IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A.T (IR) 8 of 2023

Union of India
-Vs-
Indian Oil Corporation Ltd.

For the Appellant	: Mr. Sayani Roy Chowdhury
For the Respondent	: Mr. Amit Kumar Nag Mr. Partha Banerjee
Heard on	: 06.12.2024
Judgment on	: 08.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading "For Hearing" for further clarification.
2. The Learned Advocates representing the respective parties are present.
3. The instant appeal had been filed against the judgment passed on 15.12.2022 in the review application by the Hon'ble Member/Technical (RCT) Guwahati at RCT Kolkata Mr. Tanveer Ahmed, in the Claim Application No. OA/III/KOL/01/2020 and Review application No. Rev-A/0006/2022 under 16 of the Railway Claims Tribunal Act, 1987 by the Petitioner/Judgment Debtor.
4. The respondent i.e. the Indian Oil Corporation filed an application under Section 16 of the Railway Claim Tribunal Act claiming a sum of

Rs.17,04,647/- towards refund of freight collected wrongly by the forwarding station on "paid RR" basic. The Indian Oil Corporation being the consignor booked BTPN tanks wagons loaded with High Speed Diesel (HSD) ex. Haldia on South Eastern Railway for delivery at four fuelling points at Andal, Rampurhat, Burdwan and Howrah. In all the four receipts railway was consignee at four delivery points. It was the contention before the Railway Claim Tribunal by the Indian Oil Corporation that at all the four forwarding station Railway wrongly charged "Paid R/R" instead of "To Pay R/R" violating Railway Board Circular No.TCR/1078/2006/15 dated 27.02.2017 resulting which the Indian Oil Corporation sustained loss to the tune of Rs.17,04,672/-. By judgment dated 16.03.2022 the claim of the Indian Oil Corporation was admitted and an order was passed directing the Railways to pay a sum of Rs.17,04,672/- towards refund of freight wrongly collected from the Indian Oil Corporation along with interest at the rate 12% per annum from the date of filing of the claim application till the date of payment.

A review application was preferred by the Railways challenging part of the order to the extent of awarding 12% interest per annum from the date of filing of the claim application till the date of payment. The review application was dismissed holding that Indian Oil Corporation being a commercial organization which had been deprived of its working capital to the extent of the freight was overcharged. The Tribunal also was of the opinion that Prime Lending Rate should be the guiding factor while awarding interest. The Prime Lending Rate was hovering around 12% plus.

The appellant being the Railways had challenged the order to the extent of awarding 12% per annum interest. The Railway as on date inspite of accepting the order had filed to pay the freight charges wrongfully deducted from the Indian Oil Corporation. The specific case in present appeal by the railway was to the rate of interest awarded to the extent of 12% per annum.

5. The learned advocate representing the appellant argued that:-

   i. The Tribunal imposed "*12% interest p.a. from the date of filing of claim application till the date of the payment within 30 days from the date of this order*" which was exorbitant in present scenario.

   ii. Moreover there was no provision in Railway Act and Rules to award interest on compensation or on refund. The Ld. Tribunal could award interest keeping in view of provision Section 34 of Civil Procedure Code and Interest Act, considering the conception transactions and "commercial entity".

   iii. The Learned Tribunal directed the rate should be 'DEPOSIT RATE', however also observed 'PRIME LENDING RATE' as I.O.C. had been a commercial entity.

   iv. The decision of the Supreme Court in the *Dhampal & Ors. vs UP State Road Transport* categorically mentioned "Rate at which interest is to be awarded would normally depend upon the bench rate prevailing at the relevant times" which was not adhered to.

   v. The Learned Tribunal vide its judgment dated 16.03.2022 directed the South Eastern Railway to pay compensation of Rs.17,04,672/- towards refund of freight collected from consignor in addition the applicant was entitled to get Rs.10,990/- towards refund of application fees and lump sum amount of Rs.2000/-towards advocate fees plus interest @ 12% p.a. from the date of filing of claim application till the date of the payment.

6. The advocate representing the respondent argued as follows:-

i. The appellant has challenged the Judgement/ Order dated 16th March 2022 passed in Original Application being Claim Application No. OA/III/KOL/01/2020 and also the Judgement and Order dated 15th December 2022 passed in Review Application being Rev-A/0006/2022 under 16 of the Railway Claim Tribunal Act, 1987.

ii. The Indian Oil Corporation filed an application under Section 16 of the Railway Claim Tribunal Act claiming a sum of Rs. 17,04,647/- towards refund of freight collected wrongly by the forwarding station on “paid RR” basic. The Indian Oil Corporation being the consignor booked BTPN tanks wagons loaded with High Speed Disel (HSD) ex. Haldia on Southeastern Railway for delivery at four fuelling points at Andel, Rampurhat, Burdwan and Howrah. In all the four Railway Receipts Railway was the consignee at four delivery points. It was the contention before the Railway Claim Tribunal by the Indian Oil Corporation that at all the four forwarding station Railway wrongly charged “Paid R/R” instead of “To Pay R/R” violating Railway Board Circular no. TCR/1078/2006/15 dated 27.02.2017 resulting which the Indian Oil Corporation sustained loss to the tune of Rs.17,04,672/-. By judgement dated 16th March 2022 the claim of the Indian Oil Corporation was admitted and an order was passed directing the Railways to pay a sum of Rs. 17,04,672/-towards refund of freight wrongly collected from the Indian Oil Corporation along with interest at the rate 12% per annum from the date of filing of the claim application till the date of payment.

