prayer for issuance of a writ in the nature of declaration to declare section 44 of the Railways Act, 1989 to be ultra vires the Constitution of India.

....

.....

13. Section 44 of the Railways Act reads as under;

"44. Reliefs which the Tribunal may grant -
In the case of any complaint made under clause (b) or Clause (c) of Section 36, the Tribunal may -

(i) fix such rate or charge as it considers reasonable from any date as it may deem proper, not being a date earlier to the date of the filing of the complaint.

(ii) direct a refund of amount, if any, as being the excess of the rate or charge fixed by the Tribunal under Clause (i)"

14. The constitutional validity of section 44 of the Railways Act, 1989, is challenged, on the ground;

i) that the demand of punitive charges after delivery of goods is belated, therefore, is violative of section 73 of the Act, as no weighment could be taken behind back of the petitioner without production of weighment particulars;

ii) that the party cannot be penalized for the default of Railways in not providing weighing

machine at any loading point, inspite of the fact, that their revenue is on the higher side;

iii) that the electronic weigh bridge in motion is not a proven and a successful devise, as it gives contrary report. Therefore, in case of challenge, an opportunity should be given to the party to cross check the correctness of the same by subjecting the consignment for reweighment by any other proven means, which the administration is shy of.

22. Learned counsel for the petitioner also contended, that section 44 is arbitrary, thus violative of Article 14 of the Constitution, as it has no nexus with the object sought to be achieved, as it has restricted the right of the Tribunal to remedy the wrong done to the party by providing remedy in the future and not for the wrong done.

44. Merely because section 44 bars the remedy qua the past, cannot be the ground to declare it to be unconstitutional, as it is always open to a party to avail any other remedy available under law or in the alternative to invoke the writ jurisdiction of this Court, but this cannot be the ground to declare the provisions of statute to be invalid, merely because a particular remedy is not available before the learned Tribunal constituted to deal with the limited questions under Section 36 of the Act.

45. The contention, that the provision is unreasonable or has resulted in hardship to the petitioner in taking away its remedy to challenge the penalty, cannot be the ground to challenge the constitutional validity, in view of the law laid down by the Hon'ble Supreme Court in the case of Government of Andhra Pradesh and Others v. P.Laxmi Devi, (supra).'

3. It appears that this court, on 20.09.2006, by way of an interim order, directs the petitioner to deposit 50% of the punitive charges levied and in compliance thereof, the petitioner has deposited the said amount before the 3rd respondent/General Manager amount in compliance with the interim order. The petitioner deposited the said amount before the authority.

4. In the light of the decision cited supra, this Writ Petition is dismissed, however with liberty granted to the petitioner to approach the authority, who may decide the matter on merits and pass appropriate orders, in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

msr

To

1.The Secretary to Government,
Union of India,
Ministry of Railways, New Delhi.

2. The Chairman,
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New Delhi 110 011.

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Secunderabad, Andhra Pradesh.

4. The Chairman,
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Vishakapatnam, Andhra Pradesh.

5. The Secretary, Railways Rates Tribunal, Chennai.

+1cc to Mr.P.T.Ramkumar, Advocate, sr.no.32429

+1cc to Mr.M.Sriram, Advocate, sr.no.31705

+1cc to Mr.R.Dharani Chander, Advocate, sr.no.31666

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KK(CO)
RRK(04/06/18)