

05.05.2022
Item Nos.12-16
Crt. No.11.
KB/FB

MAT 591 of 2022
with
IA No. CAN 1 of 2022

Union of India & Ors.
-Versus-
Gopal Shrinarayan Shah & Anr.
with
MAT 592 of 2022
with
IA No. CAN 1 of 2022

Union of India & Ors.
-Versus-
Gopal Shrinarayan Shah & Anr.
with
MAT 593 of 2022
with
IA No. CAN 1 of 2022
Union of India & Ors.

-Versus-
Gopal Shrinarayan Shah & Anr.
with
MAT 594 of 2022
with
IA No. CAN 1 of 2022
Union of India & Ors.

-Versus-
Mohammed Dastagir & Anr.
with
MAT 595 of 2022
with
IA No. CAN 1 of 2022
Union of India & Ors.

-Versus-
Gopal Shrinarayan Shah & Anr.

Mr. Naba Kumar Das
Mr. Subhankar Chakraborty
Mr. Saunak Bera
Mr. Saptarshi Bhattacharjee
Ms. Ruchira Manna
..... for the appellants
in all the appeals.

Mr. Saptarshi Roy
Mr. Arkadipta Sengupta
Ms. Kakali Das Chakraborty
..... for the Respondent No.1
in all the appeals.

Mr. Amal Kumar Sen, Ld. A.G.P.
Mr. Swapan Kumar Pal
..... For the Respondent No.2.
in all the appeals.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

By consent of the parties, all the appeals which arise out of a common Order of the Hon'ble Single Bench, are taken up for conjoint consideration.

Under challenge in this bunch of appeals is the final order dated 8th April, 2022 passed by the Hon'ble Single Bench allowing each of the writ petitions connected to their respective appeals which stand listed today.

Under consideration before the Hon'ble Single Bench was the question of transportation of goods *vide* parcel vans from originating railway station points such as Rajkot and Secunderabad by the writ petitioners, being the Consignors, for ultimate unloading at Shalimar station within the jurisdiction of the South Eastern Railway (*SER*).

The writ petitioners had primarily argued before the Hon'ble Single Bench that each of them was levied

with a punitive charge of a high amount by the *SER* on the ground that the weight of the consignments ordered by the writ petitioners, who are the Respondents in each of the appeals filed by the Railways was, on the date of weighment of the consignment at Padmapukur in-motion Weigh Bridge at Shalimar more than what was disclosed by the Consignor and in excess of the permissible limits.

The writ petitioners arrived before the Hon'ble Court with the grievance that the Weigh Bridge at Padmapukur, Shalimar Yard was defective. Hence, the consignments were not correctly weighed. The consignments, when individually weighed at the point of despatch, were found to be within permissible limits. Therefore, the writ petitioners urged the Hon'ble Court to direct the Respondents/*SER*/the Railways to take the assistance of the competent authority on Weights and Measures being the Controller of Legal Metrology for checking the in-motion Weigh Bridge at Padmapukur (*supra*).

The writ petitioners also urged the Hon'ble Court to weigh the empty general coach in which each of the consignments were carried to determine whether the empty general coach was of correct weighment or, in

other words, its *tare* weight conformed to Railway standards.

By the Order dated 26th August, 2021 in each of the writ petitions, a Hon'ble Single Bench was pleased to direct the Railway Authorities as follows:

“I am of the view, the Railway Authorities should carry out the following activities and file a report before this Court on the adjourned date:

- a) The Controller of Legal Metrology is directed to check the in motion weigh bridge in Padmapukur, Shalimar;*
- b) The empty general coach in which the consignment was carried should be once again weighed to determine whether the said coach is of the same weight; and*
- c) A report with regard to the above should be filed before this Court on the adjourned date.*

The matter is adjourned for a period of four weeks from date”.

Upon the matter appearing subsequently before another Hon'ble Single Bench it was, *inter alia*, noticed that steps as directed to be taken by the Railway

Authorities in terms of the order dated 26th August, 2021 (*supra*) had not been taken and the empty wagons carrying the consignments had not been weighed.

