

27.03.2025
Court No. 25
S.G. (p.a)

WPA 8812 of 2023

Harish Sharma
Vs.
Union of India & Ors.

Mr. Saptarshi Roy
Ms. Kakali Das Chakraborty
... for the Petitioner.

Mr. Kalyan Kumar Chakraborty
... for the Railway.

Mr. Ansar Mondal,
Mr. Swapan Kumar Pal,
Ms. Somashree Dey
...for the State

1. The petitioner, who is a leased parcel space operator with the respondent Railway, has filed the instant writ petition with prayers (i) for reweighment of empty tare parcel van bearing No.VPH-S.E.-118832, attached to the train No. 12905-12906, (ii) for direction upon the respondent south-eastern railway and the Controller, Legal Metrology to repair the in-motion weigh bridge, installed at Shalimar, (iii) for direction upon the respondent south-eastern railway to refund the punitive charges to the tune of Rs. 4,99,855/- and haulage charges to the tune of Rs. 44,604/-, submitted by the petitioner to the said respondent, under compulsion of releasing his goods from its custody and (iv) for consideration of his representation dated April 3, 2023, by the respondent south-eastern railway.
2. The petitioner's case is that his consignment has been reweighed at the destination station

and according to Mr.Roy learned counsel for the writ petitioner the said action is itself bad in law, being beyond the scope of provisions as enumerated in the circulars, governing the parties. Over and above challenging the act of reweighment of the consignment at the destination station, the petitioner has also challenged the readings after reweighment, on the allegation that on the relevant date and time the in-motion way bridge at Shalimar station was not in a fit condition and was not working properly resulting into erroneous reading of enhanced weight of the consignment of the petitioner, though the consignment carried the goods of static nature not subject to change in weight due to weather condition or any other factor. Therefore, the petitioner has challenged imposition of penal charges against him for carrying extra weight than was permissible, as he says that reweighment of consignment at the destination station has been an erroneous and bad exercise in the eye of law and on the top of it the machine reading has been erroneous, the weighing machine not being in order.

3. It is necessary that the factual background of the case be stated in a nut shell, which is as follows:
4. The petitioner is the leased parcel space operator with the respondent/ Railway and booked one parcel van on December 20, 2022, being No. VPH SE-118832, having carrying capacity of 23 tonnes in train No. 12905-12906, originating from the station Porbandar, for onwards transportation to Shalimar, being the

destination station within jurisdiction of South-Eastern Railway. There is a dispute with regard to the weighment of the consignment at the said destination station, when the petitioner's consignment has been reweighed and found to be in excess of the permissible limit. Thus, the petitioner has been penalised with fees to the tune of Rs. 4,99,855/- on the charge of overload of consignment by 8.13 tonnes of goods. The petitioner ultimately has taken delivery of consignment after payment of the punitive charges as well as haulage charges, on December 24, 2022, as demanded by the Railways, though under protest and without prejudice.

5. In the present writ petition, the petitioner has come up with his allegations and contentions that imposition of penal charges as above against him by the respondent/Railways, is a result of erroneous assessment of weight of the consignment by the same. The petitioner has inter alia stated that at the originating station, there has not been any issue with regard to the overweight of the consignment, neither it has ever been detected, as regards to the consignment of the petitioner, in any station, on the route. However, at the destination station, the weighment machinery like the in-motion weigh bridge, has not been functioning properly resulting into not only erroneous but erratic reading of weight of the said consignment. Therefore, the petitioner has urged that any error in the weight of consignment, if claimed to have been detected by a machine, which suffers malfunction due to ill maintenance, should not

be slapped against the petitioner holding him responsible for the same and penalising him for the said reason.

6. Hence, in this writ petition, he has prayed for a relief that reweighment of empty tare as well as repair of in motion weighbridge be made and the penalty amount and haulage charges, as recovered from him, be directed to be refunded in his favour by the respondent/Railways.
7. By referring to the relevant provision of the Freight Marketing Circular No.7 of 2021, Mr. Roy has stated that weighment of leased/indented parcel vans is stipulated to be done at the originating stations only (as per clause 1.1, of FMC No.7 of 2021). He says further that even in case weighment is done at the destination point, the same has to be done in presence of the representatives of the consignor/consignee and two gazetted railway officers, one from commercial or operating department and the second from any other department (as per clause 3.2, of FMC No.7 of 2021) and in each case, the women sheets shall be countersigned by the representatives of the consignor/consignee/leaseholder (as per clause 4.0 of FMC No.7 of 2021). In the petitioners's case, neither of these provisions has been complied with by the respondent railways, he says. Therefore, the conditions for weighment of consignment at the destination station as propounded under the relevant circular of the respondent railways, having not been complied with or fulfilled, the weighment done at

Shalimar, the readings thereof and the consequent imposition of penalty therefor, are de-hors the law and not maintainable, Mr. Roy has stated.