iii. A Review application was preferred by the Railways challenging part of the order to the extend of awarding 12% interest p.a. from the date of filing of the claim application till the date of payment. The review application was dismissed holding that Indian Oil Corporation being a commercial organization which has been deprived of its working capital to the extent of the freight was overcharged. The Tribunal also was of the opinion that Prime Lending Rate should be the guiding factor while awarding interest. The Prime Lending Rate was hovering around 12% plus.

iv. The appellant herein being the Railways has challenged the order to the extent of awarding 12% p.a. interest. The Railway as on date in spite of accepting the order has filed to pay the freight charges wrongfully deducted from the Indian Oil Corporation. The specific case in present appeal by the railway is to the rate of interest awarded to the extent of 12% p.a.

v. It had been placed before the Hon'ble Court that the Prime Lending Rate of the State Bank of India during the period when the application had been filed by the Indian Oil Corporation was more that 12% p.a. Therefore, the order passed by the Railway Tribunal awarding interest at the 12% p.a. interest was as per the prevailing interest rate at that period. The respondent had also relied on two decisions of the Hon'ble Supreme Court being (2024) 1 SCC 479 (Reliance Infrastructure

Limited-vs- State of Goa) and 2019 (2) M.P.L.J 249. The respondent further submitted that Section 34 of the Code of Civil Procedure relied upon by the Learned Advocate representing the appellant empowered the Civil Court to grant interest more than 6% in case of a dispute arising out of commercial transaction. It had also been argued that the Hon'ble Supreme Court had also not resettled the rate of interest passed by the Tribunal in the case of Reliance Infrastructure Limited thereby upholding the rate of interest at the rate of 15% passed by the Tribunal showing that without any just cause or reason the rate of interest passed in a particular case cannot be reduced. The respondent stated that the rate of interest awarded by the Learned Railway Tribunal was as per the fact of the case considering that the respondent had been wrongfully deprived of its money and the prime lending rate at that period of time was more than 12% plus.

vi. The respondent states that the Railway has failed prove as to why the rate of interest at the 12% is bad and/or is not justifiable. It has not been able to place a single document that interest cannot be passed more than 6% by Tribunal as contended by the Railways in commercial transactions.

vii. The respondent states that there is no straight jacket rule that interest on and above 6% cannot be passed by tribunal in case of commercial transactions as such the present appeal be dismissed with cost directing the appellant to forthwith pay the amount of Rs.17,04,672/- along with interest at the rate of 12% per annum from the date of filing of the claim by the respondent to till the ate of payment.

7. A claim application was initially filed by the Indian Oil Corporation Limited under Section 16 of the Railway Claims Tribunal Act, 1987 for Rs.17,04,672/- towards refund of freight collected erroneously. The Learned Tribunal vide judgment dated 16.03.2022 directed the South Eastern Railway to pay compensation of Rs.17,04,672/- towards refund of freight collected from consignor, in addition the applicant was entitled to receive Rs.10,990/- towards refund of application fees and lump sum amount of Rs.2000/- towards advocate fees plus interest @ 12% per annum from the date of filing of claim application till the date of payment within 30 days from the date of the order.
8. The Railway Administration partially accepted the award as to the refund of Rs.17,04,672/- plus application fees and advocate fees. However, the major issue of disputation is contextually the payment of 12% interest p.a. from the date of filing claim application till the date of payment to I.O.C., which according the appellant had been excessive.
9. The Railway Claims Tribunal, Kolkata Bench as well the review authority successively held the Prime Lending Rate to be 12% as fair and just. Incidentally both the disputants are owned by the Government of India, where the flow of fund from one of its Sector will be transferred to the other Sector in public services, without the involvement of any private organisation, entity or individual. One public sector undertaking is to discharge its liability towards another public sector undertaking, with the fund being centralised and allocated to different departments and/or sectors

for its operation and/or functioning without the scope of generating profit through a third party. Under such circumstances, to lessen the burden of feasibility the interest to be paid @ 12% is reduced to 6% per annum from the date of filing of the claim application till the date of its actual realization.

10. The appellant/judgment debtor is to disburse a sum of Rs.17,04,672/- (Rupees seventeen lakh four thousand six hundred seventy two only) towards refund of freight collected from the consignor. In addition, the applicant is entitled to get Rs.10,990/- towards refund of application fee and a lump sum amount of Rs.2000/- towards advocate's fee plus interest @ 6% per annum from the date of filing of the claim application within 4 months from the date of passing of this order.
11. In view of the above discussion, the instant appeal being FMAT (IR) 8 of 2023 stands disposed of.
12. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
13. Copy of the order be sent to the Department as well as concerned tribunal for information.

(Ananya Bandyopadhyay, J.)