

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

302

Date of decision: 17.03.2023

(1) CWP-3429-2007

M/S JINDAL STEEL AND POWER LIMITED .....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

(2) CWP-3930-2007

MADHAV ENTERPRISES .....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

(3) CWP-4183-2007

M/S JINDAL STEEL AND POWER LIMITED .....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

(4) CWP-4184-2007

M/S JINDAL STEEL AND POWER LIMITED & ANOTHER  
.....Petitioners

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

(5) CWP-4288-2007

KESHAV STEELS .....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

**(6)** **CWP-4656-2007**

M/S WORLDS WINDOW IMPEX INDIA PVT. LTD.  
.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

**(7)** **CWP-6077-2007**

M/S SURAJ FABRICS INDUSTRIES LTD.  
.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

**(8)** **CWP-6496-2007**

M/S HIM ALLOYES AND STEELS  
.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

**(9)** **CWP-9741-2009**

M/S RAJDHANI FERROS PVT. LTD.  
.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS .....Respondents

**(10)** **CWP-11539-2009**

M/S RAJDHANI FERROS PVT. LTD  
.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

(11)

**CWP-20191-2008**

M/S H.M. STEELS LTD. & ANOTHER

.....Petitioners

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

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Present: - Mr. Vikas Mohan Gupta, Advocate  
for the petitioner in CWP-3930-2007;  
CWP-4288-2007; CWP-6077-2007;  
CWP-6496-2007; CWP-4656-2007.

None for the petitioner(s) & respondent(s)  
in remaining petitions.

Mr. Pankaj Gupta, Senior Panel Counsel  
For respondents-Union of India  
in CWP-3429-2007; CWP-4184-2007;  
CWP-9741-2009; CWP-11539-2009.

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**VINOD S. BHARDWAJ, J. (Oral)**

A batch of 11 petitions is being decided by a common order as  
counsel for the parties agree that identical questions of law arise for  
determination in the present batch of writ petitions.

2. For facility of reference, facts are enumerated from CWP-3429  
of 2007 titled as “**M/s General Steel and Power Limited versus Union of  
India and others**”.

3. The controversy which arises for determination in the present  
batch of petitions revolves around the application and interpretation of

Section 73 of the Railways Act, 1989 and the entitlement of the Railways to recover penalty towards overloading, after the delivery of goods.

4. The petitioner-company is engaged in the business of manufacture, sale and supply of steel including sponge iron. Being the consignor, the petitioner-company loaded sponge iron to be supplied to various steel industries in Mandi Gobindgarh in Punjab through Railway rakes. Details of some of the Rail rakes dispatched by the petitioner in the above said CWP and subject matter of dispute are as under:

- “- 11.12.2005 (2420.800 MT of Sponge Iron)
- 16.12.2005 (2421.600 MT of Sponge Iron)
- 28.12.2005 (2360 MT of Sponge Iron)
- 03.01.2006 (2421.600 MT of Sponge Iron”

5. The above said consignments were booked to be taken from Kirodimal Nagar (Raigarh) in Chattisgarh to Mandi Gobindgarh in Punjab. Upon loading of the sponge iron in accordance with the instructions of the Railway Authorities, the petitioner Company was issued the Railway receipts in which the detailed description of the consignment alongwith the weighment of sponge iron was recorded. During the transit period, 06 rakes were reweighed at Weigh Bridge, Champa on 11.12.2005; 17.12.2005; 28.12.2005 and 03.01.2006. It was reported that there was excess loading of sponge iron in the above said rakes. The petitioner-company held that the weighment had been done at the back of the petitioner company and without any prior intimation. It is further alleged that weighment done by the respondent Railways was not on accurate or as per the terms and conditions but on their own whims and fancies. The delivery of the aforesaid consignment was duly made to the consignee on 29.12.2006. The

respondent-Railways, thereafter, raised a demand of penalty for overloading of the rakes after a period of more than 04 months of such delivery. Various other issues pertaining to defects in the weighment undertaken by the respondent were also raised, however, the same are not being adverted to for this case since the issue is being examined on the legality of such demand itself.