8. Thereafter, Mr. Roy has also stated that even if the consignment is weighed for the second time at the destination station, it is necessary that the weighing machine remains in order, for an appropriate assessment of whether the weight is beyond the tolerance limit as prescribed or not. Allegedly the in-motion weigh bridge at Shalimar station has not been in order on the date of second weighment of the petitioner's consignment and since thereafter. It has produced erroneous readings each and every time, weighment of the empty parcel van is done pursuant to the directions of this Court, Mr. Roy has informed.
9. Mr. Roy has referred to the two earlier decisions of this Court, wherein the Courts have declined to rely on the reading of the said in-motion weigh bridge, having found the same not in order. Those are order dated April 8, 2022 (in WPA No. 9575 of 2021 and other writ petitions) and order dated January 6, 2023 (in WPA No.29148 of 2022). It is submitted that in the light of the factual background of the cases, this Court, in order dated April 8, 2022, has drawn presumption against the in-motion weigh bridge to be in order, has found negligence by the railway Authority in maintaining the same and dereliction of duty on part of the Legal Metrology too, in doing appropriate check up and furnishing health report duly and regularly, in

terms of the provisions as stipulated regarding the said weigh bridge to be in order. The Court has even imposed cost upon the railway Authority in those cases and also directed for refund of the penalty amount as was submitted by the writ petitioners. In the other case, as mentioned above, the Court has directed for reweighment of the empty parcel van and checking of in-motion weigh bridge at Shalimar, in presence of the petitioner and the Controller, Legal Metrology or his authorised agent, within a stipulated time period. Even then, allegedly, the exercise as above has been done by the respondent Authority, in violation of the Court's order, in so far as the weighment and checking of weigh bridge has not been done in presence of the petitioner's representative.

10. Mr. Roy has stated that according to the Railway Commercial Guidelines, testing of weigh bridges by the 'Weigh bridge Inspector' on half yearly basis and furnishing a certificate thereof by him for display at the weigh bridge house, is a mandatory prerequisite for considering the weigh bridge in order and relying on the readings thereof (as per clause 1431. of the Railway Commercial Guidelines). Mr. Roy has further stated that so far as the weigh bridge at Shalimar station is concerned, any such certificate of internal inspection thereof is also not available. Therefore, as a whole, for the respondent railways there has not been available or cogent material on the basis of which it could have come to a just decision. Instead, what decision it has taken regarding the consignment of the petitioner being

overweight, on the basis of erroneous reading of the in motion weigh bridge at Shalimar, is hardly proper and reliable, for the reason the the in motion weigh bridge at Shalimar station has not been in order. hence, according to the petitioner, the penal charges have been levied against him, only irrationally and unreasonably, depending on erroneous data from an weighing instrument which has been out of order at the relevant point of time.

11. The railway Authority/respondents nos. 1 to 4 as well as the Controller, Legal Metrology/respondent No.5 have contested in the present case by filing their respective affidavits.

12. As per the report in the form of an affidavit filed by the respondents no. 2 to 4, in terms of the Court's direction, it had arranged for a joint inspection programme at Padmapukur, Shalimar on January 17, 2023 at 10:00 a.m. It has stated that the representative of the petitioner, namely, Sri Perth Singh was present. According to the said respondent, testing of wagon on VP No. SE118832 was completed at about 8:07 p.m. on the said date. However, that the said representative of the petitioner had left the place at about 6:30 p.m., without signing on the weighment report. Therefore, according to the respondents nos. 2 to 4/Railways there is no deviation by the said respondents in duly complying with the Court's earlier order dated January 6, 2023 as regards re-weighment of the empty parcel van and inspection of the

performance of the in-motion weigh bridge. Also that, in spite of the due notice and in spite of initially being present, the representative of the petitioner voluntarily left the place without the process being completed, thereby trying to frustrate the entire exercise done by the Railways in terms of this Court's order.

