

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9469 of 2008

Orissa Stevedores Ltd.

Petitioner
.....
Ms. Pami Rath, Advocate

-versus-

Union of India and others

Opposite Parties
.....
Mr. J. Katikia, Advocate for the Railways
Mr. S.P. Sarangi, Advocate for O.P. No.2

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
15.02.2022**

Order No.

05. 1. The limited grievance in the present petition filed by Orissa Stevedores Ltd. (OSL) against an order dated 6th November 2007 of the Railways Rates Tribunal of India (RRT) in Complaint No.7 of 2007 is that the RRT erred in deleting Steel Authority of India Ltd. (SAIL) (Opposite Party No.3) herein as a party to the aforementioned Complaint filed by the OSL against the East Coast Railways (ECR), Paradip Port Trust Railways (PPTR) and SAIL.
2. The background facts are that OSL is a handling contractor for the SAIL for the purposes of loading imported coal in the premises of the PPTR (Opposite Party No.2).

3. The freight charges were collected on the basis of volume i.e. the particular height up to which the coal would be loaded in the railway wagon. According to OSL, payment was also being made on that basis since there was no weighbridge for the purposes of weighing the coal loaded in the wagons at the PPTR Station.

4. It appears that the Railways raised their claim on SAIL alleging that there was overloading of the wagons which were weighed at a location 6 KMs away from the point of loading. While SAIL paid the amount under protest, it started deducting the said amount from the running bills of OSL.

5. OSL started litigation in two fora. One was the arbitration it commenced against SAIL and the other was the Complaint No.7 of 2007 filed before the RRT. By the impugned order, the RRT deleted SAIL from the array of parties in the said complaint on the ground that it was the responsibility of the OSL to pay premium charges as per the terms of engagement. RRT observed that merely because the OSL is of the view that SAIL has similar interest in the subject matter, there is no reason for impleading SAIL as Respondent. OSL would have to persuade SAIL to join it as co-complainant. Accordingly, the RRT directed the deletion of the SAIL from the array of parties. It is this portion of the impugned order that the OSL is aggrieved by.

6. Initially, OSL had directly approached the Supreme Court of India in SLP (Civil) Nos.36-37 of 2008 against the impugned order of the RRT. However, those SLPs were dismissed as

withdrawn by the Supreme Court of India by an order dated 18th January 2008 permitting OSL to approach this Court.

7. Thereafter, the present petition was filed. By an order dated 17th July 2008, while directing notice to be issued in the present petition, this Court stayed further proceeding before the RRT in the aforementioned Complaint No.7 of 2007. That stay order is continuing since then.

8. Although, SAIL was served in the present petition and one Mr. Sarat Chandra Ghose had entered appearance on its behalf, today none is appearing for SAIL. As far as ECR is concerned, Mr. Katikia, learned counsel who represents them informs the Court that there is no objection to SAIL being impleaded as party before the RRT.

9. With there being no contest in the present petition, the Court sets aside that portion of the impugned order of the RRT to delete SAIL from the array of parties in Complaint No.7 of 2007 before the RRT. There is support for this conclusion from Section 36 of the Railways Act, 1989 read with Regulation 13 (2) of the Railways Rates Tribunal (Procedure) Regulations, 1990. For ready reference, Section 36 of the Railways Act, 1989 and Regulation 13 (2) of the Regulations are reproduced hereunder:

“36. Complaints against a railway administration:-

Any complaint that a railway administration –

(a) is contravening the provisions of section 70; or

(b) is charging for the carriage of any commodity between two stations at a rate which is unreasonable; or

(c) is levying any other charge which is unreasonable, may be made to the Tribunal, and the Tribunal shall hear and decide any such complaint in accordance with the provisions of this Chapter.”

“13. (2) Where the complainant has reason to believe that any other person is likely to be materially affected by the relief he is seeking, such person shall also be impleaded as respondent.”

10. Since SAIL has chosen to pass on the burden of the demand raised by ECR for the alleged overloading of the wagons, OSL had to resort to arbitration against SAIL while simultaneously proceeding against the ECR before the RRT. These two proceedings are interconnected. SAIL cannot be said to be disinterested in the outcome of the complaint filed by OSL against the Railways. Being part of the proceedings before the RRT would not in any way prejudice SAIL.

11. Consequently, the impugned order of the RRT is modified to the extent of deleting that portion of it which deletes SAIL from array of parties to Complaint No.7 of 2007. In other words, SAIL is restored as party Respondent in Complaint No.7 of 2007. The interim order passed by this Court stands vacated. Complaint No.7 of 2007 ((or as renumbered) will now be listed before the RRT, which has now merged with the Railway Claims Tribunal, on 21st March, 2022. A copy of this order will be produced by OSL before the Railway Claims Tribunal well before that date.

12. The writ petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin

