IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 2961 of 2021
Trimula Sponge Iron Private Limited
-Versus-
Union of India & Ors.

For the petitioners : Mr. Rudraman Bhattacharya
Mr. Arijit Chakraborty
Mr. Rajnish Kumar Kalawatia
Mr. Ravi Soumya Roy

For the respondents : Mr. D. K. Singh

Heard on : 06.04.2021

Judgment on : 06.04.2021

Abhijit Gangopadhyay, J .:

This writ application has been filed by the petitioner who has a sponge iron ore plant in Chattishgarh. The petitioner brings iron ore by purchasing it from different areas of this country and those are transported mainly by railways. The petitioner was incorporated in the year 2004 and started production of sponge iron in the year 2006.

The present dispute is relating to raising of two bills by railways after the goods were transported by the petitioner through wagon to its manufacturing unit. For such transportation, two railway receipts one dated 29th February, 2012 and the other dated 4th May, 2012 was issued to him against which he paid the money for such transportation but subsequently, the railways raised further bills of Rs.82,86,273/- and Rs.62,42,974/-.

This is the bone of contention between the parties.

The two demand memos raised by the railways are found as annexure 'P-7' of the writ application.

The petitioner views this further raising of bills by the railways as illegal demand. It made contact with different officials to indicate the mistake made by the railways in raising those two bills but till date no result is yielded. Ultimately, on 11th May, 2012, he submitted one representation and as the representation was not considered he filed one writ application being W.P.11844(W) of 2012. After filing the writ application another notice for payment of the money which is annexure 'P-12' of the writ application dated 19th February, 2013 was issued to him claiming the money. On 13.06.2014, he got an interim order of stay of operation of the said notice and the claim of money on the condition on furnishing bank guarantee of 60 per cent of the entire amount claimed by the railways. The final order in the said writ application was passed on 2nd January, 2020 directing the Principal Chief Commercial Manager of South Eastern Railway to consider the representation after giving the petitioner an opportunity of hearing and to pass a reasoned order.

In this backdrop, the Principal Chief Commercial Manager of South Eastern Railway heard the petitioner on 22nd January, 2020 minute whereof has been annexed at page 165 of the writ application. On the date of such hearing, the writ petitioner was granted another opportunity to file one written representation consequent to the said personal hearing dated 22nd January, 2020 which they filed on 23rd January, 2020. On the basis of the personal hearing and on the basis of the circulars of railway, which are commonly known as 'rate circular', the authority being Principal Chief Commercial Manager decided the matter rejecting the contention of the petitioner that railway erroneously raised the two demand memos for Rs.82,86, 273/- and Rs.62,42,974/-. While deciding the matter, in the speaking order the said authority has indicated clearly that rate circular no. 36 of 2009 was circulated with various clauses, which were to be complied with by the consignor/consignee in order <u>to avail the concessional tariff for domestic consumption</u> at their manufacturing units. As per the said rate circular no. 36 of 2009 for iron ore traffic booked to private siding the procedure was laid down. The said authority has elaborated the procedure by categorising the same by the said circular as 'one time submission of documents' indicating the documents which were required to be filed by the consignor/consignee and the other one is 'periodic submission of document'.

The said authority has made it clear that these were the mandatory provisions which has been enumerated in para 3 for submission of affidavit in the prescribed format, which was given in the relevant paragraph of the rate circular. There was also a provision for furnishing an indemnity bond. After describing the basic conditions to be fulfilled for availing the concessional rate as above, the authority has proceeded to disclose the reasons for which raising of under-charges i.e. clause 180 plus distance based charge as mentioned in the said rate circular no. 36 has been made. The reasons disclosed in paragraphs 5, 6, 7, 8 and 9 of the reasoned order have been noted by this Court, which are as follows:

"6. Further in sub para (C) of para 4, it has been mentioned that in case of non-compliance of any condition laid down in Rates circular 36 of 2009, the party will be charged by raising undercharges i.e. class 180 plus distance based charge.

