IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 506 of 2020

With

CAN 2 of 2018 (Old No. CAN 10266 of 2018)

Indian Oil Corporation Limited.
-Vs-
Union of India

For the Appellant : Mr. Amit Kumar Nag
Mr. Partha Banerjee

For the Respondent : Mr. Sanjit Kumar Ghosh

Heard on and Judgment on : 08.05.2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. An application under Section 16 of the Railway Claims Tribunal Act, 1987 had been filed before the Railways Claims Tribunal, Kolkata Bench being Claims Application No. OA(IIU)/KOL/2010/03423 claiming for Rs.23,94,818/- which had been erroneously adjusted.

2. The claimant being Indian Oil Corporation Limited contended that a consignment of Serve RR 407 (Servo Lube Oil) was loaded in two Tank Wagons (hereinafter referred to as 'TW') bearing No. SE 95365 and SE/77760 loaded for carriage under Invoice No. 14 and R/R No. 0086845 on 31.05.99 ex-Budge-Budge to Patrutua being two stations falling under the jurisdiction of Eastern Railways. The Consignment was despatched by I.O.C.

Ltd., to ACOS (D) Eastern Railway, Patratu containing 45 300 KL of Serve RR 407, valuing Rs. 23,94,818/-. The applicant had been the Consignor and ACOS (D) E. Rly, Patratu was the Consignee. The Railway Authority, due to their negligence, misconduct and other lapses wrongly diverted those two wagons to Sindri and delivered to FCT/Sindri. Sindri decanted those wagons with the assistance of Respondent. The booked consignment was Serve RR 407 but Sindri alleged to have received Furnace Oil. The said events were not informed to I.O.C. Ltd. which eventually learnt of the same when Rs.23,94,818/- was deducted from their P.O.L. Bill vide Railway's C.O. No. 06003476 dated 26.3.02. Notice u/s. 106 of the Railways Act could not be served in time to the Railway, as the Consignee i.e. ACOS (D) Patratu did not inform the fact within six months. Moreover notice of Claim U/s. 106 was required to be served in the case of loss, destruction, damage, deterioration or non delivery of good carried by Railway. Since the instant case did not fall within the circumstances wherein notice was required to be served under Section 106 of the Railways Act, the appellant did not comply with the same. As soon as the I.O.C.L. received the information of wrong diversion, wrong delivery and wrong classification of goods, illegal deduction of amount Rs.23,94,818/- from I.O.C.L. in P.O.L. Bill vide C.O. No.069934 dt. 26.03.02, immediately I.O.C.L. contacted the Railways to refund their deducted amount but in vain. Letter dt. 20.01.03 to FA & CAO/E. Rly. to CME/E. Rly. to the CCO/E. Rly. vide letter dt. 05.03.03, were not replied to. No action was taken against the letter addressed to CCCM/E. Rly. vide letter dt. 18.10.04 and 01.02.05.

3. The Petitioner vide letter Ref No OP/41A/C-26(ER) dated 17/09/2004 intimated that ACOS(D), PATRU TWs since consumed by FCI, Sindri, the concerned Railway should have settled and recovered the cost of product from SCI, Sindri and IOC was in no way involved in settling the claim of Railway's ACOS(D), PATRU. It was the categorical stand of the Petitioner that the concerned Railways was responsible for delivery of consigned product of the Petitioner to a different party whose name was not mentioned in the forwarding note/RR. Hence, requested for settling the claim amount without further delay Further vide letter Ref: OP/41A/C-26 dated 9/11/2004 the Petitioner had requested the ACOS (D), E. Rly, Patru to send the "Disclaimer Certificate" in respect of non receipt of the TWs originally consigned to ACOS(D), E. Rly, Patru by IOC from Ex Budge Budge. The request was made on the basis of the advice given by Chief Claim & Catering Manger, E. Rly as per his letter no EA.10/ER/19511/11/99 dated 18/10/2004 for considering the refund claim of the Petitioner.
4. In compliance with the advice of Chief Claim & Catering Manger, E. Rly, the claimant vide its letter Ref: OP/41A/C-26 dated 01/02/2005 forwarded the letter No- CSR/2/15920 dated 22/01/2005 wherein AM.M (D) E.C Railway confirmed non-receipt of the subject TWs which were wrongly delivered and consumed by FCI, Sindri. The Respondent/Railway vide its letter Ref EA1O/ 19511/11/99 dated 04/12/2006 informed the petitioner that the claim for refund of product value wrongly delivered by railway to other party namely FCI, Sindri which had consumed the same was under process for finalization of material value and freight of the subject TWs. Further it was also

intimated to the petitioner that since FCI, Sindri was inoperative, the matter had been referred to Railway Board for finalization of the claim amount of Rs. 2394818/- and requested to withdraw the claim application filed by IOCL before RCT, KOLKATA. In this regard a meeting was also held on 10/04/2006 with CCM, Eastern Railway wherein Railways authority had confirmed that FCI, Sindri had confirmed receipt of content of FO and accordingly settlement would be exercised as per the cost of FO from IOC'S side. It was further informed since contents of the TWs booked in RR was Servo RR, settlement should be arrived as per RR not FO. However, the refund till date IOCL did not receive the amount which unilaterally and illegally deducted by the respondent from petitioner's POL bill without complying its own Circular.