The Hon'ble Single Bench by a further order dated 31st March, 2022 directed both the Controller of Legal Metrology and the Railway Authorities to file their affidavits disclosing the steps taken in terms of the order dated 26th August, 2021 (*supra*).

The matter thereafter appeared for consideration next before the Hon'ble Single Bench on the 7th of April, 2022. On the said date it was noted by the Hon'ble Single Bench that the Railway Authorities, more particularly, the Senior Divisional Mechanical Engineer, SER, Kharagpur had *suo motu* sought for repairs of the in-motion Weigh Bridge at Padmapukur on January 24, 2022, thereby giving a go-by to specific directions of the Hon'ble Court as passed on 26th August, 2021 and reiterated on 31st March, 2022 directing that the Controller of Legal Metrology be approached to check the in-motion Weigh Bridge. The Hon'ble Court found that the attempt made by the Railway Authorities as admitted by the Senior Divisional Mechanical Engineer, Kharagpur (*supra*) to repair the Weigh Bridge on 24th January, 2022 *suo*

motu to be an act of subversion of the solemn orders of the Hon'ble Court.

By the Order impugned dated 8th April, 2022 passed in presence of the Senior Divisional Mechanical Engineer, SER, Kharagpur, the Hon'ble Single Bench was pleased to note that no plausible explanation has been offered by the concerned Railway Officer for non-production of the empty general coach carrying consignments for weighment and for repairing the in-motion Weigh Bridge at Padmapukur *suo motu* without first checking with the Controller of Legal Metrology. The Hon'ble Single Bench found the action of the Railway Authorities and that of the Controller of Legal Metrology to be collusive.

The Hon'ble Single Bench further found that the very fact that the in-motion Weigh Bridge was sent for repairs on January 24, 2022, lends credence to the grievance of the writ petitioners that the in-motion Weigh Bridge was defective.

Accordingly, the Hon'ble Single Bench directed the Railways to refund all punitive charges collected in respect of the consignments of each of the writ petitioners as well as any other additional or incidental charges by way of wharfage etc.

Considering the conduct of the Railway Officers, the Hon'ble Single Bench directed payment of costs by the Respondent Nos. 3, 4, 5 and 6, being the respective dealing Railway Officers in each of the writ petitions.

Mr. Das, Learned Counsel appearing for the appellants/the Railways, principally submits that under the Railways Act, 1989 and specifically in terms of Sections 78 and 79 thereto, the Railways have an inherent right to measure and/or re-measure and/or weigh and/or re-weigh any consignment.

Referring to a Supplementary Affidavit filed on behalf of the Railway Authorities before this Court, Learned Railway Counsel submits that the Controller of Legal Metrology has reported that the in-motion Weigh Bridge at Padmapukur was last checked on the 14th of September, 2021. It is thus submitted that no automatic presumption can be raised by the writ petitioners to the effect that as on the dates of arrival of the consignments at Shalimar in March 2021, the in-motion Weigh Bridge was found to be defective.

Also referring to a Report in the form of Affidavit filed by the Railway Authorities before the Hon'ble Single Bench, it is pointed out that the direction passed by the Hon'ble Single Bench with regard to the

weighment of the empty general coach was carried out and the tare weight was found to be of 39.0 tonnes.

Arguing for the writ petitioners/the respondents in this appeal, Mr. Ray, Learned Counsel, submits that the Orders of the Hon'ble Court as issued on and from 26th August, 2021 till the 8th of April, 2022 amply demonstrate that the Railway Authorities had failed to act in terms of the solemn directions passed by the Hon'ble Court to ensure that the Controller of Legal Metrology checks the in-motion Weigh Bridge and the empty general coach is weighed.

