

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8170 of 2020

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M/s Swastik Associates A Proprietorship firm having its place of business at 10, A, Narmada Apartment Exhibition Road, Patna- 800001 through its Karta namely Anand Vardhan, S/o Late Narayan Prasad Dalmia, R/o 53, B-Narmada Apartment, Exhibition Road, Patna.

... .. Petitioner/s

Versus

1. The Union of India Through the Secretary, Ministry of Railways, Government of India, New Delhi.
2. The General Manager East Central Railway, Hajipur.
3. The Chief Commercial Manager East Central Railway, Hajipur.
4. The Divisional Railway Manager (Commercial) Samastipur.
5. The Goods Superintendent Dauram, Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Gautam Kumar Kejriwal, Alok Kumar Jha Mukund Kumar Akash Kumar Aditya Raman, Advocates
For the Respondent/s	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 04.04.2025

I.A. No. 1 of 2021

1. This interlocutory application has been filed for amendment in prayer portion of para-1 of the writ petition by addition of the reliefs



mentioned in paragraph No. 1 (VII) and (VIII) of the interlocutory application.

2. I.A. No. 1 of 2021 is, hereby, allowed amending the prayer portion. The reliefs mentioned in paragraph No. 1 thereof would form part of the writ petition.

I.A. No. 2 of 2022

3. This interlocutory application has been filed for amendment in prayer portion of para-1 of the writ petition by addition of the reliefs mentioned in paragraph No. 1 (V) and (VI) of the interlocutory application.

4. At the time of hearing of this interlocutory application, the Learned counsel for the parties submit that this interlocutory application has become infructuous in view of the intervening developments, as auction was dropped in view of the payment made by the petitioner, the present petition has become infructuous.

5. Accordingly, I.A. No. 2 of 2022 has become infructuous.

Re. C.W.J.C. No. 8170 of 2020



6. The petitioner has filed the Writ petition for the following reliefs:

“i. For issuance of a writ in the nature of certiorari for quashing of the letter number GS/DMH/Court Case/07/1 dated 17.07.2020 issued by the respondent number 5 being violative of the principles of natural justice and also being in teeth of the order dated 23.08.2012 passed in CWJC number 14957 of 2012 (M/s Swastika Associates Vs The Union of India and others);

ii. For further holding and a declaration that the impugned letter number GS/D MH/Court Case/07/I dated 17.07.2020 being a demand of demurrage charges issued afresh after annulment of the original demand notice dated 09.07.2012 issued in the year 2012 and never thereafter is badly barred by limitation and as such is not maintainable against the petitioner;

iii. For further issuance of a writ or order or direction restraining the respondents from executing the impugned demand of demurrage charges raised vide letter number GS/DMH/Court Case/07/1 dated



17.07.2020 on grounds of the same being barred by limitation as also being in teeth of the principles of natural justice;

iv. For grant of any other relief (s) to which the petitioner is found entitled to in the facts and circumstances of the present case.

v. For issuance of a writ in the nature of a direction upon the respondents specially the respondent Divisional Railway Manager (Commercial) Samastipur to refund the sum of Rs. 705,600/- which has been recovered from the petitioner by way of coercive method during the pendency of the above-mentioned writ application;

vi) For further issuance of a direction upon the respondents to adequately compensate the petitioner by way of payment of interest on account of coercive recovery of the demurrage charges which is otherwise illegal, misconceived and unsustainable in the eye of law."

2. The petitioner, a HUF firm, operates as a clearing and forwarding agency



works of cement Company, namely, M/s Maihar Cements having its infrastructure throughout Bihar.

3. It is contended in the Writ petition that the petitioner previously challenged the demand for demurrage charges for a sum of Rs. 7,05,600/- raised by the respondent Goods Superintendent Dauram, in a letter dated 09.07.2012, vide C.W.J.C. No. 14957 of 2012. The case was disposed of by this Court on 23.08.2012, following the order in **C.W.J.C. No. 20814 of 2011 (Sri Ram Enterprises v. Union of India & Ors.)**, and the demand for demurrage charges was quashed. The Court granted liberty to the respondents to give a pre-decisional hearing to the petitioner and then to pass a fresh order in accordance with the law.

