

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7833 of 2020

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M/s Sumit Trading Co. a partnership firm, 310, Ashiana Hari Niwas, New Dak Bunglow Road, Patna through one of its partners namely Rekkha Agarwal female aged about 47 years Wife of Dinesh Agarwal resident of A- 506, Bansal Tower, R.K. Bhattacharya Road, Patna.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Railway, Government of India, New Delhi.
2. The General Manager, N.F. Railway, Maligaon, Guwahati, Assam.
3. The Divisional Railway Manager (Commercial) N.F. Railway, Katihar.
4. The Chief Goods Supervisor, N.F. Railway, Ranipatra, Purnea.
5. The Station Superintendent, N.F. Railway, Ranipatra, Purnea.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Gautam Kumar Kejriwal, Advocate
For the Railways : Mr. Ramadhar Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 09-09-2021

Heard learned counsel for the petitioner and learned counsel for the Railways through video conference. Learned counsel for the petitioner hereby undertakes that all defects pointed out by the stamp reporter shall be removed, and compliance with the conditions of the notices of this Court with regard to acceptance of e-filing shall be made, without delay immediately upon resumption of normal physical functioning of the Court, and in any event within one month thereof.

2. The following reliefs as formulated by the petitioner



have been claimed in the writ petition -

“ (i) For issuance of a writ in the nature of certiorari for quashing of the demurrage penalty statement dated 11.07.2019 imposed and issued by the respondent Chief Goods Supervisor without any prior notice upon the petitioner and without any opportunity of hearing afforded to the petitioner before imposition of such penalty;

(ii) For issuance of a writ in the nature of certiorari for quashing of the letter Number 869400 (PDC) dated 23.01.2020 issued by the respondent-Divisional Railway Manager (Commercial) North Frontier Railway, Katihar;

(iii) For issuance of a writ or order or direction upon the respondent Divisional Railway Manager (Commercial) North Frontier Railway, Katihar to consider, apply mind, award an opportunity of hearing to the petitioner and to pass a speaking order on the application dated 14.07.2019 submitted by the petitioner seeking waiver of demurrage penalty charges;

(iv) For issuance of a writ in the nature of an order of restrain upon the respondents from taking any coercive action for recovery of the demurrage penalty for a sum of Rs. 8,69,400/- imposed by the respondents.

(v) For holding and a declaration that the application for waiver of demurrage penalty submitted by the petitioner being in the nature of appeal against the infliction of financial punishment, the Divisional Railway Manager (Commercial) North Frontier Railway, Katihar ought to have applied his mind as quasi judicial authority and decided the same by way of a speaking order dealing with each and every aspect of the matter and not in a slipshod



manner as communicated through the impugned letter;
(vi) For grant of any other relief(s) to which the
petitioner is found entitled in the facts and circumstances
of the present case.

3. Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner, assails the impugned statement of demurrage charges (Annexure-3) and the order of the Divisional Railway Manager dated 23.01.2020 raising a demand of Rs. 8,69,400/- by way of demurrage charges (Annexure-5). It is submitted that such demand has been made without prior show cause notice and so also the petitioner was not supplied a copy of the recommendation of the Chief Goods Supervisor (respondent no. 4). In any event, the petitioner had raised various grounds in its waiver application (Annexure-4) which have not been dealt with and the same has been disposed of by a non-speaking order in complete violation of natural justice.

4. Learned counsel for the respondent-Railway appears and opposes the writ petition, inviting reference to Clause-3.0 of the Railway's Circular dated 19.05.2016 (Annexure-B to the counter affidavit) which provides for an appeal against orders of waiver which lies before the higher authority. It is submitted that the petitioner has however rushed to this Court without availing of such alternative remedy available to it.

5. Having heard the parties and on a consideration of the



materials on record, this Court finds that the petitioner's contention that the demurrage charges has been demanded without prior show cause notice has not been controverted in the counter affidavit. Besides, a perusal of the impugned order of demand shows that the same is a non-speaking one and no reasons have been afforded for not accepting the pleas raised in the petitioner's waiver petition (Annexure-4). As such, the impugned action of the respondents is clearly in violation of the principles of natural justice. It is well settled that a writ petition would be maintainable where the action complained of is in violation of natural justice.

6. In the above view of the matter, the impugned order dated 23.01.2020 (Annexure-5) is set aside and the matter remanded to the Divisional Railway Manager for passing orders afresh after grant of opportunity of hearing to the petitioner in accordance with law.

7. It is made clear that in view of the ongoing Covid-19 pandemic, any correspondence between the parties may be made through e-mail and the petitioner shall be at liberty to request for hearing through video conference. To facilitate disposal, the petitioner shall furnish his mobile number and e-mail ID to the concerned respondent within a week from today.

8. The writ petition stands allowed to the extent above.

9. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by



the petitioners within the stipulated time provided in para-1
hereinabove, failing which the matter shall be brought to the notice
of this Court.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10 .09.2021
Transmission Date	N.A.