6. Pursuant to the notice issued to the respondent, written statement on behalf of the respondents had been filed wherein they had taken a plea that the weighment of the rakes had been undertaken by the Railways as per the provisions under the Railways Act, 1989 and that it is entitled to claim punitive charge for overloading of the Railway wagon/rakes under Rule 161 of Railway (Punitive Charges for overloading a wagon) Rules, 1990. Reference was also made to various others provisions pertaining to claiming charges for overloading of wagon/rakes by the respondent Railways. The other factual aspects, however, are not disputed. It was pointed out that the loading of the consignment was not supervised by the Railway staff and the Railway receipt issued contained the remarks “CPH, BSP EN-ROUTE TO WEIGH AND ADVISE JOINTLY”. Hence, the Railways cannot be deemed to be a signatory or acknowledging the correctness of the weighment undertaken by the petitioner himself. Hence, the consignor/consignee, as the case may be, is responsible to pay the penalty imposed on account of overloading of the Railway wagon/rakes as per the weighment done by the Railways. It was alleged that the reading and interpretation of the provisions of the Railways Act, 1989 by the petitioners is misconceived and is not-sustainable. The demand was thus justified.

7. Counsel for the parties reiterated their submissions noticed above during the course of arguments. The same are not being reiterated to avoid repetition of the facts.

8. I have heard learned counsel appearing for the respective parties and have gone through the documents available on record with their able assistance.

9. Before going further into the controversy, it would be necessary to make a reference to the relevant statutory provisions that are relied upon by the parties to substantiate their respective claims.

**The Railways Act, 1989**

*"65. **Railway receipt**.- (1) A railway administration shall,*

*(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or*

*(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.*

*(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein; Provided that in the case of a consignment in wagon load or train-load and the weight or the number of packages is not checked by a railway servant authorised in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee."*

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**72. Maximum carrying capacity for wagons and trucks -(1)**

*The gross weight of every wagon or truck bearing on the axles when the wagon or truck is loaded to its maximum carrying capacity shall not exceed such limit as may be fixed by the Central Government for the class of axle under the wagon or truck.*

*(2) Subject to the limit fixed under sub-section (1), every railway administration shall determine the normal carrying capacity for every wagon or truck in its possession and shall exhibit in words and figures the normal carrying capacity so determined in a conspicuous manner on the outside of every such wagon or truck.*

*(3) Every person owning a wagon or truck which passes over a railway shall determine and exhibit the normal carrying capacity for the wagon or truck in the manner specified in sub-section (2).*

*(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), where a railway administration considers it necessary or expedient so to do in respect of any wagon or truck carrying any specified class of goods or any class of wagons or trucks of any specified type, it may vary the normal carrying capacity for such wagon or truck or such class of wagons or trucks and subject to such conditions as it may think fit to impose, determine for the wagon or truck or class of*

*wagons or trucks such carrying capacity as may be specified in the notification and it shall not be necessary to exhibit the words and figures representing the carrying capacity so determined on the outside of such wagon or truck or such class of wagons or trucks.*

**73. Punitive charge for overloading a wagon.-** *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.*

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**78. Power to measure, weight, 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-weight 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.*

**79. Weighment of consignment on request of the consignee or endorsee.** *A railway administration may, on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any:*

*Provided that except in cases where a railway servant authorised in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit;*

*Provided further that no request for weighment of consignment wagon-load or train-load shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed."*

10. Upon consideration of the aforesaid statutory provisions in light of the undisputed factual aspects establishes that the respondent Railways is entitled to carry out the weighment of the goods loaded by a person. Where the loading of the goods has been done by a person and Railway receipt is issued by the Railways on the basis of authorization or declaration done by the consignor, the burden of proving the weight is on the consignor/consignee as the case may be. Hence, the responsibility of such weighment cannot be cast upon the Railways. The entitlement of respondent-Railways to carry out re-weighment for verification of

declaration so made by the consignor/consignee is affirmed by Section 78 of the Railway Act.

