

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.81 of 2016

A.F.R.

Union of India

Appellant
.....
Mr.D.R.Mohapatra, CGC

-versus-

***M/s.Radha Krishna Enterprises and
others***

Respondents
.....
Mr.N.R.Routray, Advocate for Respondent No.1
Mr.D.Chatterjee, Advocate for Respondent No.2

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
01.12.2022**

Order No.

8.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Mohapatra, learned Central Government Counsel for the Appellant and Mr.Routray, learned counsel for Respondent No.1 as well as Mr.Chatterjee, learned counsel for Respondent No.2.
3. The present appeal by the Appellant is directed against the impugned judgment dated 1st October, 2015 passed by the learned Railway Claims Tribunal, in O.A.No.(III) 5 of 2014, wherein the additional freight charges realized from the

Respondents have been directed for refund with interest at the rate of 8% per annum from 26th March, 2014.

4. Respondent No.1 was the claimant before the Tribunal. It is his case that he had a contract with Respondent No.2 to supply bamboo. Accordingly, on 7th May, 2008 a rake of bamboo was consigned from Badampahad Railway Station to Rajahmundry Railway Station under South Eastern Railways. He paid freight charges of Rs.13,93,100/- and consignment was delivered at Rajmundary on 14th May, 2008. While unloading, the Railways issued one demand notice for additional Rs.16,653/-. On the next day, i.e. 15th May, 2008 when Respondent No.2 made payment of that amount, the same was not accepted and, thereafter, on 22nd May, 2008 another demand notice of Rs.9,51,198/- was received by Respondent No.2 by Fax. Respondent No.2 paid that amount on 22nd June, 2008 and in turn deducted the said amount from Respondent No.1, the consigner. Respondent No.1 accordingly preferred the claim application under Section 16 of the Railways Act for refund of that amount along with interest.

5. Mr.Mohapatra challenging the impugned judgment submits that it is within the power of Railways in terms of Section 78 read with Section 83 of the Railways Act to make demand of additional freight charges due from any party in respect of any consignment and therefore, the demand made for undercharges is justified. He further submits that, the freight charges in respect of the consignment was undercharged by Badamapahad Railway Station Manager, which should be in class 120 of wagon load as per Goods Tariff No.45 Pt.1 (Vol.III)

instead of class rate L.R.No.3. Accordingly, the station authorities of Rajmundury reclassified the consignment in class 120 of wagon load as per Goods Tariff No.45 Pt.1 (Vol.III) and additional charges were demanded. He thus contends that when reclassification of the consignment is not disputed and the demand is in terms of the Goods Tariff charges, the interference by the Tribunal in the demand notice is unwarranted.

6. Mr.Routray as well as Mr.Chatterjee, learned counsels for respective Respondents submit in their reply that the Railways have no authority to revise and raise the demand charges after delivery of the consignment and whatever they had to do, it should be before delivery of the consignment in terms of Section 78 of the Railways Act.

7. In the backdrop of such rival contentions, the crux of the issue appears that, whether the demand notice dated 14th May, 2008 under Ext.A/4 has been made and issued prior to delivery of the consignment booked on 7th May, 2008 at Badampahada Station ?

8. Section 78 of the Railways Act postulates as follows:-

“78. Power to measure, weigh, etc – Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to-

- (i) re-measure, re-weigh or re-classify any consignment;
- (ii) re-calculate the freight and other charges; and

(iii) correct any other error or collect any amount that may have been omitted to be charged.”

9. Further, Section 83 of the said Act speaks for lien for freight charges upon failure on payment of demand by the party in respect of any freight or other charges due for him.

10. Before delving further, it needs to be mentioned the admitted facts here. The booking of the consignment and assignment of the same on 7th May, 2008 at Badamapahar Station is admitted along with payment of demanded freight charges of Rs.13,93,100/-. The delivery of the consignment at Rajmundury Railway Station on 14th May, 2008 to Respondent No.2 is also not disputed. Admittedly, Respondent No.2 received the demand notice under Ext.A/4 on 22nd May, 2008 and the amount was paid on 22nd June, 2008 to the Railways. The copy of Ext.A/4, as produced by Mr.Routray in course of hearing, reveals that it was sent through fax and received by Respondent No.2.

11. The background facts reveals that on 14th May, 2008 while unloading the consignment, the Railways raised a claim of Rs.16,653/- as first demand and thereafter the second demand, i.e. present Ext.A/4, was received on 22nd May, 2008.

12. In terms of Section 78, Railways have the right to re-measure, re-weigh or re-classify any consignment and recalculate the freight and other charges and to collect any amount that has been omitted from charging, before delivery of the consignment.

Section 73 of the Railways Act prescribes for punitive charge in case of overloading. Section 83 speaks for lien in respect of demand of additional freight charges. None of the

above provisions nor any other provision under the Railways Act authorizes the Railway to revise their freight charges and to make a fresh demand after delivery of the goods consigned.

13. In the instant case, according to the Railways, the consignment was initially charged in the wagon load class rate, which was corrected to 120 wagon load rate as per the Goods Tariff No.45. So whatever may be the revision of freight charges either upon re-measure or reclassification, it should have been made before delivery of the goods in the consignment. In absence of any provision authorizing the Railways to make revision of the freight charges after delivery of goods is not permitted under the Railways Act. Now what the Railways try to show that the revision freight charges upon reclassification have been made prior to delivery of the consignment, is found incorrect. It is for the reason that, admittedly, the goods have been delivered on 14th May, 2008 and had there been revision of freight charges before that, they would have detained the goods from delivery to the consignee in terms of the powers under Section 83 of the Railways Act. Once delivery of goods is confirmed and not disputed, the prima facie presumption is that the demand raised is after delivery of the same. This presumption is further fortified from the undisputed fact that the demand notice under Ext.A/4 has been served through fax message on 22nd May, 2008. This means that the Railways after making revision of the demand of freight charges made further demand of Rs.9,51,198/- after 14th May, 2008 and to make it regular in

terms of the Section 78 put the back date as 14th May, 2008, because had the demand been made on 14th May, 2008, then it would have been served on Respondent No.2 on the same day and there would not have the first demand notice for Rs.16,653/- on 14th May, 2008 under Ext.3. Therefore, the conclusion of the Tribunal that the further demand notice under Ext.A/4 has actually been made on 22nd May, 2008 is justified. This Court accordingly does not find any merit in the appeal to interfere with the impugned judgment.

14. At this stage, Mr. Mohapatra prays for reduction of the rate of interest from eight per centum to six per-centum. Considering the prayer and keeping in view the provision contained in Section 34 of the C.P.C., the rate of interest is reduced to six per-centum from 8% on the award amount of the Tribunal.

15. In the result, the appeal is dismissed. The copies of the exhibits as produced in course of hearing are kept on record.

(B.P. Routray)
Judge