13. Respondent no. 5/the Controller of Legal Metrology, Government of West Bengal has also filed a report in this case in the form of an affidavit. This respondent has also relied on the documents as annexed with the 'Notes of Argument', submitted by him. There it has not only stated in support of the respondent/Railways regarding due conduct of re-weighment/inspection in terms of Court's earlier order dated January 6, 2023 but also laid down that the in-motion weighbridge at Padmapukur, Shalimar has been found in proper working condition and no irregularity as regards the weighment of the empty parcel van was detected. It has stated that verification of automatic in motion rail weighbridge has to be done in compliance with the provisions as prescribed under the Legal Metrology General (Rules, 2011) in the 7th Schedule, Heading-C thereof. In the 7th Schedule, Heading-C, Part- II, Paragraph – 2 (2) of the said Rules, the provisions have been made for "Maximum Permissible Error (MPE)", it has stated that, any reading within the MPE can be treated as correct reading. It has stated further that the minimum operating speed and maximum operating speed of the automatic rail weighbridge are 1 km/h and 15 km/h

respectively, as per the model approval certificate it says that, if the train does not pass on the automatic rail weighbridge within the range of the operating speeds as mentioned above, the readings obtained may be subject to error. In its said affidavit, the respondent no. 5/Controller of Legal Metrology has further stated that on the particular date of examination, that is on January 17, 2023, the weighbridge has been checked for accuracy by way of making the reference wagons to pass through the same at different speeds within the operating range of speed and by this way, total 60 readings were noted. Upon inspection of the automatic in-motion weighbridge on the date of inspection as above, it is the report of the said authority that, the deviation, if any, obtained in the readings are within the limit of Maximum Permissible Error (MPE), as specified in Para 2 of Part 2 of 7th Schedule, Heading – C of the Legal Metrology (General) Rules, 2011. Thus, according to the set standards, the respondent no. 5 has stated on oath that the in-motion weighbridge was found operating in accordance with the said standard. This respondent has further stated in its report that the tracks became available for conducting re-weighment of the empty wagon at about 5:00 p.m. in the evening, on the stipulated date and the process was conducted and completed at about 8:00 p.m. on that date. It has stated further that the representative of the petitioner, though was present at the initial point of time, but could not make himself available at the relevant time of inspection of the wagons and left the place. The respondent no. 5 has stated that the Maximum

Wagon Weight of the Automatic Rail Weighbridge is 140 t Scale interval (d) is 200 kg and it belongs to Accuracy Class 1 Declared Weight of the Empty Parcel Van bearing VPH No. 118832 was 32.0 t demarked on the back side of the parcel van and the calculated maximum permissible error of the Automatic Rail-Weighbridge for the declared weight of the Empty Parcel Van was determined as per Para 2(2) and para 2(8) of the Part II of Schedule C to the Legal Metrology (General) Rules, 2011. Thus, according to the said respondent, the weight of the reference wagons were found to be within the allowed and permissible maximum range of error, and also the automatic rail weighbridge was found to be in conformity to the standards established by the Legal Metrology Act, 2009 and the Rules made thereunder.

14. The first question is whether after reaching the train at the destination, the Authorities could have rightfully done the reweighment of the consignment consisted with the hard parcel goods and if so, what are the formalities required to be maintained for the same. Admittedly reweighment of the consignment of the writ petitioner has been done at the destination at Shalimar station, upon the train reaching there on December 23, 2022. Admittedly also that at the time of loading of the consignment at the originating station two days back, that is on December 21, 2022, when the said consignment has been weighed in terms of the mandatory provision in the statute, no overweight has been detected as alleged. Therefore, the consignment has travelled

peacefully through, there having not been any similar kind of allegation enroute, at any station in between.

15. As per provision under 'clause 3.2' of the Freight Marketing Circular No.7 of 2021, surprise check is permitted to detect overloading, if any, at the destination point of the train. Process has been laid down there as to how the excess weight is to be calculated. It has further been provided that such detection/calculation of the excess weight is to be done in presence of the representative of the consignor/consignee and two gazette railway officers from the departments as specified therein. Punitive charges, if any, would be subject to the excess payload so determined.