11. The question which however arises is the time by which such claim for punitive charges can be leveled by the respondent Railways. A perusal of Section 73 clearly shows that where a person loads goods in a wagon beyond its permissible carrying capacity, the Railway administration may, in addition to the fare and other charges, recover from the consignor/the consignee/ the endorsee, charges by way of penalty at such rates as may be prescribed, “before the delivery of the goods”. The proviso to the aforesaid Section further empowers the Railway administration to unload the excess consignment and to not release it till such time that the overloading penalty is recovered from them. Section 78 confers the powers of the Railways to carry out the re-weighment. However, the said power also uses the expression “before the delivery of consignment”. Hence, without prejudice to the rights to the respondent Railways to carry out the reweighment, the time frame by such claim can be raised has been provided in statute itself. The power to recover such charges has been conferred to be before the delivery of the goods and not thereafter. The object of prescribing aforesaid time schedule for effecting recovery of the penalty/over loading charges is seemingly perpetuated by the fact that the verification of the claim done by the Railways qua weighment of the wagon/rakes can be undertaken only before the delivery of the goods. The aforesaid safeguard as has thus been prescribed for the interest of the consignor/consignee/endorsee to challenge the weighment done by the Railways and to seek re-determination of the above said weighment. Post delivery of the goods and consumption thereof, consignor/consignee/endorsee (as the case may be), significantly

looses his right to raise a challenge to the claim made by the respondent Railways.

12. The entitlement of the consignor/consignee/endorsee to be allowed weighment on payment of charges is also provided for in Section 79 of the Railway Act, 1989. Thus, the scheme is completely thought out for by the legislative why demand ought to be raised prior to delivery of goods. The use of expression “before delivery” is not a single expression in isolation in Section 73 but is also reported in Section 78 followed by Section 79 of Railway Act, 1989 empowering the consignor to seek weighment again.

13. The prescription of the aforesaid time schedule in the statute is seemingly meant as a protection to the consignor/consignee/endorsee. Such valuable right conferred on the consignor/consignee/endorsee cannot be defeated by untimely action on the part of the respondent Railway authorities. Once the statute empowers the Railways to withhold delivery of consignment to unload excessive material and also to charge demurrage of unloading charges for the period during which the consignment remained in its possession there was no occasion as to why the Railways should not have exercised its power or authority well in time for seeking payment from the concerned party, prior to delivery of the goods.

14. It is well settled position in law that the legislature is conscious of the use of the words and that every such phrase/word has to be assigned the meaning. Any such interpretation as is likely to render the aforesaid expression i.e. “before the delivery of the goods” meaningless, superfluous, non-existent or unenforceable has to be avoided. A plain/literal rule of interpretation has to be accepted unless such plain or literal interpretation

leads to vague or incomprehensive results or outcome. Where literal interpretation is not likely to defeat the object of the statutory provision or run contrary to the statute, the law would go by such interpretation. On being assessed against the interpretation offered by the respondents, the suggestive interpretation/approach of the respondents that it can demand the penalty for overloading at any time is likely to render the aforesaid phrase, “before the delivery of the goods”, meaningless, otiose and unenforceable. The same could not have been the legislative intent.

15. I am also supported in my aforesaid view while examining the issue from another perspective as well. The Railway freight/indirect expenses are reimbursable and translate into the overall cost. In the event of the timely communication of the aforesaid charges, the same could have been recovered from the concerned parties as a part of indirect burden. By non-communication of the aforesaid charges, to the consignor/consignee/endorsee, such person cannot at any later stage be burdened with the additional cost which it has no means to recover.

16. Even otherwise, the respondent railway authorities not having acted timely cannot take benefit of their own wrong and still claim the dues. There is no valid explanation rendered by the respondents as to why they preferred to deliver the goods to the consignee and to thereafter lodge the claim of overloading from the consignor after a lapse of merely 04 months and despite knowing it fully that the goods in question would have already been consumed and there would be no way whereby the consignor could seek re-determination or weighment under Section 79 of the Railway Act, 1989. It thus caused prejudice to the consignor to seek protection of his rights. Denial/deprivation or extinguishment of such rights of the consignor

could not be the intent of the statute. Failure by the State instrumentalities to act in accordance with the statutory mandate cannot be the foundation to defeat right of the citizens/consumers.