5. During pendency of the said claim application, several letters were written repeatedly to the respondent for release of the claim of the petitioner in connection with the refund. After much persuasion on 08.04.2008 the Chief Commercial Manager/Claims, Eastern Railway informed the petitioner that the petitioner's claim for compensation of Rs. 23,65,964/- had already been paid through adjustment against recoverable dues from the petitioner on 31st March, 2008.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences dismissed the application.
7. The Learned Advocate representing the appellant stated as follows:-
    a. There was no document produced before the Learned Tribunal which would suggest there was reconciliation amongst the parties in

relation to the unilateral adjustment of claim of the appellant by the respondent Railways against the alleged dues of the respondent Railways and therefore the impugned order under appeal was based on no evidence and/or suffered from perversity;

b. The expression "may" used in the Circular bearing No. 2000/TC-III/18/IOC dated 13th January, 2000 of the Railway Board as relied by the respondent Railways, did not authorize the respondent Railways to bind the appellant to get the claims of the appellant on account of for non-delivery of tank wagons adjusted against the unfounded and non-established claims of the railways;

c. The value of the product booked at a particular point of time could not be adjusted against the value of an identical product or different product booked at a different point of time since the value of similar products or different products in the tank wagons varied from time to time and as such the purported unilateral adjustment of claim of the appellant by the respondent Railways against the alleged dues of the respondent Railways was arbitrary and unlawful;

d. Compensation for future loss could not be made good in advance by several years as the respondent Railways purportedly did in the instant case by unilateral adjustment of claim of the appellant by the respondent Railways against the alleged dues of the respondent Railways;

e. The purported letters dated 25.02.2008 and 17.03.2008 issued by the respondent Railways was self-serving statements of the respondent Railways and could not be taken as admission on the part of the appellant;

f. There was no document produced before the Learned Tribunal which would suggest that there was reconciliation amongst the parties in relation to the unilateral adjustment of claim of the appellant by the respondent Railways against the alleged dues of the respondent Railways;

g. The Circulars bearing No. 93/TC-III/56/5 dated 06.06.1994 and 2000/TC-III/18/IOC dated 13.01.2000 issued by the respondent were not interpreted in their in true perspective;

h. The requirement of giving notice within six months from the date of payment or the date of delivery of goods at the destination station, whichever was later, was only in cases of overcharge by the Railways, which was not applicable in the instant case;

i. The Learned Tribunal did not take note of the Hon'ble Supreme Court of India in Civil Appeal No. 21862 of 2017 [*M/s Hindustan Petroleum Corporation Limited-versus-Union of India*);

j. The Learned Tribunal erred to hold that the claim application so filed by the appellant was not properly verified, signed and filed;

k. Due to the negligence only on the part of the railway authorities. the tank wagons in question were wrongly delivered to Food Corporation of India, Sindri and was consumed and/or unloaded by Food Corporation Of India, Sindri; the appellant was not even informed of the fact that the tank wagons in question were wrongly delivered to

Food Corporation Of India, Sindri and was consumed and/or unloaded by Food Corporation Of India, Sindri, which the Appellant only came to know when on March 26, 2002 the respondent authorities unilaterally deducted the amount of Rs. 23,94,818/- from the appellant's P.O.L bills vide Railway's C.O. No. 06003476;

l. The notice under section 106 of The Railways Act, 1989 could not be served on the respondent authorities within the stipulated time since the appellant was not aware of the occurrence of the fact that the tank wagons in question were wrongly delivered to Food Corporation Of India, Sindri and was consumed and/or unloaded by Food Corporation of India, Sindri;

m. There were several correspondences exchanged between the parties and the appellant had time and again requested the respondent authorities to refund the amount of Rs. 23,94,818/- deducted from the appellant's P.O.L bills;

n. The appellant never agreed to any adjustment being made towards the respondent's recoverable dues from the appellant to the tune of Rs. 23,94,818/-.

8. The Learned Advocate representing the respondent/Railways submitted that claim of the appellant was frivolous and harassive in nature. The appellant had not been prejudiced since the aforesaid claim was adjusted against the pending bills which had not been unjustified.