4. It is submitted in the Writ petition by the petitioner that in pursuance of the order dated 23.08.2012 passed in C.W.J.C. No. 14957 of 2012, the respondents never issued any notice or intimation of any kind of the nature as directed by the Court, for the purpose of affording any hearing



to the petitioner in the matter of demand of demurrage charge. The respondents never raised the issue, at any point until 2020 since the order dated 23.08.2012 and nearly eight years have passed. However, suddenly, the respondent Goods Superintendent, vide the impugned Letter No. GS/DMH/court case/07/1 dated 17.07.2020, issued a fresh demand for demurrage charges of Rs. 705,600 related to the rake placed at the Dauram siding in Madhepura in 2012. It is submitted on behalf of the petitioner that the letter refers to another communication, GS/DMH/DC/06/20 dated 27.06.2020, which was never served on the petitioner. It is submitted by the Learned counsel of the petitioner that in response to the impugned letter, the petitioner replied on 22.07.2020, referring to the categorical directions of this Court as contained in the order dated 23.08.2012, which was not observed by the respondent Goods Superintendent.

5. The Learned counsel of the petitioner submitted that the impugned letter,



dated 17.07.2020 (Annexure-6), is the first communication regarding the demand for demurrage charges after the initial demand letter dated 09.07.2012, which was quashed by the Court order dated 23.08.2012. Therefore, the impugned demand is barred by the law of limitation, in terms of Articles 26 and 113 of the Limitation Act, 1963. It is further submitted by the Learned counsel for the petitioner that more than eight years have passed, since the initial demand was raised followed by the Court's order, rendering the demand of demurrage charge issued in 2020 to be stale barred by limitation. Additionally, the Goods Superintendent has failed to issue any prior notice or set a date to allow the petitioner to present their case, as directed by this Court in the 23.08.2012 order. Thus, the impugned letter dated 17.07.2020 thoroughly constitutes an illegal and invalid demand raised by the respondents, made in violation of the Principles of Natural Justice, and is therefore unsustainable in law.

6. The petitioner has brought several



orders passed by this Court in similar matter. The Learned counsel of the petitioner submitted that this Court, while considering a similar issue in the matter of **M/s Ganga Carriers Private Ltd. (C.W.J.C. No. 14780 of 2011)**, addressed a challenge made to the imposition of demurrage charges by the respondents on the grounds of denial of any pre-decisional hearing as well as an order of imposition of financial liability without providing information of reasons and facts, specially when the consignee had raised objections regarding the condition of the siding. The Court, in its order dated 13.10.2011, held that the demand for demurrage charges, being a non-speaking imposition of liability without any opportunity for the consignee to explain, was bad in law and, accordingly, quashed the demand. It is further submitted that in several of its judgments, this Hon'ble Court has decided that demurrage and wharfage penalties can only be imposed after due observance of the principles of natural justice. Failing to do so, renders such a demand illegal and



unsustainable in the eye of law. Some of the relevant orders include the orders dated 22.06.2016 passed in C.W.J.C. No. 18846 of 2013 and the order dated 08.08.2014 passed in C.W.J.C. No. 24766 of 2013. The most recent, order dated 22.06.2020 passed in C.W.J.C. No. 21861 of 2018, is on the same issue where the Court quashed a similar order on the same issue.

