

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

W.P.O. 101 of 2012

NARBHERAM VISHRAM & ANR.

Versus

**CHIEF COMMERCIAL MANAGER,
SOUTH EASTERN RAILWAY & ORS.**

For the Petitioner	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. Anuj Singh, Adv. Mr. Madhuja Barman, Adv. Mr. Aman Agarwal, Adv.
For the Respondents Nos. 1 to 6	:	Mr. R.N. Bag, Adv. Mr. Deepak Kr. Singh, Adv.
Respondent No. 7	:	Mr. Swarajit Dey, Adv.
Last Heard on	:	11.03.2022.
Delivered on	:	16.03.2022.

Moushumi Bhattacharya, J.

1. The writ petitioners pray for cancelling of four notices of demand issued by the South Eastern Railways in relation to stacking charges of the petitioners' goods at Barbil Railway Sidings. The impugned notices of demand

were issued on 13th January, 2007, 14th August, 2008, 20th July, 2010 and 22nd December, 2011. By the first notice dated 13th January, 2007, the respondents / Railways claimed a sum of Rs. 11,26,56,480.00/- as stacking charges and referred to a joint inspection done on 3rd December, 2006. The said demand notice also contained a handwritten chart in support of the claim of Rs. 11,26,56,480.00/-. The petitioners replied to the demand notice on 19th January, 2007 disputing the imposition of the wharfage charges. The respondents / Railways did not reply to this letter and issued a second demand notice dated 14th August, 2008 after a gap of 19 months. The second demand notice also raised an amount of Rs. 11,26,56,480.00/- which was identical to the first demand notice and asked the petitioners to treat the said notice as final and most urgent. The petitioners replied to the second demand notice by a letter dated 18th October, 2008 reiterating its objection to levying of the wharfage charges and demanded that the bills in that respect be dropped by the respondents. The respondents chose not to reply to the petitioners' letter and issued a third demand letter on 20th July, 2010 after a lapse of 21 months and a fourth demand letter on 22nd December, 2011 after 38 months.

2. The above facts are undisputed and the present writ petition was filed after the fourth demand letter dated 22nd December, 2011.

3. The affidavit-in-opposition of the respondents/ Railways states that the petitioners are liable for the payment demanded since the petitioners stacked 16,616 metric tons of iron ores in the Railway premises without permission and dumped the materials without authorisation. The position of the Railways

is that the stacking of materials was detected by a joint team and calculated as per paragraph 7 of the Rates Circular No. 4(G) of 2006. It is also contended that a surprise inspection was carried out by a joint team on 2nd December, 2006 and a sketch map of stacking material was prepared on this basis showing the petitioners' stocks marked as serial no. 5 and 6 lying in the said godown.

4. The response of the Railways to the questions raised by the Court indicate that a joint inspection had been undertaken and the petitioners' stacking materials measured on the basis of the Rate chart. According to the Railways, the measurement was done on the basis of volume calculating length of the area of stacking materials multiplied by the breadth of the area of the stacking materials plus height which amounted to 16616 metric tons. The Railways further stated that the stacking materials were measured through volumetry process and divided in relation to 248 rakes which resulted in the quantification of Rs. 11,26,56,480/-. The Railways have also submitted that the guards engaged by the petitioners refused to put their signatures on the Report although they were approached to do so. The position is, however, that the guards appointed by the petitioners were present at the time of the joint inspection.

5. Upon hearing learned counsel appearing for the parties, the undisputed facts lead to certain questions. First, the dates of the impugned notices show that the respondents/ Railways were extremely lax on proceeding against the petitioners, even assuming they had a case against the petitioners. To repeat,

the demand notices are dated 13th January, 2007, 14th August, 2008, 20th July, 2010 and 22nd December, 2011; thus being issued with gaps of 19 to 38 months in between each of the notices.

6. Second, the tenor of the impugned notices are vague and without any material particulars save for a hand-written calculation accompanied by an equally unclear sketch map. The letters do not indicate the basis of the demand raised upon the petitioners. The reference to a joint inspection is equally ambiguous and there is no evidence accompanying the particulars to the joint inspection carried out on that date.

7. Third, none of the petitioners' letters / representations dated 19th January, 2007 and 18th October, 2008 raising specific questions were replied to by the railways. The Railways chose to not pay any heed to the petitioners' denial of any liability as against the charges levied or answer or respond to the questions raised in the representations.

8. Fourth, the letters show a mechanical repetition of the demands without any application of mind. There is no effort to refer to earlier notices or explain the said notices with further particulars.

9. Besides the above, the respondents have not disclosed any material in their affidavit-in-opposition on the alleged joint inspection undertaken on 2nd/3rd December, 2006. There are no contemporaneous records to show that the petitioners were represented at the time of such inspection or that 16616 metric tons of iron ore belonging to the petitioners were actually found during the course of such inspection. The alleged presence of the petitioners' security

guards does not find place in any of the demand letters or even in the pleadings filed by the Railways before this Court save the Notes of arguments filed by the Railways. Moreover, the assertion of the respondents that there is no provision for serving any notice to the petitioners before quantification of the impugned demand or before any joint inspection, is not only contrary to the principles of natural justice but also shows a high-handed attitude of the respondents in making uncorroborated demands from the petitioners. The reliance on the Rate Circular cannot be of any assistance to the respondents / Railways without any corroborating material that 16616 metric tons of iron ores were actually found during the course of the inspection and proof that it belonged to the petitioners and were lying at the Railway premises for a period of 100 days. Finding that the goods were lying in the said premises since 26th August, 2006 is also arbitrary and the Railways have not produced any evidence to substantiate this date.

10. The affidavit filed by the added respondent proceeds on the basis that the petitioners have sought to make the added respondent liable for the stacking charges. Since no relief has been claimed against the added respondent and the petitioners have only challenged the demand notices issued by the Railways, the contentions of the added respondent are not material.

11. More than 15 years have passed since the first demand notice of 13th January, 2006 and the railways have failed to substantiate their claim or provide any basis in support of the same. The Railways are precluded from raising any Wharfage, Cess Fee or tax without any proof or particular

corroborating the same and particularly without due process or authority of law.

12. In view of the above reasons, this Court finds substance in the contentions made on behalf of the petitioners and W.P.O. No. 101 of 2012 is accordingly allowed and disposed of in terms of prayer (a). The impugned notices of demand and letters dated 13th January, 2007, 14th August, 2008, 10th July, 2010 and 22nd December, 2011 are cancelled. The respondents/ Railways are restrained from taking any steps or giving any effect to the aforesaid impugned notices of demand as prayed for by the petitioners in any manner whatsoever.

12. The Writ Petition is disposed of in accordance with this judgment.

Urgent Photostat certified copies, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J)