16. The 'clause 3.2' of the Freight Marketing Circular No.7 of 2021, is to ensure transparency and fairness in the process of determining excess weight, if any. The imminent danger to the safety security of the train due to overweight etcetera, is not there when the Authority is paying surprise check to determine overweight if any, in terms of 'clause 3.2' of the Freight Marketing Circular No.7 of 2021. Exercise of weighment of the consignment at the originating station is principally meant for that, when overweight consignment, if any would not be allowed to be boarded in the parcel van, unless the weight thereof is reduced to the tolerance level. Therefore the purpose of the whole exercise as enumerated in 'clause 3.2' of the Freight Marketing Circular No.7 of 2021, is to determine if the provisions of the contract is flouted by the lessee or to prevent any malafide

disposition on his part, while operating pursuant to the agreement entered into by him. In such circumstances the rules of fair play demands bonafide, transparency and fair play in the process to be undertaken by the respondent Authority. These objectives are subserved by duly complying with the provisions under 'clause 3.2' of the Freight Marketing Circular No.7 of 2021, in case of 2nd weighment of the consignment at the destination station, if done. On the contrary, noncompliance of the provisions therein, would render the entire process of reweighment of the consignment at the destination station, not only devoid of due compliance with the provisions of the Circular as above but also an arbitrary and unfair exercise and abuse of power by the said respondent Authority.

17. In the present case, the weighment of the petitioner's consignment has been done on December 23, 2022, at the destination station Shalimar, in absence of the petitioner or his representative and without any representation by the Controller, Legal Metrology. The entire process was done and concluded by the officers of the Railway only. This fact is also an admitted one in this case, never being disputed or denied by the respondent Railway. Hence, there has been a gross violation of the provisions of 'clause 3.2' of the Freight Marketing Circular No.7 of 2021, in case of 2nd weighment of the petitioner's consignment, after the train has reached the destination station on December 23, 2022. Therefore, even if for the argument's sake, it is held that on the relevant day, the in motion

weigh bridge at Shalimar station has been in order, the process undertaken by the respondent for reweighing the consignment has not been in conformity with the statute, therefore is unfair, arbitrary and illegal. Since fall out of the action taken by the respondent Authority would result into penal action, the process has to be fair with adequate proportion of participation by the alleged defaulter too, as provided in the rules and regulations. A process undertaken if deficient, as it is in the present case, to duly comply with the relevant provisions of the rules and regulations, the result arrived at regarding over weight and consequent imposition of the penal charges, is therefore perverse and not maintainable in the eye of law.

18. It is also worth noting that in terms of clauses 1.1 and 3.4 of the Freight Marketing Circular No.7 of 2021, it is only at the originating station from where the train starts, the physical verification if any, in terms of the clause 3.2 of the said Circular, of the duly weighed parcel van/rake loaded with standard packets of uniform sizes, has to be done and not otherwise. Also that as per clause 27.8 of the modified policy guidelines on 'Comprehensive Parcel Leasing Policy' dated April 15, 2014, weighment has to be made in presence of the leaseholder or his representative and the report of weighment result should be counter signed by the CPS and the concerned party to be binding on the parties. Therefore, one can find that the 2nd weighment of standard packets of uniform sizes is virtually barred as per provisions of the said Circular. On this score, the purported action of

the respondent Railways is found to be de-hors the statute. Also that due to violation of the provision of said 'Comprehensive Parcel Leasing Policy' regarding countersignature and absence of countersignature on the record, would render the weighment result as invalid.

19. The other allegation is with respect to the in motion weigh bridge at Shalimar station to be persistently not in order, to produce only the erroneous readings as regards weight of the consignments. The petitioner has alleged that even if assuming but not admitting that the respondent Railway has undertaken a valid exercise in the eye of law by conducting the 2nd weighment at the destination station as well as by doing that in absence of any representative of the petitioner or the Legal Metrology department, the incoherent and erratic data achieved thereby as regards the weight of empty tare, would clearly suggest that the weighing machine that is the in motion weigh bridge, has not been in order when the weight was measured. A 3rd weighment of the empty tare of the parcel van operated by the petitioner, has been done pursuant to the Courts order dated January 6, 2023 (in WPA No.29148 of 2022).

20. In consideration of the dire requirement of maintaining a proper weighing machine in place, several provisions have been made to ensure regular periodical check up and maintenance of such weighing machine. The department of Legal Metrology of the State Government is entrusted for verification of the machine. Also, that clause 1431 of the 'Commercial Guideline'

of the Railway has provided that weighbridges should be tested every half yearly, by the qualified and duly trained 'Weigh bridge Inspector', who should issue a certificate of proper adjustment and testing been made each time, for being displayed in the weighbridge house, till the time the next certificate is issued after the next half-yearly tests are concluded. Admittedly, no such certificate is available for in-motion weigh bridge at Shalimar, not only at the relevant point of time, but also previous and subsequent to that.

