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06.07.2022
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WPA No.12872 of 2022

DG Raj Highway Services

Vs.

Union of India and others

Mr. Saptarshi Roy,
Mr. Debrup Bhattacharjee,
Mr. Arkadipta Sengupta,
Ms. Kakali Das Chakraborty

.... for the petitioner

Mr. S. Kumar Ghosh

.... for the respondent nos.1 to 5

Learned counsel for the petitioner contends that the respondent-railways are making a patent discrimination, without any reasonable basis, between Parcel Vans (VPs) and Brakevans (SLRs).

It has been submitted that although the Comprehensive Parcel Leasing Policy of the Railways dated April 15, 2014 is uniformly applicable, as per the policy itself, to VPs and SLRs, the petitioner, who operates in respect of loading and unloading on VPs, is not being permitted to load and unload even the perishable goods from the platform of the Howrah station. This is posing a practical difficulty since the loading/unloading has to be done from the Howrah

Goods Shed as per the impugned Notification dated June 27, 2013. It is contended that such shed is last made available for VPs before 19 hours from the departure of the train, which is having a direct and adverse effect on the condition of the perishable commodities, which are turning stale in the process.

Learned counsel for the petitioner submits that the petitioner is agreeable at least to load/unload up to 5 tonnes of perishable goods, out of the total amount of 24 tonnes available to the petitioner, from the platform close to the departure time of the train in order to obviate such difficulty.

Learned counsel for the petitioner makes it clear that the petitioner is willing to utilize whatever reasonable time is granted by the Railway authorities to the petitioner for the purpose of loading/unloading perishable commodities from the platform, in order to circumvent unnecessary inconvenience to the passengers.

Learned counsel appearing for the railway-authorities places reliance on the alleged railway policy, which automatically distinguishes between the SLRs and VPs on the premise that SLRs remain attached to the concerned train, whereas VPs can be detached and re-attached.

In such view of the matter, it is submitted that, in respect of SLRs, it is not possible to load/unload at the goods shed by separating the SLRs from the train; however, the same is very much possible in case of VPs.

It is further contended that as per the railway policy, in order to obviate unnecessary inconvenience and safety hazards to the commuters, such Notification has been issued, specifying the loading and unloading for VPs only at the Howrah Goods Shed Siding for Eastern Railway trains.

Upon looking into the materials annexed to the writ petition and giving anxious consideration to the submissions of learned counsel, it is evident from the Comprehensive Parcel Leasing Policy of the railways that there is no discrimination in the provisions thereof, between VPs and SLRs.

Out of the opening clauses of the said policy dated April 15, 2014, as annexed at page-70 (Annexure – P/10) of the writ petition, Clause 3.0 clearly stipulates that the instructions given therein will come into force with immediate effect and shall be made applicable to all future tenders to be invited for leasing out of parcel space of the Assistant Guard's Cabin (AGC), Brakevans (SLRs) and Parcel Vans (VPHs/VPs/VPUs etc.).

It is further seen from Clauses 25.0 to 25.9 of the policy, which deal with Stacking/Removal of consignments on/from platforms, that Clause 25.1 clearly specifies that at all train originating stations, a lease holder can stack his consignments 2 hours before the scheduled departure of the train in case of leased SLRs and 3 hours in case of leased VPs.

Again, it has been clarified in the subsequent clauses that in respect of early morning trains, overnight stacking is permissible only at the originating station on the platform.

In respect of the terminating stations, a similar provision has been stipulated as regards the lease holder being obligated to remove his consignments within a maximum of 3 hours in case of leased VPs.

Clause 25.8 of the policy, notably, confers discretion on the Chief Commercial Manager of the zonal railways to increase/reduce the stacking time keeping in view the availability of space, traffic-load at that station/terminal and restriction imposed by local administration on road-movement.

The conferment of such discretion on the Chief Commercial Manager, *ipso facto*, clearly establishes that it is possible to increase/reduce the stacking time keeping in view the factors as specified in Clause 25.8.

Thus, it is seen from the provisions of the policy itself that the discrimination being meted out to the VPs in precedence over the SLRs insofar as perishable goods are concerned is not sanctioned by the railway policy itself.

Hence, the provision in the impugned Notification dated July 01, 2013, which stipulates that for Howrah-originating trains in respect of Eastern Railway and the South-Eastern Railway, the Howrah Goods Shed Siding has to be used for Eastern Railway Trains and Shalimar Parcel Shed for South-Eastern Railway trains, for the purpose of loading/unloading for VPs.

However, in view of the above discussions, such restriction has to be relaxed for the purpose of the VP loaders and unloaders to stack, load and unload perishable commodities on the platform at least for the limited period which is required for the train to arrive at the station and to leave the station.

Since SLRs have already been permitted to do so, the line of discrimination drawn between the VPs and SLRs on such score, at least in respect of perishable goods, is unreasonable and cannot be justified.

However, the decision of the railway-authorities otherwise, in respect of administration of the railways

and management of the assets of the railways and other commodities loaded and unloaded from the railways, is absolutely the discretion of the railway authorities and this court does not intend to interfere with such discretion otherwise.

The present interference is made only due to the discrimination pointed out by the petitioner between the SLRs and VPs insofar as perishable goods are concerned.

Hence, WPA No.12872 of 2022 is disposed of by modifying the Notification dated July 01, 2013 [annexed at pages-118 and 118(A) of the writ petition] to the extent that, in respect of Eastern Railway trains of which the originating station is Howrah, the petitioner shall be permitted to use the Howrah railway platforms immediately prior to the departure of the concerned trains for the limited purpose of loading and unloading perishable goods only, up to a maximum of 5 tonnes, during the time specified by the railway authorities. However, it is expected that such stipulation by the railway authorities in respect of the time given to the petitioner shall be reasonable and sufficient to facilitate proper loading and unloading of the perishable goods only. Such exercise shall be done by the railway authorities by fixing the stipulated time, for which the platforms may be used

for the purpose of loading and unloading of perishable goods only, in respect of the VPs from the Howrah station, expeditiously, positively within a fortnight from date.

It is made clear that the loading and unloading of the hard parcels, which are not perishable, shall be carried on by the petitioner from the Howrah Goods Shed Siding for Eastern Railway trains as stipulated in the impugned Notification dated July 01, 2013. The said Notification is not interfered with in any other manner than to the limited extent as indicated above.

There will be no order as to costs.

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.)