17. The issue in question has also been examined by this Court in its judgment dated 31.07.2009 in the matter of **“M/s Adhunik Metaliks Ltd. versus Union of India and others”** bearing CWP-10546-2009. Considering the aforesaid provisions. The relevant extracts of the aforesaid judgment is reproduced hereinafter below:

*“It is also not in dispute that reweighment at Muri was done without any notice to the petitioner. Right of the railway administration to weigh the material en-route is sustainable in view of provisions of Section same time, 78 of the Act. However, at the same time, in case of dispute, right of the consignee for re-weighment cannot be denied except as provided under the provisions of Section 79 of the Act. To deny this right to the petitioner, reliance has been placed upon the provisions of para 1744 of the Manual, which is not justified for the reasons mentioned hereinafter.*

*As per provisions of Section 65 of the Act, Railway receipt is a 'prima facie evidence' of the weight unless it is proved on record that the weight was not checked, at the time of booking, by the Railway authorities. In the event of dispute regarding weighment, burden of proof lies on the consignee to prove the same. If contention of counsel for the respondents is accepted that in view of the provisions of Para 1744 of the Manual, right of reweighment cannot be given to the consignee, then the proviso of Section 65 of the Act will become redundant and the consignee will not get any opportunity to prove weight of the consignment. Furthermore, at the time of arguments, counsel for the respondents has failed to show to this Court that*

*the instructions issued vide Manual were notified as per provisions of Section 87 of the Act.*

*A combined reading of the provisions of Sections 65, 78, 79 of 1744 of the Manual makes it very clear that the Railway the Act and administration has a right of reweighment of a consignment, en-route. However, when it comes to the question of laying penalty, on the basis of re-weighment, en-route, this Court feels that it can be imposed only after giving reasonable opportunity to the consignee to prove to the contrary. To prove over-loading of the material, the Railway must satisfy the Court that the re-weighment was correct. Nothing is provided in the Act and the Manual that correctness of the reweighment, done in the absence of the party concerned en-route, on a railway weigh-bridge, cannot be questioned by the consignee concerned. A similar controversy came up before a Single Bench of Gauhati High Court in Nirmal Traders v. Union of India and others, AIR 2003 Gauhati 122. After noticing the provisions of Sections 65, 78, 79 of the Act, it was observed as under:*

*"In other words, since under the first proviso to Section 79, an element of discretion does rest with the railway servant concerned to re-weigh goods, which are booked at owner's risk, the consequence will be that when omission to exercise the discretion is challenged, the railways must be in a position to satisfy the Court that in the facts and circumstances of the case, the railway servant concerned could not have exercised his discretion to re-weigh the consignment. In the case at hand, however, the railway respondents have not mentioned even a word in their affidavit-in-position to show as to why such a discretion was not exercised by the railway servant concerned; rather, their stand in para 11 of their affidavit-in-opposition appears to be that as per provisions of Section 79, no consignment booked at*

*owner's risk shall be allowed to be re- weighed meaning thereby as if no discretion in favour of re- weighment of goods booked at owner's risk can ever be exercised. This cannot, as already indicated hereinbefore, be treated as a correct interpretation."*

36. Counsel for the petitioner has also brought it to the notice of the Court that as per instructions, issued by the Ministry of Railway on October 13, 2006, vide rates circular No. 86/2006, it has been provided that second weighment of the consignment is permissible only under orders of a senior officer. Clause 7 of the instructions reads thus:

*"7. Since the information regarding weighment of the rake will be available in FOIS, the divisional control will ensure that all those rakes, which have not been weighed earlier, are positively weighed. **Similarly, the rakes, which have been weighed earlier, should be re-weighed only under special instructions of an authority not lower than DRM or under the instructions from officers of Vigilance department.**"*

Counsel for the respondents has failed to show that the second weighment of the consignment at Muri was done under orders of the competent authority.

Along with the replication, the petitioner has brought on record freight material circular No. 51 of 2006, issued by Ministry of Railways, on December 11, 2006, stating that in case of dispute, reweighment of parcels can be done on weighing scales at party's costs. Relevant portion reads as under:

*"Some instances of disputes about correctness of weighment done by the Railways on in-motion weighbridge at enroute station for the consignments loaded in Parcel Vans (VPHS/VPs/VPU) have come to*

*the notice of Railway Board which led to Court interventions.*

*The matter has been examined and it has been decided that if any party requests for second re-weighment at destination station against the result of in-motion weigh-bridge carried out by railway at enroute station, the Chief Commercial Manager of the zonal railway may permit second re-weighment of consignment loaded in Parcel Vans at destination station on Weighing Scale at party's cost."*

*Reading of the provision indicates that in case of dispute regarding weight, of a parcel, right has been given to a consignee to reweigh it at its own costs. This Court feels that denial of such a right to the petitioner, who had booked full train is not justified simply on a ground that Railway weigh-bridge is not available at the station of destination, especially when the consignee is ready to make payment of the costs for reweighment and other permissible charges.*