9. A communication of the Deputy Chief Mechanical Engineer, Eastern Railway addressing to the Chief Claim Officer, Eastern Railway, dated the 5th March, 2003 is replicated as follows:-

"No.EF/D/RSDO/Genl./Pt. IV. Kolkata, dt. the 5th March '03

Chief Claims Officer,
Eastern Railway
Kolkata

Sub:- Retrenchment on A/C of lube tank wagons
meant for Rly. but decanted by FCI/Sindri.
Ref:- 1) CCO/E. Rly's letter No.EA
10/195199/5/2001 dt. 18.1.02.
2) Sr. A.O(IC)/E. Rly's letter No.
SA/Fuel/HSD Oil/Short receipt/175 dt. 31.1.03.

In reference to your letter quoted above (1), the tank Wagon No. SE-95365 & SE-77760 amounting to Rs. 23,65,964,45 has been deducted from M/s. ICC's bill as CAO (Fuel) vide his letter No. SA/IC/HSD Oil/Short Receipt/Decantation/299 dt. 13.03.02 has stated that there is no such transaction with M/s. Sindri.

Sr. A.O.(IC)/E.Rly. vide his letter under reference (2) alongwith M/s. ICC's letter dt. 20.01.03 (copy enclosed) has stated that M/s. IOC preferred claim to refund the deducted amount of Rs.23,65,964.45. M/s. ICC in their letter have advised that claim for non-receipt of the wagon should be taken up with FCI Sindri.

This may please be examined and further necessary action taken at your end under advice to this office.

Dy. Chief Mechl. Engineer(O).

Copy to:- 1) Sr. A.C. (IC)/E. Rly. for information in reference to his letter dt. 31.01.03.

2) Dy. G.M.(F), M/s. Indian Oil Corpn. Ltd.,

Eastern Region, Indian Oil Bhavan,
2, Gariahat Road (South), Dhakuria,
Kolkata – 700 008 for information."

10. Admittedly notice under Section 106 of the Railways Act was not served upon the respondent-Railways since the instant dispute concerned erroneous delivery of goods beyond the purview of the circumstances which required notice to be served under Section 106 of the Railways Act. The appellant-Indian Oil Corporation Ltd. had filed the claim application in the year 2007 against the dispute which occurred in the year 2003 on the basis of a petition for condoning the delay in filing the same which was ultimately allowed on 17.08.2007. The records revealed of subsequent avenues of settlement adhered to by both the parties during the pendency of the claim application which was ultimately unresolved and written statement was filed by the Railways on 17.06.15. The appellant-corporation despite several dates being fixed for adducing evidence failed to appear before the Railway Claims Tribunal for a continuous period of eight years from the date of filing the claim application. A copy of the Board resolution entitling the applicant the authority to file the complaint case was not filed. The appellant-claimant did not appear before the aforesaid Tribunal on 04.08.17, 11.12.18, 14.03.18, 03.05.18, 06.08.18 for adducing evidence as well as hearing of the application. The claim application filed by the applicant was not properly verified and signed. The appellant-corporation claimed that a sum of Rs.23,94,818/- was wrongly deducted from their POL Bill vide Railways CO7 No.06003476 dated 26.03.02 was without jurisdiction to adjust the claim

with other bills and as such the aforesaid amount along with cost and interest should be refunded.

11. The act on the part of the appellant expressing reluctance intending to delay the disposal of dispute in a protracted manner despite the admission on the part of the respondent-Railways to have adjusted the aforesaid sum against other bills could not be accepted. The admission on the part of the respondent-Railways in the process of on-going transaction between the parties could not have resulted in a litigation involving unnecessary and undue expenditure of public money since both the departments are owned by the Government. The statement of accounts should have been corrected and updated with fresh statement of transactions from time to time being specific in its records pertaining to tank wagons, endeavour on the part of the respondent/Railways was evident from the communication dated 05.03.2003 as stated above.

12. The appellant raising a question with regard to the adjustment of the aforesaid amount to have been excessive or illegal cannot be accepted. It can only be agitated that the adjustment as aforesaid to be erroneous, subject to rectification/adjustment obliterating the occasion of a deliberate wrong-doing detrimental to the financial interest of the petitioner. Since the appellant and the respondent did not severe its commercial relationship on account of such adjustment in the sphere of prevailing accounts of transaction to be billed against the tank wagons in other sectors/stations, such adjustment could not be termed as illegal, excessive or overcharge. The appellant having given numerous occasions to be present before the Tribunal

failed to represent its case exhibiting disregard and evasion towards judicial process initiated by it.

13. The impugned judgment and order passed by the Learned Tribunal stating the facts and circumstances of the case meticulously does not require the interference of this Court.
14. Accordingly, the instant appeal is dismissed.
15. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
16. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)