



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 18TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 82809 OF 2013 (GM-RES)

BETWEEN:

M/S. BHARAT MINES AND MINERALS
SINGHI SADAN, INFANTRY ROAD,
CANTONMENT, BELLARY-583104,
KARNATAKA, REPRESENTED BY ITS GM-PR,
MR. SILAS NERELLA, AGE: 46 YEARS.

...PETITIONER

(BY SRI. UDAY HOLLA, SR. COUNSEL FOR SRI. CHETAN MUNNOLI,
ADVOCATE)

AND:

1. INDIAN RAILWAY BOARD,
RAIL BHAVAN, RAISINA ROAD,
NEW DELHI-110001,
REPRESENTED BY IT'S CHAIRMAN.
2. SOUTH WESTERN RAILWAY,
CLUB ROAD, HUBLI-580023,
REPRESENTED BY ITS GENERAL MANAGER.
3. THE CHIEF TRAFFIC PLANNING MANAGER,
TRANSPORTATION BRANCH,
HQRS OFFICE, 2ND FLOOR,
EAST BLOCK, NEW GMS BUILDING,
GADAG ROAD, HUBLI-20.

...RESPONDENTS

(BY SRI. AJAY U. PATIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF
CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION
QUASHING THE COMMUNICATION DATED 05.04.2013 BEARING
NO.T.143/SDG/BMM/RNJP ISSUED BY THE CHIEF TRAFFIC PLANNING





MANAGER OF SOUTH WESTERN RAILWAY (RESPONDENT NO.3) PRODUCED AS PER ANNEXURE-A; ISSUE A WRIT OF MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION, DIRECTING THE RESPONDENTS TO CONSIDER THE REPRESENTATION DATED 22.04.2013 PRODUCED AS PER ANNEXURE-Y AND REFUND THE REGISTRATION FEES DEPOSITED BY THE PETITIONER AS STATED ANNEXURE-P DATED 17.02.2010 IN REF.NO.BMM/SWR/SIDIND/RANJITPURA.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking the following reliefs:

- a) Issue writ a writ of Certiorari or any other writ, order or direction quashing the communication dated 5.4.2013 bearing No.T143/SDG/BMM/RNJP issued by the Chief Traffic Planning Manager of South Western Railway (respondent No-3) produced as per **Annexure-A**.*
- b) Issue a writ of mandamus or any other writ, order or direction, directing the respondents to consider the representation dated: 22-04-2013 produced as per **Annexure-Y** and refund the registration fees deposited by the petitioner as stated **Annexure-P** dated 17.02.2010 in Ref. No.BMM/SWR/SIDIND/RANJITPURA*
- c) Issue any other writ or direction which this Hon'ble deem fit to meet the ends of justice.*



2. The petitioner claims to be a firm which was engaged in carrying out mining activity. For that purpose, on a liberalized sliding policy having been issued by the railways in terms of circular dated 31.03.2005, the petitioner applied for establishing a railway sliding on its property for the purpose of transport of mines and minerals in pursuance thereof. Inspection was carried out and on the location being suitable and technically feasible, recommendation was made in furtherance of which a detailed project report was submitted on 30.07.2007 and the construction work was taken up on 08.10.2007 by the petitioner.
3. When the construction was going on, a new policy came to be amended vide Marketing Circular No.12/2008 requiring payment of a sum of Rs.5,00,00,000/- if the sliding was to be established in a private land and a sum of Rs.10,00,00,000/- if it was established in railway land in terms of clause 3.1 of the Circular No.12/2008.
4. The petitioner under protest deposited a sum of Rs.5,00,00,000/- on 17.02.2010 and certain other



amounts as codal charges etc. The petitioner completed the construction of the railway sliding at its cost and used the said railway sliding till the year 2013. Thereafter the mines came to be closed and the petitioner has stopped using the railway sliding. Hence, the petitioner made a request for refund of the sum of Rs.5,00,00,000/- which had been paid under protest. The same not having been acceded to, the petitioner had approached this court in W.P.No.6478/2011 seeking for a mandamus, which was granted on 30.10.2012 directing the respondent to consider the representation of the petitioner.

5. The representation being considered by the impugned correspondence at Annexure-A dated 05.04.2013, the petitioner was informed that the respondent has addressed a letter to the Railway Board highlighting the concern and seeking for clarification and had therefore indicated that until such clarification is received from the Railway Board, the payment cannot be made. It is challenging same the petitioner has approached this court.



6. Sri. Udaya Holla, learned senior counsel appearing for the petitioner, would submit that the petitioner having ceased to make use of the railway sliding from the year 2013, the payment of Rs.5,00,00,000/- having been made under protest, the same is required to be refunded since the railway sliding, which has been constructed by the petitioner at its cost, is not being used by the petitioner.
7. He further submits by placing reliance on the statement of objections filed by the respondent railways that there is an admission on part of the railways that the amount is required to be refunded. However, the refund mechanism stated in the objection is 10% rebate on the freight charges. Since there is admission of refund being required to be made, the respondent be directed to refund the entire amount in a lump sum instead of 10% rebate, since the petitioner is not using the railway sliding and as such the rebate cannot be adjusted.
8. Learned counsel for the respondent would submit that the clarification which was sought for vide Annexure-A to the Railway Board has been issued by the Railway Board in



terms of Marketing Circular No.18/2014 dated 29.09.2014 and in terms of Para 2.2 thereof, any investor who has deposited the registration fee and were given approval before the issuance of the freight Marketing Circular No.12/2008 will be refunded by way of rebate of 10% in freight for loading done after the issuance of this amendment. Therefore, he submitted that the petitioner would be entitled for such rebate of 10% in the freight and as such the refund would be made by way of such rebate.

9. Having heard both the counsels, it is clear that the respondent has admitted its liability to refund the monies. But however, the mechanism of refund that the respondent has proposed is rebate of 10% in the freight for loading that is done after the issuance of the amendment.
10. In terms of the Marketing Circular No.18/2014, the said circular having been issued post the filing of the above writ petition and post the petitioner having stopped its mining activities, the mines having been closed and the petitioner not using the railway siding for any freight or



loading of freight at the said railway siding, the question of the petitioner using the railway siding for freight loading and claiming rebate of 10% in my considered opinion would not arise. Thus, the respondent, having admitted the liability of refund, would be required to consider the case of the petitioner, dehors the rebate of 10% and make payment of the amount deposited under protest in a lump sum.

11. In that view of the matter, the Marketing Circular having been issued post the filing of the above petition, I deem it fit to grant liberty to the petitioner to file one more representation to the respondent in terms of the observation made hereinabove and the Marketing Circular No.18/2014, which Sri.Uday Holla, learned senior counsel, submits would be made within a period of 15 days from the date of receipt of a copy of this order.
12. The respondents are directed to consider the said representation, pass necessary orders thereon within a period of 60 days after receipt of such representation.



13. With the above observation, the writ petition stands disposed of.
14. In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

Sd/-
JUDGE

YAN, List No.: 1 SI No.: 19