

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P. 21636 (W) of 2019

**National Carrying Corporation & Anr.
Vs.
The Union of India & Ors.**

For the Petitioners: Mr. Saptarshi Roy, Adv.,
Ms. Kakali Das Chakraborty, Adv.

For the Respondent Nos. 1-5: Mr. Sanajit Kr. Ghosh, Adv.,

For the State: Mr. Pantu Deb Roy, Adv.,
Mr. Subrata Guha Biswas, Adv.

Hearing Concluded on: 20.02.2024

Date: 11.03.2024

SUVRA GHOSH, J. :-

1. The reliefs sought by the petitioners in the present application are three fold:-

- i. Direction upon the respondents to carry out the weighment of empty 23 tonne VP No. WR 008490 for ascertaining its correct weight upon payment of usual charges.

- ii. Direction for taking necessary steps to rectify in-motion weigh bridge situated at Howrah.
 - iii. Direction upon the respondent authorities to refund the punitive amount deposited with the Railways to the tune of Rs. 1,11,745/- if it is found that the tare weight exceeds the declared weight.
2. The first and second prayers of the petitioners have been addressed by the railway authorities in compliance with the order by this Court dated 26th November, 2019 and the empty tare weight has been found to be 30.70 tonnes.
3. It is contended on behalf of the petitioners that the petitioners entered into an agreement with the Divisional Commercial Manager, Tinsukia Division of North-East Frontier Railway for leasing of 23 tonnes parcel van on round trip basis by train no. 15960/15959 Kamrup Express, (Dibrugarh to Howrah) for a period of five years from 2nd August, 2017 to 1st August, 2022 subject to payment of lump sum freight per trip. On November 18, 2019, the first petitioner loaded goods parcel weighing about 17,600 kgs in the said parcel van upon payment of advance freight charges and upon completion of loading, a railway manifest duly countersigned by the Chief Parcel Supervisor, Eastern Railway was prepared prior to departure of the train from Howrah station on November 19, 2019. The railways conducted in-motion weighment of the said parcel van without notice to the petitioners and found the parcel van to be over loaded by 2.10 tonnes. The parcel van containing goods including life saving drugs was detached from the train

and retained in the station in sealed condition and the petitioners were not permitted to unload the same. Re-weighment of the parcel van and the empty parcel van were not made by the authority despite request of the petitioners and punitive demand for such alleged overloading to the tune of Rs. 1,11,745/- was raised upon the petitioners on the same day accompanied by threat of other punitive measures including disentitlement of the petitioners from further loading and unloading. The petitioners were constrained to pay such amount under duress and seek refund of the same.

4. Learned counsel for the petitioners has taken this Court to the application filed by the railway authority before this Court being CA No. 72 of 2020 praying for a direction upon the Controller of Legal Metrology (7th Respondent) to take appropriate steps for repairing of the electronic in-motion weigh bridge at Howrah Station by permitting opening of seals provided on the console unit and junction box. In the said application, the respondent railways has stated that whenever the in-motion weigh bridge at Howrah is out of order, necessary steps are taken for repairing the same by the railways as well as the Legal Metrology Department on an urgent basis. Also, the safety and security of trains carrying railway passengers and goods are in danger and the railway is suffering huge expenses due to non weighment of VP/SLR at Howrah on account of non cooperation of the Legal Metrology Department. Therefore it is crystal clear that the in-motion weigh bridge is often out of order and non-functional. The weigh bridge was found to be defective from 23rd December, 2019 to 13th January, 2020. The in-

motion weigh bridge was rectified and the empty parcel van weighed and found to be 30.70 tonnes on 13th January, 2020.

5. Learned counsel for the petitioners submits that the in-motion weigh bridge was still defective since the normal weight of the parcel van ought to be 32 tonnes whereas it showed 30.70 tonnes on the relevant date. Learned counsel has referred to clause 1451(b) of The Railway Commercial Manual which indicates that railway receipts should not be granted till goods tendered for despatch have been correctly examined and weighed. When senders are required to load their consignments, the railway receipts should not be given until the loading has been completed to the satisfaction of the railway. Learned counsel has submitted that since the re-weighment was done without serving notice upon the petitioners, the punitive demand raised on the basis of such re-weighment is bad in law. Learned counsel has referred to clause 27.22 of the lease agreement which demonstrates that if any information/declaration made by the leaseholder is found false at any stage or if the leaseholder deliberately defrauds the railway, his registration will be cancelled and registration fee forfeited. In the present case, since registration of the petitioners has not been cancelled by the authority, it can be said that there was no mis-declaration, mis-information or fraudulent act on the part of the petitioners. Learned counsel has also placed reliance on clause 20.7 of the contract which says that efforts should be made to conduct weighment in presence of the concerned leaseholder or his representative and the report of weighment should be countersigned by the authority as well as the party concerned. The in-motion weighment of the

parcel van was conducted without notice being served upon the petitioners or their representatives. Learned counsel has placed reliance on the judgment of a coordinate Bench of this Court in W.P.A. No. 9575 of 2021 dated 8th April, 2022 and Hon'ble Division Bench of this Court in M.A.T. 591 of 2022 dated 5th May, 2022 in support of his contention.

