

12th September,
2019

**Calcutta High Court
In the Circuit Bench At Jalpaiguri**

W.P.A. 570 of 2019

(22)
(BD)

Abhash Enterprises & Ors.
-vs-
North East Frontier Railways (NFR) & Ors.

Mr. Jagriti Mishra
..... For the Petitioners.

Mr. Samir Paul
... for the respondents

The petitioner is a CNF (Clearing and Forwarding Agent) agent whose work involves unloading goods brought from a private siding to the place of unloading and thereafter distributing the goods to the consignees. The grievance of the petitioner relates to demurrage charges imposed by the respondent no. 5 who is the Chief Goods Supervisor at the New Jalpaiguri station of an amount of almost 12 lakhs. The representations made by the petitioner on 20th April, 2019 against imposition of such demurrage charges were rejected by two communications dated 8th August, 2019.

Learned counsel appearing for the petitioner submits that the petitioner was due to unload two rolling wagons on 18th April, 2019 which happened to be the date fixed for the Lok Sabha Elections 2019 in the District of Jalpaiguri where the train station is located. By reason of the elections and the accompanying non-working of the labours' syndicate

and other curbs on public movement, the petitioner was unable to unload the goods from the two wagons on 18th April, 2019 and was able to do so only on the following day namely on 19th April, 2019. Demurrage charges of Rs.6,55,200/- and Rs. 5,54,400/- were imposed on the petitioner by reason of the delay (of one day) in the unloading. The application for waiver of demurrage charges was rejected by a terse “Your Appeal for consideration of waiver has been Regretted” by the concerned authorities. Counsel places the Guidelines regarding wharfage and stacking under a Circular No. 21 of 2007 and on Clauses 3.5 and 3.6 thereunder which provide that wharfage will not be charged on specified National Holidays but will be charged on Sundays. Counsel relies on the relevant Rules regarding waiver of demurrage and wharfage and places Rule 2.8 pertaining to the circumstances for accrual of demurrage/wharfage charges which are categorized under (i) reasons within the control of the consignor/consignee. (ii) reasons beyond the control of consignor/consignee or other abnormal/unforeseen circumstances; (iii) Act of God, act of war etc.

Clause 2.9 provides that in the second category, that is reasons beyond the control of the consignor/consignee, speaking orders should be

recorded in all cases and that waiver should be considered on the merits of individual cases. Counsel relies on a decision of the High Court of Gauhati, Assam, Nagaland, Mizoram and Arunachal Pradesh dated 3rd April, 2017 where it was held, *inter alia*, that the delay in taking the delivery of goods and imposition of demurrage charges cannot be imposed by the Railway Authorities where the consignor was at fault.

Learned counsel for the Railways, representing all the respondents points to Clause 3.0 of the guidelines of the Railway Board which provides for appeal against orders of waivers under the said clause, a consignor/consignee can prefer an appeal to a higher authority in case he is not satisfied but before preferring such appeal, the proposed appellant will be required to deposit the amount of demurrage which have not been waived. It is submitted that since the petitioner has not deposited the demurrage charges, the appeal is defective.

Having heard learned counsel for the parties and upon seeing the material on record, it is undisputed that on 18th April, 2019, the Lok Sabha Election had been held in Jalpaiguri. This would raise the presumption that public transport and other facilities would be severely disrupted and

organizations providing labour may not have been functioning. It may also be assumed that holding of the Lok Sabha election would be akin to the condition envisaged in Guidelines 3.5 and particularly Rule 2.8 (ii) which takes into account reasons beyond the control of the consignor/consignee and includes labour and transportation strike, curfew and other abnormal and unforeseen circumstances. Holding of general election for the Lok Sabha may be seen as having the characteristics of such a situation. Rule 2.9 also lays down that in the aforesaid facts and circumstances of the case as under Rule 2.8(ii), the waiver can be considered on the merits of each individual case and speaking orders should be recorded.

Having regard to the circumstances, this court is of the view that the petitioner's case would fall under Rule 2.8 (ii) which required the Railway Authorities to consider the case on merits and pass a reasoned order. Admittedly, this was not done in this case and the petitioner's appeal for waiver was rejected by a terse and non-speaking order. The provision with regard to appeal under the Rules cannot assist the respondent since under the said Rule, the petitioner would have to first pay the concerned demurrage charges before the appeal can

be entertained. This cannot give any relief to the petitioner under the circumstances. It is also noted that the petitioner unloaded the concerned goods on the very next day that is on 19th April, 2019 without any delay. The petitioner cannot, therefore, be faulted for any deliberate delay or laxity on its part. The decision relied on however cannot be of assistance to the petitioner as in that case the delay had been on the part of the Railway authorities.

For the above reasons, the impugned communications dated 8th August, 2019 are cancelled. The Railway Authorities are directed to waive the demurrage charges or any other charges imposed on the petitioner.

W.P.A. 570 of 2019 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)