Heavily relying on the facts as recorded by the Orders (*supra*) of the Hon'ble Single Bench, learned Counsel for the writ petitioners submits that the dispute does not lie *qua* the powers of the Railways to measure, weigh or re-weigh in exercise of powers under Sections 78 and 79 of the Railways Act but, the dispute lies with the specific grievance raised by the writ petitioners that the in-motion weigh bridge at Padmapukur was defective and such defects in weighment stares in the face of the records since at the point of departure of the said consignments, the weighment was found to be within permissible limits.

It is reiterated by Learned Counsel for the writ petitioners that the goods in the consignment were not

of a nature which would gain in weight during transit. To the contrary, the Hon'ble Single Bench had noticed that the goods comprised of hard parcels of electronic items. It is submitted that there is no effective denial by the Railways of their failure to execute, in letter and spirit, the directions of the Hon'ble Single Bench dated 26th August, 2021 (*supra*).

It is submitted that the conduct of the Railways in not producing the empty general coach for weighment and *suo motu* taking steps to repair the in-motion Weigh Bridge at Padmapukur, betrays an activity which is subversive of the directions of the Hon'ble Court.

In the above view of the matter, Learned Counsel for the writ petitioners submits that the Hon'ble Single Bench was justified in directing return of punitive and wharfage charges etc. as well as in imposing costs on the concerned Railway officers.

Appearing for the Controller of Legal Metrology, Mr. Sen, Learned Counsel, submits that the Controller of Legal Metrology has always acted in terms of the solemn orders of the Hon'ble Court dated 26th August, 2021 and 11th February, 2022.

The Controller of Legal Metrology has stated that the last correction of the in-motion Weigh Bridge at Padmapukur was carried out on 14th September, 2021. In the absence of proactive steps taken by the Railway Authorities to act in terms of the Orders of the Hon'ble Court, the Controller of Legal Metrology cannot be held responsible for any violation.

Having heard the parties and anxiously considering the materials placed, this Court finds that the Orders of the Hon'ble Court dated 26th August, 2021, 11th February, 2022, 31st March, 2022, 7th April, 2022 and, lastly the 8th of April, 2022 disclose detailed application of mind to the principal facts in issue namely: *a)* The correctness of the in-motion Weigh Bridge at Padmapukur to be checked on an as-is-where-is basis by the Controller of Legal Metrology; and *b)* Weighment of the empty general coach carrying the consignments.

This Court notices that the directions passed by the Hon'ble Court on the above two issues do not in any manner affect, impact or infringe the power of the Railways to weigh or re-weigh consignments as provided under Sections 78 and 79 of the Railways Act.

This Court finds that the germane issue before the Hon'ble Court was not the power to carry out the

weighment in terms of the statute but specifically the correctness of the weighment carried out in the facts of each case connected to Issues *a)* and *b)* as recorded above.

Having considered the Order impugned dated the 8th April, 2022, this Court is of the view that the issues flagged by the Hon'ble Single Bench are embedded in hard facts and it is the dereliction of their lawful obligations by the concerned Respondents as imposed by the solemn Orders of the Hon'ble Court arising out of such facts, that has resulted in consequential Orders of imposition of costs and refund of punitive charges.

For the above reasons, this Court is unable to discover any infirmity in the Order impugned of the Hon'ble Single Bench dated 8th April, 2022.

The Order impugned dated 8th April, 2022 stands accordingly sustained with the solitary modification that the Order on payment of costs shall not apply against the Respondent No.6 in each of the appeals since no cause-of-action has been espoused by the writ petitioners against such Railway Officers operating in Railway Jurisdictions outside *SER*.

**MAT 591 of 2022 with I.A. No. CAN 1 of 2022,
MAT 592 of 2022 with I.A. No. CAN 1 of 2022, MAT**

593 of 2022 with I.A. No. CAN 1 of 2022, MAT 594 of 2022 with I.A. No. CAN 1 of 2022 and, MAT 595 of 2022 with I.A. No. CAN 1 of 2022 stand accordingly **dismissed**.

Since affidavits are not invited, all other allegations are deemed to be denied and disputed.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for be given to the parties upon compliance with all necessary formalities.

(Ananda Kumar Mukherjee, J.) (Subrata Talukdar, J.)