6. Challenging the maintainability of the writ petition, learned counsel for the respondents, upon placing reliance on a judgment of a coordinate Bench of this Court passed on 6th December, 2019 in W.P. No. 6127 (W) of 2012, has submitted that the subject matter of the application pertains to disputed questions of fact which can be decided by the Tribunal and cannot be taken into consideration by the writ Court exercising extraordinary jurisdiction under Article 226 of the Constitution. On merits, learned counsel has submitted that the in-motion weigh-bridge was found to be defective on 23rd December, 2019 whereas overweight was detected on 19th November, 2019. Though the manifest submitted by the petitioners showed the total weight of the consignment to be 17,600 kgs, it was subsequently detected upon re-weighment at Howrah Station that it was 25,100 kgs. The petitioners were requested to pay Rs. 1,11,745/- due to overweight to the extent of 2.10 tonnes. Several weighments were made from 19th November, 2019 to 23rd December, 2019 and no complaint has been received by the authority from any other leaseholder in respect of such weighments. The weighment of the empty VP was found to be 30.70 tonnes on 13th January, 2020 whereas the normal weight of the same should be 32 tonnes. Therefore the overweight was in fact more than what was detected. Since the consignment was

handed over to the petitioners, there was no scope for re-weighment of the consignment in terms of section 79 of the Railways Act, 1989.

7. Learned counsel has drawn the attention of the Court to section 78 of the 1989 Act which empowers the railway administration to re-measure, re-weigh or re-classify any consignment before delivery of the same. According to learned counsel, there is no provision under the Act for service of notice upon the petitioners prior to such re-weighment or presence of the petitioners during such re-weighment. Learned counsel has also placed reliance on sections 64 and 65 of the Act. Section 64 envisages that every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government and the consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note. Section 65 enumerates that a railway administration shall on acceptance of the goods, issue a railway receipt which shall be prima facie evidence of the weight thereof. Since the consignment loaded by the petitioners was re-weighed on 19th November, 2019 i.e., prior to the machine being out of order, the consignment was correctly re-weighed and found to be overweight.
8. Learned counsel has relied upon a judgment of an Hon'ble Division Bench of this Court in M.A.T. 1418 of 2018 dated 27th January, 2020 in support of his contention.
9. Admittedly the first petitioner entered into an agreement with the Divisional Commercial Manager, Tinsukia Division of North-east Frontier Railway on 2nd August, 2019 for leasing 23 tonnes parcel van on round trip basis by

train no. 15960/15959 Kamrup Express for a period of five years expiring on 1st August, 2022. It appears from the manifest submitted by the petitioners that the total weight of the consignment was found to be 17,600 kgs. However, the railway administration re-weighed the parcel van on 19th November, 2019 and found it to be 25,100 kgs, i.e., 2.10 tonnes in excess of the declared weight. Admittedly such re-weighment was done without service of notice to the petitioners and in their absence.

10. The manifest/forwarding note executed by the petitioners under section 64 of The Railways Act, 1989 showing total weight of the consignment as 17,600 kgs was signed by the railway authority upon endorsement of the same. The railway receipt issued by the authority in terms of section 65 of the Act is prima facie evidence of the weight of the consignment. The contents of the manifest or the receipt which bear the signature of the railway authority are not in dispute. No reason has been assigned by the respondents as to what prompted the railways to re-weigh the consignment prior to departure of the train at Howrah Station despite the fact that the consignment was weighed at the same place upon completion of loading. Upon receipt of the demand of punitive charges on 19th November, 2019, the petitioners requested re-weighment of the consignment in terms of section 79 of the Act but the same was not carried out by the railways. The petitioners were constrained to pay punitive charges under protest in order to release the consignment from the clutches of the railways.
11. True, the railway administration may before delivery of the consignment re-weigh such consignment in terms of section 78 of the Act of 1989. But since

such re-weighment may be made before the delivery of the consignment, it is obvious that it is done at the destination station or en route the destination and not prior to departure of the consignment. Clause 1451(b) of The Railway Commercial Manual indicates that railway receipt should not be granted till goods tendered for despatch have been correctly examined and weighed. Such receipts are granted only upon satisfaction of the railway that the loading has been completed. In the case in hand, since receipt was granted by the railway authority in favour of the petitioners upon completion of loading, it can be inferred that the weight of the consignment was checked and verified by the authority and the receipt was issued upon satisfaction of the authority with regard to the weight of the consignment being 17,600 kgs. Clause 20.7 of the agreement requires efforts to be made to conduct weighment in presence of the concerned leaseholder or his representative. The report of weighment result should also be countersigned by the party. It is evident from the record that the respondents made no such effort and the report of weighment is also not on record, far less, the countersignature of the petitioners therein.