21. The Department of Legal Metrology of Government of West Bengal, who is respondent no. 5 in the present case, has filed several reports in this matter. Though they have made out a case that the in motion weighbridge has been regularly checked and verified by the same and for the relevant period, there has not been any disorder therein, they have not come up with any corroborating document, particularly, regarding their certification of the in motion weighbridge at Shalimar, being in order. They say that the certificate of verification issued by the Department shall be valid for one year, that is, till February 03, 2023. Therefore, according to the said respondent, the verification certificate as above, duly covers railway in motion weighbridge at Shalimar at the relevant point of time, certifying the same to be in order. However, no material has been produced in this case to show that, such certificate has ever been exhibited at any conspicuous place, in terms of Rule 22 of the Legal Metrology (General Rules, 2011).

22. Record reveals that, in terms of Court's direction dated January 6, 2023, the decisions were held for ascertaining weight of the empty tare of the parcel van on January 17, 2023. The petitioner has raised dispute as to why as many as 60 readings would be necessary to come to a definitive finding. To the question so raised by the petitioner, the Railway however, shall not have a justifiable explanation. They have only stated in their report that, 60 readings were taken and according to the report of the Legal Metrology, each time the weight of the reference wagons were found to be within the allowed and permissible maximum range of error. Also that the automatic Rail weighbridge was found to be in conformity to the standards established by the Legal Metrology Act, 2009 and Rules made therein. The Court further finds that though having ascertained that 60 readings were taken on the particular date, the final decision of the authorities was based upon only a few of those and the others were left aside, without any plausible reason. It is necessary that reasonable explanation should be there, as to why from amongst all, some particular readings are taken for consideration, leaving aside rest of those. In the present case, there is no such explanation by the Railway authorities. Therefore, there is no clear reason, as to why in spite of taking 60 readings as regards the weight of the empty wagon, some would be taken note of and why and the rest would be left aside. This is a gross procedural latch, unjust and improper to render the entire process to be vitiated being irrational and unreasoned.

23. On consideration of the same, the Hon'ble Co-ordinate Bench has previously held in its order dated April 8, 2022 that, adverse backward presumption is to be drawn against the Railways and inference be drawn, that the weighing instrument was defective at the material point of time, that is, in and around January 23, 2022, as is the material date in the instant case also, giving rise to the wrong recording of the measurement of the petitioner's consignment. The ratio of the decision of the Hon'ble Co-ordinate Bench as above, would be squarely applicable in the present case too, thereby drawing the backward adverse presumption as against the stand of the respondent Railways as well as Legal Metrology that, on the relevant date, the in motion weighbridge at Shalimar station has been in order.

24. The Court cannot also overlook that even for the third time, when the empty wagons were measured by the authority, the petitioner's representative was not present. Parties have different versions in this regard, obviously contrary to each other. The petitioner says that, due to enormous delay and after waiting for several hours, his representative was compelled to leave the place, whereas the Railway says that, in spite of service of notice and due receipt thereof, no one was present on behalf of the petitioner at the time of examination of the empty rake. Be that as it may, fact remains that, even at the time of weighment of the empty rake, as per the Court's order on January 17, 2023, the said exercise was done in absence of the petitioner's representative. That violates not only

the Court's order but the statutory provision too, thereby rendering the action of the petitioner as non-transparent, unfair and arbitrary.

25. Therefore, on the premise of above, the Court finds there would not be any justifiable ground for the respondent/Railways to assess and impose any penalty amount on the allegation of the petitioner's consignment being overweight as from the very inception the process of ascertainment of overweight, if any, at the destination station has been an erroneous exercise, contrary and in contravention of the statutory provisions as well as rules of practice and the Court's order. Hence, imposition of penalty and haulage charges, to the tune of Rs. 4,99,855/- and Rs. 44,605 respectively is illegal and not maintainable. Since the petitioner has already submitted the penal charges and haulage charges as above with the respondent railways, it is hereby directed that the respondent/Railways shall immediately refund the amount of penal charges and haulage charges as submitted by the petitioner in its credit.

26. Let the said respondent refund the penal charges and haulage charges as above, to the writ petitioner within a period of four weeks from the date of communication of this order. With the directions as above, the present writ petition is allowed and disposed of along with applications pending, if any.

27. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)