

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6972 of 2012

SMS Khanija

.....

Petitioner

Mr. K.A. Guru, Advocate

Vs.

East Coast Railway and others

.....

Opposite Parties

Mr. S.S. Kashyap, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

14.12.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard learned counsel for the parties.

3. The petitioner has filed this writ petition seeking to quash the penalty imposed and demand notice issued by opposite parties 1 and 2 under Annexures-5 and 6, whereby the petitioner has been directed to pay punitive charge against the rake of Rs.7,53,347/-.

4. Learned counsel for the petitioner contended that Section 73 of the Railway Act, 1989 provided for punitive charges for over loading a wagon. The said section provides that if it is found that any wagon was over loaded, then same cannot be released in favour of the consignee unless and until the punitive charges are paid or in alternative the excess goods would be retain by the railway authority. As per the weight made by opposite party no.3 only 3900 MT of minerals were received by them. But the railway authority claims the total quantity of minerals to be 4148.12 MT. Therefore, it is contended that the petitioner is not liable to pay the penalty as demanded by the authority. It is contended that the demand made to the consignee, i.e. the opposite party no.3 who in terms agreed to pay the same. As per the purchase order, the amount would be paid by opposite party no.3 and the same will be deducted from the bills of the petitioner. In other words, the

penalty have been levied against the petitioner and the petitioner is the ultimate loser. Accordingly he has approached this Court.

5. Pursuant to the notice issued by this Court, opposite parties have entered appearance and filed counter affidavit justifying the claim made by the opposite parties. As per the counter affidavit, opposite party no.3 received demand notice of Rs.7,53,347/- under Annexure-6 issued by opposite party no.2 imposing penalty/punitive charges alleging over loading of minerals in the wagon. Immediately thereafter, the petitioner was informed about such imposition of penalty and a discussion was made with the representative of the petitioner. In course of discussion, the representative assured opposite party no.3 to resolve the issue at their end and if necessary they would approach the appropriate court of law and submit the interim order of stay by 13.04.2012. But the petitioner failed to submit the stay order within the period taken, therefore, opposite party No.2 informed the opposite party no.3 that they would hold up the incoming coal and other minerals at the railway siding, if the payment of punitive charge under Annexure-6 is not made by 17.04.2012. Finding no other option, opposite party no.3 deposited the punitive charges of Rs.7,53,347/- under protest on 17.04.2012 vide letter dated 17.04.2012.

6. Since disputed questions of fact have been involved in this writ petition, this Court is not inclined to entertain the writ petition. It is open to the petitioner to pursue his remedy before the appropriate forum, if he is so advised.

7. With the above observation/direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(B. P. SATAPATHY)
JUDGE

Arun