7. A counter affidavit was filed on behalf of respondent Nos. 4 and 5. It is submitted by the said respondents that the petitioner's case is legally untenable and factually incorrect rendering the writ petition not maintainable. It is further submitted that this Hon'ble Court, vide its order dated 23.08.2012 passed in CWJC No. 14957 of 2012 (M/s Swastic Associates v. Union of India & Ors.), directed as follows:

“In the circumstances, this writ application is disposed of and it is held that so far as prayer made in clause (ii) of Paragraph 1 is concerned, the writ application shall stand disposed of in terms of the order passed by this Court in CWJC



No. 20814 of 2011. Consequently, the impugned order dated 09- 07-2012, as contained in Annexure- 3, shall stand quashed with liberty to the respondents to give a pre- decisional hearing to the petitioner and thereafter to pass fresh orders in accordance with law"

8. It is submitted by the Learned counsel for the respondents that despite several requests followed by the office letter No. C/782/CWJC No. 14957/12/HC PAT/SA dated 28.01.2020, wherein the petitioner was asked to submit a reply/statement regarding the pending DC/WC, no response was received from the petitioner. In such circumstances, the railway administration had no option but to proceed with the recovery of the pending DC/WC. Accordingly, office letters dated 27.06.2020 and 17.07.2020 were issued, requesting the petitioner to deposit the pending DC/WC. Subsequently, the railway administration proceeded in accordance with the applicable rule.

9. It is submitted by the Learned counsel for the respondents that it is evident from



the aforementioned facts that the petitioner neither informed nor cooperated with the railway administration, contrary to the direction of this Hon'ble Court dated 23.08.2012 passed in CWJC No. 14957/2012. The Learned counsel for the respondents submitted that in view of the facts and circumstances stated above, it is clear that the petitioner is not entitled to any relief, as prayed in the writ application, and the same is liable to be dismissed.

10. A rejoinder to the counter affidavit has been filed by the petitioner and controverted the statements made in the counter affidavit.

11. It is contended by the petitioner in rejoinder that the statements made in paragraph 4 of the counter affidavit are misconceived, insofar as the claim of the respondents that the petitioner's case is bad in law and erroneous in facts and, therefore, not maintainable. The reference to the order of this Hon'ble Court dated 23.08.2012 in CWJC No. 14957



of 2012 is true and correct. The statements in paragraph 5 of the counter affidavit are false, baseless and unsupported by any evidence. Specifically concerned with the reference made to letter number C/72/CWJC No. 14957/12/HC PAT/SA dated 28.01.2020. It is contended that the petitioner never received the said letter demanding payment of demurrage charges or to show cause disputing such liability. This is further confirmed by the impugned letter of demand dated 17.07.2020 (Annexure-6), which makes no reference to the letter dated 28.01.2020.

12. It is submitted by the Learned counsel of the petitioner that the petitioner's statements made in paragraph Nos. 23, 24, and 25 of the writ application, regarding the issuance of fresh demand for demurrage charge of Rs. 705,600 raised, after the order of this Court on 23.08.2012, have not been disputed by the respondents. Thus, the claim in paragraph 5 that the letter of 28.01.2020 was issued by the respondents in order to afford an opportunity to



the petitioner against proposed demand of demurrage charge is false, misconceived and misleading. Furthermore, the impugned letter of demand dated 17.07.2020 would indicate that no reference of any previous letter dated 28.01.2020 was made rather it discussed a letter dated 27.06.2020, which is the impugned letter of demand. This attempt to justify the demand by supplementing new grounds is impermissible in law, as held by the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai (2005) 7 SCC 627**, and **Rashmi Metalliks Ltd. v. Kolkata Metropolitan Development Authority (2013) 10 SCC 95**. These decisions categorically state that an order passed by a statutory authority must stand on its own reasoning and cannot be sustained by additional reasons introduced through pleadings before the court. Accordingly, the reference to the letter dated 27.06.2020 is also flawed.

