IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR

WRIT PETITION NO.762 OF 2008

Petitioners :

(1) M/s. Jindal Steel & Power Ltd.
Kharsia Road, Post Box No.16,
Raigarh – 496 001 (Chhattisgarh State)

(2) M/s. Sanvijay Rolling & Engg. Ltd.,
Unit 13-1-202, MIDC Industrial Area,
Butibori, Dist. Nagpur,
through Shri Sanjay Nivetia
having its Regd. Office at 9, Imambada Road,
Nagpur – 440 018 (M.S.)

– Versus –

Respondents :

(1) The Union of India, through
The General Manager, Central Railway HQ,
CST, Mumbai (Maharashtra)

(2) The Divisional Railway Manager,
Nagpur Division, Central Railway,
Kingsway,
Nagpur (Maharashtra)

(3) The Chief Commercial Manager,
Central Railway HQ,
CST, Mumbai (Maharashtra)

(4) The Chief Goods Supervisor,
Goods Office, Central Railway,
Butibori, Dist. Nagpur.

(5) The Chief Goods Supervisor,
Goods Office, S.E.C. Railway,
Kalumna, Dist. Nagpur.

(6) The Senior Divisional Commercial Manager,
Zone Office, South East Central Railway,
Bilaspur (Chhattisgarh)

Mrs. Radhika Bajaj, Advocate for the Petitioners.
None for the Respondents.

CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.

DATE : 2 MARCH 2022.

ORAL JUDGMENT : (Per Nitin Jamdar, J.)

The Petitioners have challenged the levy punitive charges as per the demand bills raised by Respondent Nos.4 & 5, dated 30 May 2007 under Section 73 of the Railways Act, 1989 totalling to Rs.10,03,316/-.

2. The Petitioners are in the manufacture, sale and supply of iron materials. Respondent No.1 is the General Manager of Central Railway; Respondent No.2 is the Divisional Railway Manager; Respondent No.3 is the Chief Commercial Manager, Central Railway and Respondent Nos.4 & 5 are the Chief Goods Supervisors, Nagpur.

3. Petitioner No.1 had loaded various consignments from Raigarh, Chhattisgarh State, to be supplied to Petitioner No.2 at Butibori, Nagpur. The Respondents reweighed the rakes carrying the Petitioners' goods, and, according to the Respondents, there was excess loading of consignments. The details of the rakes on reweighing, according to the Petitioners, are specified in the chart in the Petition. The Respondents raised demands as per Section 73 of the Railways Act, 1989 (hereinafter referred to as "the Act of 1989" for short). This demand of punitive charges is under challenge in this Petition. By an interim order passed in this petition, the impugned demand is stayed.

4. Since the case centres around section 73 of the Act of 1989, it will be necessary to reproduce the provisions, which read thus :

> *"73. <u>Punitive charge for overloading a wagon.</u> — Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods: Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such*

unloading and any charge for the detention of any wagon on this account."

5. The main ground on which the Petitioners challenge the levy of punitive charges is the breach of principles of natural justice. The Petitioners contended that the levying punitive charges under Section 73 of the Act is quasi-criminal in nature, and at least some opportunity must be given to the consignor or the parties considering the consequence of levying of penalty. As regards an opportunity to be given in respect of action taken under Section 73 of the Act, the learned Counsel for the Petitioners relied on the full bench decision of the Gauhati High Court in *Megha Technical Engineers (P.) Ltd. vs Union of India & Ors.*[1] and of the Calcutta High Court in *Union of India & Anr. (E.Rly) vs Ultra Tech Cement Ltd. & Anr.*[2] and in *Union of India vs Agarwala & Co. & Anr.*[3].

6. Respondents have filed a reply affidavit in which the fact that the opportunity was not given is accepted. However, it is sought to have contended that it is not practicable to give a hearing, as the rakes cannot be kept standing idle and detaining the rakes would have caused inconvenience to the Petitioners and Respondents; therefore, the rates were rightly levied. It is also contended that there is no reason for the authority to give a wrong figure.

1 *(2018) 1 Gauhati Law Reports 597*
2 *AIR 2011 Calcutta 216*
3 *2007 SCC OnLine Cal 738*

7. Section 73 of the Act uses the word 'may', and therefore the authority has a discretion and the levy penalty is not necessary for all situations. Since Section 73 does not mandate any penalty, an opportunity needs to be given to the consignor to demonstrate that the levy of penalty is not warranted in its case. The penalty also has civil consequences and it affects the consigner's reputation. There could be a *bona fide* explanation for the higher load. As regards the argument of the Respondents of impracticality to give a hearing by the Respondents to exclude principles of natural justice, the argument is not of impossibility. These impediments can be taken care of by evolving a mechanism. Mere inconvenience cannot be a ground to exclude the principles of natural justice. The Full Bench of Gauhati High Court in *Megha Technical Engineers* has held that an opportunity will have to be given in respect of punitive charge levied under Section 73 of the Act to the consignor. Similar view is also taken by the Calcutta High Court in the cases of *Ultra Tech Cement Ltd.* and *Agarwala & Co.* We are in respectful agreement with this view.

8. The Respondents have also taken a ground in their reply that the Petitioners have an alternate remedy of filing an appeal under Section 36 to the Tribunal established under Section 33 of the Act. The learned Counsel for the Petitioners sought to contend that the levy of punitive charge under Section 73 will not fall under Section 36 of the Act. *Prima facie*, the provision of Section 36(c) of the Act that

speaks of levying of any charge which is unreasonable, may cover the present charge, as it can be contended that the act of imposing a levy is unreasonable. However, it is not necessary to conclude this issue as the learned Counsel for the Petitioners is right in contending that it will be futile to send the Petitioners to an appellate forum now after the lapse of 16 years after the Petition has been entertained and an interim order is passed. There is no effort made by the Respondents to vacate the interim order; neither the same has been challenged. In the light thereof, at this stage, we do not deem it proper to relegate the Petitioners to an appellate remedy.

9. As regards the arguments based on breach of principles of natural justice as stated above, Section 73 of the Act will have to be read as envisaging an opportunity to be given to the consignor. This opportunity is admittedly not given to the Petitioners before levying punitive charges under Section 73 of the Act. The action being in breach of principles of natural justice and violative of Article 14 of the Constitution of India will have to be set aside.

10. Accordingly, Rule is made absolute in terms of Prayer Clause (ii), which read thus:

> *Issue a writ of certiorari or any other appropriate writ, order or direction to quash the demand bill dated 30/05/2007 issued by Respondent Nos.4 & 5 at Exhibit-C (colly).*

11. The Petition is disposed of as above. No costs.

[ANIL L. PANSARE, J.] [NITIN JAMDAR, J.]

Sandesh