12. The in-motion weighbridge was found to be defective from 23rd December, 2019 to 13th January, 2020. Pursuant to orders passed by this Court on 26th November, 2019 and 17th December 2019, when the respondent authorities jointly tried to take the empty tare weighment, it was found that the in-motion bridge at Howrah Station was out of order. Though the in-motion weighbridge was detected as defective on 23rd December, 2019, it is not unlikely that the weighbridge was defective/out of order even prior to

the said date. Since the consignment was found to be 17,600 kgs on 18th November, 2019 as certified by the railways and remained in the custody of the railways till re-weighment, increase of weight of the consignment during the said period is inconceivable. Strangely, the railway authority was not even aware of the defect in the weighbridge till the weight of the empty tare was attempted to be taken on 23rd December, 2019.

13. Learned counsel for the railways has pointed out that several weighments were made from 19th November, 2019 to 23rd December, 2019 and no complaint has been received by the authority from any other leaseholder in respect thereof. In my considered view, non receipt of complaints from other leaseholders does not necessarily indicate that the weighbridge was functioning during the said period. It is not in dispute that the weight of the empty tare was found to be 30.70 tonnes on 13th January, 2020 whereas the normal weight ought to be 32 tonnes. Such fact is immaterial since the dispute is with regard to excess weight of 2.10 tonnes over 16,700 tonnes as weighed initially. If the weight of the empty tare was 30.70 tonnes as on 13th January, 2020, it was the same when the consignment was weighed and re-weighed. Therefore what falls for consideration is the condition of the weighbridge on 19th November, 2019. As discussed earlier, the weighbridge may have been defective on the said date, thereby showing an excess weight of 2.10 tonnes. A similar situation was dealt with by a coordinate Bench of this Court and by an order passed on 8th April, 2022 in W.P.A No. 9575 of 2021, the learned Court held the weighment instrument to be defective at the relevant point of time and directed refund of the punitive charges

imposed upon the petitioners therein. In the present case also, since defect in the machine on the relevant date cannot be ruled out, the benefit of doubt ought to weigh in favour of the petitioners.

14. Learned counsel for the respondents has placed reliance on an order passed by an Hon'ble Division Bench of this Court on 27th January, 2020 in M.A.T. 1418 of 2018. In the said matter, the wagons carrying consignment of the appellant-writ petitioner therein was initially weighed at Kahalgaon and later found to be in excess of what was declared by the consignor upon re-weighment en route to Degaru. The appellant paid the additional charges and penalty imposed upon him but did not make any demand for re-weighment of the wagons at the destination station or at any other place. The appeal was dismissed on the ground that since there was no simultaneous request for re-weighment, the appellant could not demonstrate that the weight recorded by the railways during the in-motion weighment was wrong. The fact situation of the present case can be distinguished from the other case and the ratio laid down therein has no manner of application herein.
15. Last but not the least, the challenge to the maintainability of the writ petition made by the respondents is required to be dealt with. Learned counsel for the respondents has placed reliance on a judgment of a coordinate Bench of this Court dated 6th December, 2019 in W.P. No. 6127 (W) of 2012 wherein the learned Court has held that the writ Court is not the appropriate forum to adjudicate disputed questions of fact with regard to

determination of rate of freight on a consignment and truth of a declaration made by the parties about the consignment in question.

16. There is no quarrel with the proposition of law that the writ Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India declines jurisdiction in cases where there are disputed questions of fact.
17. The issues which have fallen for consideration in this writ petition can be distinguished from the writ petition under reference. Herein, no disputed question of fact requiring extensive evidence to be led by the parties has been raised. The issue involving re-weighment of empty tare, demand/refund of punitive charges and the like can be decided by the writ Court in exercising extraordinary jurisdiction under Article 226 of the Constitution of India upon consideration of the submission made on behalf of the parties and material on record. In the premises, it can be held that the writ petition is maintainable in its present form and prayer.
18. In the light of the observation made hereinabove, this Court is inclined to hold that the petitioners are entitled to refund of the punitive charges paid by them to the tune of Rs. 1,11,745/-.
19. Accordingly the writ petition being W.P. 21636 (W) of 2019 is allowed.
20. The railway authorities being the respondents herein are directed to refund the said amount to the petitioners within two weeks from the date of communication of this judgment.
21. There shall however be no order as to costs.

22. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to have been admitted.
23. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)