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

+ **FAO 34/2018 & C.M.Nos.3586-87/2018**
+ **FAO 35/2018 & C.M.Nos.3588-89/2018**
+ **FAO 36/2018 & C.M.Nos.3590-91/2018**

BHARAT PETROLEUM CORPORATION LTD. Appellant
Through: Mr. Praveen Kumar Singh, Advocate.

Versus

UNION OF INDIA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **ORDER**
30.01.2018

1. There is a delay of 362 days in filing these appeals. The reasoning assigned for the same is that certain Deputy General Manager of the appellant who was dealing with the 'logistics' of the case had taken ill between February and June, 2017. The Court would note that the impugned order was passed on 15.09.2016. Copy of the order was applied for on 03.10.2016 and received on 19.10.2016. Hence, excluding the said 17 days, the remaining delay of 345 days is unexplained. Even if the time taken for the alleged indisposition of the said officer from February to June, 2017 is condoned, the other period of delay of approximately 295 days remains unexplained.
2. The learned counsel for the appellant states that delays do occur in the government organizations - which the appellant is, hence, a more

considerate view may be taken. In support of his contentions, he relies upon the dictum of the Supreme Court in ***Union Bank of India vs. Naresh Kumar & Others reported in (1996) 6 SCC 660***, wherein observed that:-

“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 CPC, 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.”

3. The Court is of the view that the said judgment does not give a carte blanche freedom to government organizations from the strict stipulations of the Limitation Act. It cannot be said that in each case concerning the government, the Court would necessarily condone any period of delay, howsoever inordinate it may be.

4. In the present case, there is no pleading or explanation whatsoever, to the effect that the appellant was constrained from taking a decision apropos filing of the appeal. The appellant is a large organization manned by hundreds of trained personnel and has a host of lawyers on its panel to assist it in its legal affairs. Therefore, to suggest that the appellant's filing of the appeal or the prosecution of a case was held up because of the illness of a particular officer is unacceptable. Large public sector organizations, like the appellant, are not dependant on the decision of one person; their administrative/ organizational structure has ample scope for decisions to be taken by other officers, such as filing of an appeal within the period of

limitation. In the circumstances, the applications for condonation of delay are rejected.

5. However, if for a moment, the Court were to take a lenient view, as the learned counsel requests on the ground that he has otherwise a good case on merits, the Court would note of the facts that: The appellant had booked three consignments of High Speed Diesel (HSD) with the Railways for transportation to Bijwasan, New Delhi from Haldia, West Bengal and Numaligarh, Assam: the first consignment was booked on 12.03.2008 of 1,95,720 litres and the remaining two consignments of 67,200 litres each on 18.09.2008 and 20.10.2008 respectively. The learned counsel submits that after accepting the said consignments at its railway siding, it was found that there was a shortage of 14072, 3282 and 3041 litres respectively. The consignor sought claim against the Railway Receipts, for Rs.3,80,307/-, Rs.1,34,971/- and Rs.1,25,061/- respectively.

6. The Railway Claims Tribunal noted that at the time of accepting the consignments, the appellant did not point out that the seals at the top of the wagons were broken. Upon a joint inspection, it was found that there was a shortage of the amounts as claimed by the appellant. Their claim for compensation was rejected by the Tribunal on the ground that the quantum mentioned in each of the invoices was not checked or determined by the carrier Railway's staff. The consignments were accepted under 'SWA' and 'L/U', which mean "Sender's Weight Accepted" and "Loading and Unloading", by the consignor/appellant. In other words, the consignee was not present at the time of loading of the goods into the railway wagons. The learned Tribunal examined the facts of each case and concluded that the manhole cover of one consignment was open but there was no leakage, the

condition of the valves on top and the bottom were intact. There was no objection to the seal at the top of the wagon having been broken when the wagons were accepted and there was no leakage from it. In these circumstances, the learned Tribunal found no reason to allow the claim. Accordingly, it was rejected.

7. The Court is of the view that the three consignments were accepted on the basis of the weight declared by the appellant/consignor. They were not verified. The goods – High Speed Diesel were dispatched in wagons whose valves and seals were intact at the time of delivery to the consignee. The open manhole – cover of one of the wagons would not render the carrier – Railways liable for any loss, because the valve seals at the top and bottom of the wagons were intact and there was no leakage in the wagon i.e. the carrying vessel. If all exit points of the wagon were intact and there was no leakage in it, the goods could not have been lost in transition due to any mistake of the carrier, unless there was evaporation of the goods. Evaporation is intrinsic to the nature of the goods and the carrier cannot be held liable for it.

8. In view of the facts discussed above, the Court finds no reason to interfere with the reasoning and the conclusion arrived at. The appeals, being without merit, are dismissed alongwith the applications.

NAJMI WAZIRI, J.

JANUARY 30, 2018

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