

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2609 of 2021

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M/s NPD Corporation a Proprietorship firm having its Place of business at Gandhi Nagar, Near Kalyan Chowk, Katihar through its Proprietor namely Anand Vardhan Male, aged about 50 Years Son of Late Narayan Prasad Dalmia Resident of Flat number 302, Balajee Residency, New Dak Bunglow Road, Patna-800001.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway, Government of India, New Delhi.
2. The General Manager, North Frontier Railway, Guwahati.
3. The Divisional Railway Manager, North Frontier Railway, Katihar.
4. The Senior Divisional Commercial Manager, North Frontier Railway, Katihar.
5. The Chief Commercial Manager, North Frontier Railway, Katihar.
6. The Divisional railway Manager (Commercial), Katihar.
7. The Chief Goods Supervisor, North Frontier Railway, Katihar.
8. The Goods Supervisor (Goods), North Frontier Railway, Katihar.
9. The State of Bihar through the District Magistrate, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Railway/s	:	Mr. Ramadhar Shekhar, Advocate
For the State	:	Mr. Fakruddin Ali Ahmad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) For issuance of a writ in the nature of certiorari for quashing of the impugned letter dated 30.06.2020 issued by the Divisional Railway Manager, Katihar to the extent

it has denied waiver of the demurrage charges applied for by the petitioner without any consideration of the relevant facts and materials on record and as such suffers from jurisdictional error;

(ii) For issuance of a writ or order or direction upon the respondent North Frontier Railway and its authorities to refund alongwith the interest the amount of Rs. 2,05,884/- being the part of demurrage charges which has not been waived by the respondent divisional Railway Manager, Katihar and has been illegally, arbitrarily and unreasonably recovered from the petitioner;

(iii) For further holding and declaration that the petitioner was prevented by force majeure factor in delayed unloading of the railway rakes due to the stop work instructions issued by the team from the office of the respondent district magistrate Katihar on 11.05.2020 on the basis of order of the said respondent;

(iv) For further holding and a declaration that the impugned demurrage penalty imposed by the respondent chief goods supervisor, North Frontier Railway, Katihar itself is violative of principles of natural justice and such bad and unsustainable in the eye of law;

(v) For grant of any other relief(s) to which the petitioner is found entitled in the facts and circumstances of the present case.”

Having noticed the clauses of the compendium termed as “the guidelines regarding demurrage, stabling, wharfage, stacking, waiver and write off” issued by the respondent Railways, more specifically chapter III clauses 2.8 II and III as also clause 2.9; 2.10, 2.11 of the same.

In view of the averments made in the response filed by

the petitioner explaining the reason for non-imposition of charges for demurrage resulting by way of restriction arising out of the order dated 10th of May 2020 passed by the District Magistrate, Katihar, stopping the activity of loading unloading of goods from the railway wagons for a period of three days i.e. 10th of May 2020 to 13th of May, 2020 we are inclined to quash the impugned order dated 30th of June 2020 passed by the Divisional Railway Manager NF Railways, Katihar whereby the petitioner's request for waiver of charges stands decided to the extent of 20%.

In our considered view, the authority has not dealt with any one of the facts referred to (Supra) as also the clause contained in the compendium issued by the Railways.

Ordered accordingly, with further directions to the petitioner to appear before the Divisional Railway Manager NF Railways, Katihar on 20.12.2021 at 10.30 A.M. who shall pass a fresh order assigning reasons, as is so postulated in clause 2.9.

Liberty given to the petitioner to place additional material, if so required, in support of the contentions. The officer shall pass an order within a period of four weeks thereafter.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	