

**W.P.A. No. 3165 of 2020
(VIA VIDEO CONFERENCE)
IN THE HIGH COURT AT CALCUTTA
Appellate Side
Sharuan Kumar
Vs.
Union of India & Ors.**

For the Petitioner : Mr. Anirban Dutta, Advocate
Mr. Saptarshi Roy, Advocate

For the Respondent Nos. 4 & 7 : Mr. Nripendra Ranjan Mukherjee, Advocate
Mr. Sourya Mukherjee, Advocate

Heard on : September 4, 2020

Judgment on : September 4, 2020

DEBANGSU BASAK, J.:-

Petitioner seeks to exercise rights under Section 79 of the Railways Act, 1989.

Learned advocate for the petitioner submits that, there is an allegation of overweight by the Railways. The petitioner is yet to take delivery of the goods. He relies upon a decision of this Court rendered on **March 3, 2017 in W.P. No. 5842(W) of 2017 (Harish Sharma Vs. Union of India & Ors.)** and submits that, the petitioner is similarly situated and circumstanced and, therefore, should be granted similar relief as **Harish Sharma (supra)**.

Learned advocate for the respondent nos. 4 and 7 submits that, there is an arbitration clause. By reason of such arbitration clause, he submits that, the writ petition is not maintainable. In support of such contention, he relies upon an unreported decision dated **May 18, 2006 passed in W.P. No. 2206 of 2005 (The Champdany Industries Ltd. & Anr. Vs. The New India Assurance Co. Ltd. & Ors.)** and **(1980) 4 SCC 556 (Smt. Rukmanibai Gupta Vs. Collector, Jabalpur & Ors.)**. He submits that, the Railways have issued a letter of termination.

As noted above, the petitioner seeks to exercise Section 79 of the Railways Act, 1989.

In **Harish Sharma (supra)**, the entitlement of a person carrying goods with the Railways to have such goods reweighed under Section 79 of the Act of 1989 was considered. Following earlier two authorities of the Court, **Harish Sharma (supra)** permitted the writ petitioner therein to have reweighment done of the goods under Section 79 of the Act of 1989, however, upon payment of all the punitive, haulage and demurrage charges prior to the weighment being made.

In the **Champdany Industries Ltd. (supra)**, disputed questions of fact were found and on the top of that, an arbitration clause was present between the parties. In such factual background of disputed question of fact being involved, the Court found the writ petition to be not maintainable. In **Smt. Rukmanibai Gupta (supra)**, the Supreme Court found in the facts of that case that an award was passed under the Arbitration Act, 1940. Such award was sought to be assailed under Article 226 of the Constitution of India. The Supreme Court expressed the view that, since the award governed by the Act of 1940 can be challenged under the Act of 1940 a petition under Article 226 of the Constitution of India was not maintainable.

The fact scenario in the present case are completely different than that of the **Champdany Industries Ltd. (supra)** and **Smt. Rukmanibai Gupta (supra)**. There is no disputed questions of facts involved in the present case. Again as noted above, the petitioner approached this Court for exercise of rights under Section 79 of the Railways Act, 1989. Railways surely cannot stand in the way in the exercise of such rights conferred by statute to a person using the Railway facilities provided the parameters of Section 79 of

the Act of 1989 are satisfied. Moreover, a writ petition is maintainable in a situation where there is an arbitration clause. Notwithstanding the existence of an arbitration clause, if the writ petitioner can demonstrate that fundamental rights of the writ petitioners stands affected or that the authorities are acting in a manner which is beyond jurisdiction or the authorities are acting in breach of principles of natural justice, then in such a scenario, the jurisdiction of the High Court exercising powers under Article 226 of the Constitution of India is not ousted.

The letter of termination issued by the Railway Authorities are not under challenge in the writ petition. Therefore, the Court is not required to enter into the issue as to the validity of the letter of termination. In any event, the letter of termination does not obviate the exercise of rights under Section 79 of the Act of 1989.

In such circumstances, the present writ petition is allowed on the same terms as that of **Harish Sharma (supra)**. The petitioner is permitted to have reweighment done of the goods that the petitioner did not take delivery of, under Section 79 of the Act of 1989 upon payment of all the punitive, haulage and demurrage charges prior to the weighment being made. The payment so made

will abide by the result of the weighment. The parties are at liberty to initiate proceedings with regard thereto.

W.P.A. 3165 of 2020 is disposed of accordingly without any order as to costs.

[DEBANGSU BASAK, J.]