7. M/s. Trimula Sponge Iron Pvt. Ltd. submitted some documents on 22.9.2011 in the office of the Sr. Divisional Commercial Manager, Chakradharpur. The same documents were annexed in the writ petition filed by the petitioner before Hon'ble High Court as noted in point 8 below. However, none of the required documents as discussed in para 4 above were submitted along with party's letter of 22.9.2011. <u>Each of the documents submitted vide letter 22.9.2011 were shown to the party during the hearing and he also confirmed that these were not the required documents for one time notification for booking of domestic iron ore to a private siding</u> (emphasis mine). Having submitted some other documents which were not relevant vide their letter 22.9.2011, M/s. Trimula Sponge Iron Pvt. Ltd. also did not ensure whether any follow up action on notification for availing concessional domestic rate was issued or not. <u>The notification was not issued as the documents so submitted on 22.9.2011 were not in accordance with R. C. 36 of 2009</u> (emphasis mine). The affidavit and indemnity note submitted on 22.09.2011 were also not correct and not in accordance with the format given in RC 36 of 2009. The required documents as per Rates Circular were given by the party vide letter dated 07.5.2012 and accordingly notification for availing concessional rate was issued on 10.5.2012.

8. It is pertinent to reiterate that the documents annexed with the letter dated 22.9.2011 submitted in Sr. Divisional commercial Manager's office were also annexed in the writ petition filed by the petitioner at Annexure P-6. The said documents in the writ petition were also not as per the provision of Rates Circular 36 of 2009 (emphasis mine).

9. It is noted that M/s. Trimula Sponge Iron Pvt. Ltd. has submitted the documents on 22.9.2011 in the office of the Sr. Divisional Commercial Manager, Chakradharpur and the affidavit and indemnity note was not in accordance with RC 36 of 2009. In the meanwhile M/s. Trimula Sponge Iron Pvt. Ltd. placed indent No. 124 on 26.2.2012 and the Railway Receipt No. 212002511 was issued on 29.2.2012 ex. Jaruli to MVIS/Silyari. Similarly M/s. Trimula Sponge Iron Pvt. Ltd. again placed another indent No. 294 on 29.4.2012 and the Railway Receipt No. 212002624 was issued on 04.05.2012 ex. JRLI to MVIS. The party was well aware of the fact that he was booking the consignment to a private siding whereby the entire transaction of the party was covered under the provision enumerated under Para 3(A) of the RC 36 of 2009. The party knowingly and deliberately misled the CGS/JRLI for booking the two rakes under section 3(B) of RC 36 of 2009 which is applicable for iron ore traffic booked to terminals other than private sidings of Iron and Steel Manufacturing as well as Cement Units. Therefore, he is prima facie liable for the undercharge which was raised i.e. difference between class 180 and class 180 plus distance based charge."

I have not found any challenge to the facts stated in the said reason given by the said authority being the Principal Chief Commercial Manager in the writ application. Being a Court of writ jurisdiction I will not engage myself for deciding the factual disputes. I have found that the order of the Writ Court dated 2nd January, 2020 passed in W.P. 11844(W) of 2012 has been fully complied with and I am satisfied that sufficient reason has been disclosed by the said railway authority as to why the additional bills were raised. It is found that the petitioner failed to submit all the documents as was required to get the benefit under the said rate circulars being rate circular no. 36 which has not been denied in this writ application which specially appears from paragraph 9 of the said reasoned order. The authority held that the petitioner failed to submit all necessary papers for picking of domestic iron ore to a private siding and instead of that the petitioner submitted certain other documents on 22nd September, 2011 and as a result the certificate that was required to be issued and the notification that was required to be issued for concessional rate was not issued in respect of those two transportation.

In such view of the matter, I find no merit in the application as the manner of reaching the conclusion is not vitiated. The writ application is dismissed without any order as to costs.

The railway authority shall have the liberty to invoke the bank guarantee and to take further steps to realise the rest of the amount as claimed from the petitioner company. The entire amount shall be realised with an interest at the rate of 8 per cent per annum from the petitioner by the concerned Railway Authority.

After passing of this judgment and order, the petitioner prays for stay of operation of this order, which is considered and rejected.

(Abhijit Gangopadhyay, J.)