*Right of the consignee to ask for reweighment, is also coming out from the provision of Section 73 of the Act. It is provided therein that order imposing penalty, towards overweight, has to be communicated to the consignee before delivery of the goods. This provision appears to have been incorporated to give a right to the consignee, that in case there is a dispute regarding weight, the consignee may challenge it as per provisions of the Act.*

*So far as C.W.P. No. 10647 of 2009 is concerned, besides raising all those arguments which are noted in the main case ( CWP No. 10546 of 2009), counsel for the petitioner made an offer that let the petitioner weigh the material, at its own costs, under supervision of the authorities on local Dharamkantas. If after weighment, material is found equal to the weight, for which penalty has been imposed, the petitioner shall pay the*

*amount demanded by the respondents and any other amount as may be fixed by this Court. Even this offer is not acceptable to the respondents.*

*Counsel has not disputed right of the Railway administration to re-weigh the material en-route. However, by making reference to the receipts regarding reweighment en-route (P-14), counsel states that the consignee has booked 21 wagons whereas 20 have been shown as over-loaded. He has also made reference to various lacunae in the receipt regarding re-weighment, such as against at Sr. No. 3, tare weight of the wagon has not been mentioned. Against column No. 7, if tare weight of the wagon is deducted from the gross weight, then it will come less than the actual weight shown in the receipt. By referring to original receipts and reweighment receipts, he also demonstrated that tare weight of most of the wagon does not tally. Counsel for the respondents has tried to defeat right of the petitioners in CWP No. 10647 of 2009 simply by stating that the consignment was brought in sealed wagons and as such in view of provisions of Section 1744 of the Manual, relief of reweighment cannot be granted in favour of the petitioner. This Court feels that in view of discussion made above, this objection is not tenable. As per the respondents, reweighment was done on an electronic weigh-bridge, if that is so, it is very surprising as to how the difference has come in the tare weight of the wagons and the actual weight in some of the wagons.*

*In view of facts, mentioned above, these writ petitions are allowed. Respondents are directed to re-weigh the consignment in both the cases. Let the material be re-weighed either at the nearby Railway weigh-bridge or locally at Dharamkantas, as per convenience of the respondents, against expenses to be paid by the petitioners. It is made clear that if after reweighment, weight shown by the respondents is found to be correct, then the respondents shall be entitled to charge amount towards penalty. demurrage, wharfage etc. In that event, the respondents shall*

*also be entitled to charge an amount of Rs. 3,00,000/- from each of the petitioners towards raising fake claim, inconvenience to the department and litigation expenses. If found to the contrary, except charging expenses for reweighment as per rm, the Railway shall not charge amount towards, penalty demurrage, wharfage for the period the train remained block at the railway station on account of this litigation.*

*(Emphasis Supplied)*

18. It is evident from the perusal of the aforesaid judgment that the Court has recognized the right of the petitioner (consignor/consignee/endorsee) to seek re-weighment of the consignment in the event of any claim being raised by the Railways and to dispute the same. He can thus seek re-determination and/or re-verification of the aforesaid claim before any liability is fastened upon them. In the present case on account of delivery of the product without raising any claim, the presumption which arises is that the declaration made by the petitioner was in a order. The petitioner having not being informed of any discrepancy in the declaration made by him cannot thereafter be burdened with a demand which he cannot dispute.

19. It is thus held that the Railways are entitled to seek re-weighment of the consignment and to demand penalty for overloading or even to withhold the delivery of the consignment till the applicable penalty/charges are paid. Such demand is required to be however raised prior to delivery of the goods/consignment and the owner/consignor has a right to seek weighment again on payment of charges. The claim is thus required to be made prior to the delivery of the goods.

20. Considering from the any of the perspectives, demand in question which has been conveyed at a belated stage by the respondent Railway is unsustainable. The writ petitions are accordingly allowed. The demand of Railways to the penalty on account of overloading is set aside. The respondent-Railways shall refund the excess amount, if any, deposited by the petitioners with the Railways against the aforesaid demand within a period of 06 weeks from the receipt of the certified copy of the present order.

**(VINOD S. BHARDWAJ)**  
**JUDGE**

**MARCH 17, 2023**  
*Vishal Sharma*

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No