

01-05
08.04.2022
TN

WPA No. 9575 of 2021
IA No: CAN 1 of 2022

Mohammed Dastagir
Vs.
Union of India and others

With

WPA No. 12667 of 2021
IA No: CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

With

WPA No. 12668 of 2021
IA No: CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

With

WPA No. 12672 of 2021
IA No: CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

With

WPA No. 12677 of 2021
IA No: CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

Gopal Shrinarayan Shah
Vs.
Union of India and others

Mr. Saptarshi Roy,
Mr. Arkadipta Sengupta
Mr. Kakali Das Chakraborty
...for the petitioners

Mr. Naba Kumar Das
 Mr. Subhankar Chakraborty
 ...for the respondent nos. 1 to 6

Mr. Amal Kr. Sen,
 Mr. Swapan Kumar Pal
 ...for the State

The Officer-in-question of the Railways, who was directed to appear by the order dated April 7, 2022, that is, the Senior Divisional Mechanical Engineer, South Eastern Railway, Kharagpur, is personally present in court and submits, on query of the court, that on the communication of the Commercial Department of the South Eastern Railways, the said Officer had sought for a repair of the disputed weighing instrument on January 24, 2022. No plausible explanation, however, has been given by the said Officer for non-production of the empty general coach and for sending the weighbridge in Padmapukur, Shalimar, both of which were directed by a coordinate Bench, vide order dated August 26, 2021 to be inspected and the condition thereof to be ascertained.

Such inspection has acquired paramount importance in the matter since the dispute agitated in the writ petitions centres around a punitive claim of Rs.1,60,365/-, Rs.74,084/-, Rs.2,02,816/-,

Rs.69,246/- and Rs.74,084/- respectively imposed on the petitioners, in the respective writ petitions, by the railway authorities on the premise that the weight of the consignment sent by the petitioners on a particular date was more than what was disclosed and it exceeded the permissible limit.

Surprisingly, when the consignments were put in motion on March 27, 2021, July 18, 2021, July 18, 2021, July 17, 2021 and July 18, 2021 respectively at the Secunderabad, Rajkot, Rajkot, Ahmedabad and Rajkot points, measurements at such points showed that the weights were within the permissible limits. However, when the consignment reached its destination at Padmapukur, Shalimar, the same were allegedly weighed again, respectively on March 29, 2021, July 20, 2021, July, 20, 2021, July 20, 2021 and July 20, 2021, which purported examination revealed that the weights were beyond the permissible limit.

The consignments comprised of goods which are all hard parcels, being primarily electronic goods and there was no scope of any hygroscopic enlargement or increment in the weight of the said goods due to moisture or some other factors.

As such, it is unexplainable as to what prompted the railway authorities to check the weight a

second time and what was the reason for such increment of weight of the consignment within two days, during the entirety of which period the consignments were in the custody of the railway authorities.

In any event, since the weighing instruments respectively at all the other points, that is, Secunderabad, Rajkot and Ahmedabad points clearly disclosed that the goods were within the permissible loads, there could not have been any occasion to weigh the same again at Shalimar, unless there was any specific allegation levelled and/or found out by the authorities. No explanation has been afforded all through, however, on such score.

More importantly, the measurement of weight of the carriage itself, in which the consignment was carried, never took place due to appalling negligence and indifference of the railway authorities in not even producing the same on the date of inspection before the Controller, Legal Metrology. Such apathy leads to the obvious inference that there was deliberate collusion between the railway officials in order to cover up the misdeeds which has been taking place and to hide the fact that the weighing instrument at Shalimar has all along been defective.

It is shocking that on the basis of such apparently defective instrument, punitive charges were levied on the petitioners in each of the writ petitions, which may very well have been the usual practice of the concerned office-bearers of the railway authorities against several other consignors as well.

It is unimaginable as to how the machine could be sent for repair on January 24, 2022 at the instance of the railways itself despite there no report on the condition of the weighing instrument having been prepared as on the relevant date, when inspection was held by the Controller, Legal Metrology. Since the machine was admittedly defective, as evident from the effort of the railway authorities to seek repair on January 24, 2022, backward presumption has to be drawn and it can very well be inferred that on March 29, 2021, July 20, 2021, July, 20, 2021, July 20, 2021 and July 20, 2021, which were all prior to January 24, 2022, the weighing instrument was defective as well, giving rise to the wrong recording of the measurement of load of the petitioner's, and may be others', consignments.

In such view of the matter, due to non-production of the carriage as per the direction of this court and due to suppression of the actual condition of the weighing instrument by sending it conveniently

for repair before a report with regard to its condition was prepared, adverse inference is drawn under the Evidence Act against the railway authorities. As such, the petitioner's contentions, in all the writ petitions, that the Shalimar weighing instrument was defective at the relevant point of time and punitive charges were entirely beyond the authority of the railway authorities to be imposed, are vindicated.

Hence, WPA No.9575 of 2021, WPA No.12667 of 2021, WPA No.12668 of 2021, WPA No.12672 of 2021 and WPA No.12677 of 2021 are allowed, thereby quashing the demands respectively dated March 30, 2021, July 21, 2021, July 21, 2021, July 21, 2021 and July 21, 2021, for punitive charges of respectively Rs.1,60,365/-, Rs.74,084/-, Rs.2,02,816/-, Rs.69,246/- and Rs.74,084/- on the writ petitioners in the respective writ petitions. The South Eastern Railways shall refund the entire amount paid under duress and compulsion by the petitioners, in each writ petition, in lieu of such punitive charge, along with the wharfage charges and any other amount of money which the petitioners, in each of the writ petitions, might have paid pursuant to the demand of the railway authorities on the ground of such punitive charge, within one week from date by demand drafts

for the amounts paid by the petitioners, in each of the writ petitions.

That apart, the respondent nos.3, 4, 5 and 6, in each of the writ petitions, who are principally responsible for the illegal and unlawful punitive charges being imposed, shall each pay costs from their own pockets to the petitioners, in each of the writ petitions, at the rate of Rs. 20,000/- each in connection with each of the writ petitions, by April 30, 2022.

In the event such costs are not paid to the writ petitioners in each of the writ petitions within the time stipulated herein, the petitioners in each of the writ petitions shall be entitled to move the court for deliberate contempt of court on the part of the defaulting respondents.

The parties and all concerned shall act on the written communication of the learned Advocate for the petitioners in each of the writ petitions, accompanied by server copies of this order, without insisting upon prior production of certified copies, for the purpose of compliance.

The purported certificate of verification issued by the Office of the Controller, Legal Metrology dated September 14, 2021, which is handed over in court

today and discloses precious nothing, be kept on record.

In view of the disposal of the matters, further personal appearance of the Senior Divisional Mechanical Engineer, South Eastern Railway is dispensed with.

The connected pending applications stand disposed of accordingly.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)