13. The Learned counsel of the petitioner submitted that the respondents ought



to have complied with the court's order by affording the petitioner, an opportunity to be heard before issuing any fresh demand, which they failed to do. It is further submitted that the statement made in paragraph 6 of the counter affidavit are false and misleading as the petitioner was never called upon to present their case against the proposed liability prior to the issuance of the demand letters dated 27.06.2020 and 17.07.2020. The petitioner was not served with any show cause notice regarding the demand of Rs. 705,600/- as demurrage charge. Therefore, it is contended that the respondents never initiated any proceedings to determine the petitioner's liability in compliance with the directions of this Hon'ble Court. The claim that the petitioner failed to cooperate or represent their case is wholly misconceived and factually incorrect. The court's order did not impose any obligation on on the petitioner to take initiative in the matter rather it was the respondents' responsibility to provide a fair opportunity of hearing, to the petitioner, which



they admittedly failed to do. Consequently, the respondents' justification for raising said demand is legally untenable. The statement made in paragraph 7 of the counter affidavit is misconceived, erroneous and deserves to be rejected by this Court.

14. The Learned counsel for the petitioner further submitted that even if the statement of the respondents, as contained in paragraph no. 5 of the counter affidavit regarding issuance of the letters dated 28.01.2020, 27.06.2020 and 17.07.2020 are accepted for a while for the sake of argument alone, the respondents case is still barred by the doctrine of delay and laches. All the aforesaid letters were issued in the year 2020 which is nearly 8 years of the order of the Hon'ble court reserving the liberty to the respondent. He further submitted that the respondents having failed to avail such liberty for an inordinate period of eight years, are not at all entitled to avail such liberty, at this belated stage and the repeated attempt to recover demand of



demurrage charges are, therefore, barred by the doctrine of delay and latches. The respondents themselves have committed deliberate delay in initiating any process afresh in order to avail the liberty granted by this Court and, therefore, they are estopped from seeking enforcement of any such claim at this juncture.

15. In support of the case of the petitioner, the Learned counsel has relied on the judgments of the Apex Court reported in (1) **(2013) 2 SCC 606: Gian Chand & Brothers & Anr Vs Rattan Lal @ Rattan Singh** (paragraph nos. 23 and 24), (2). **AIR 1973 SC 2537 : Rajendra Singh & Ors. V. Santa Singh & Ors.** (paragraph Nos. 176 and 18), (3). **(1997) 6 SCC 71 : Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim** (paragraph Nos. 2 & 3), (4) **(2002) 1 SCC 134 : Veerayee Ammal Vs. Seenii Ammal** (paragraph No. 13) and (5). **(2010) 6 SCC 193 (Eureka Forbes Limited Vs. Allahabad Bank and ors.** (paragraph Nos. 65 & 66).

16. Heard the Learned counsel for the



petitioner and the Learned counsel for the respondents.

17. Admittedly, the notices/letters were issued by the respondents after a period of eight years. Furthermore, the Letters do not disclose about the previous notices issued to the petitioner, which can be construed that the petitioner received the Letters after a span of eight years, and the respondents have not strictly complied the orders of this Court.

18. Further, the petitioner has brought on record some judgments passed by this Court in identical issue, which are annexed as Annexure - 4 series. From perusal of these judgments, it appears that a similar issue was considered in **CWJC No. 14780 of 2011 (M/s Ganga Carrier Private Limited Vs. The Union of India & Ors.)** wherein this Court by order dated 13.10.2011 (Anneuxre-3) set aside the demand notice on the ground that it violates the rule of equity and Principle of Natural Justice and observed as under in paragraph 10:-



“In the aforesaid facts and circumstances, the impugned order of the authority concerned dated 20.08.2011 (Annexure-3) is hereby 2019quashed with a liberty to the authority concerned to take fresh step after issuing notice to the petitioner and giving reasonable opportunity for a pre-decisional hearing and thereafter pass a speaking order in the matter in accordance with law.”

19. In the aforesaid facts and circumstances of the case, this Writ petition stands disposed of with similar direction as has been issued in order dated 13.10.2011 passed in **CWJC No. 14780 of 2011 (supra)**. In view of the above, the present Writ petition is also disposed of with identical direction as issued in the said judgment. Consequently, the demand notices as contained in Annexure-6 shall stand quashed. The authorities, in the present case also shall act in terms of the direction issued in the aforesaid Writ petition i.e., **CWJC No. 14780 of 2011 (supra)**.

20. Interlocutory Application(s), if



any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2025
Transmission Date	

