

14

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 3769/2002

JAYASWALS NECO LTD. Petitioner

Through: Mr. Neeraj Kaul, Sr. Advocate
with Mr. Prateek Jalan and
Mr. Nirnimesh Dube, Advocates

VERSUS

UIO & ORS. Respondents

Through: Mr. Rajesh Tikku, Advocate

DATE OF DECISION: AUGUST 06, 2004CORAM:

Hon'ble Mr. Justice T.S. Thakur

✓ 1. Whether reporters of local papers may be allowed to
see the judgment?

✓ 2. To be referred to the Reporter or not?

✓ 3. Whether the judgment should be reported in the
Digest?: T.S. THAKUR, J.

In this petition for a writ of certio rari, the petitioner company calls in question the legality of a demand raised by the respondents for the recovery of what is described as 'undercharge' in connection with certain consignments transported by the railways. The facts giving rise to the filing of this petition are few and may

be summarised as under :

2. The petitioner company is engaged in the manufacture of Pig Iron at Raipur in the State of Chattisgarh. The stocks so manufactured are transported by rail and/or by road from Raipur to various distributors and customers all over the country. The respondents have provided a dedicated railway siding in the proximity of the petitioner's plants at Siltara known as 'Nackast railway siding' under the Mandhar railway station. For the transport of goods by rail, the petitioner places an indent upon the Station Superintendent, Mandhar station for carriage to various destinations. A railway receipt indicating the freight charges is issued to the petitioner which the petitioner is required to pay before the goods are loaded in the wagons. The charges are determined on the basis of what is called 'wagon load facility' or 'train load facility'. In the case of wagon load facility, the charges are calculated on the number of wagons to be transported to a particular destination. In the case of train load facility, the entire rake consisting of a much larger number of wagons is transported at the request of the customer. This facility can, according to the petitioner, be availed for one destination or a combination of two destinations subject to the approval of the Railways Authorities.

3. In the month of August-September, 1998, the petitioner appears to have approached the Station Superintendent, Mandhar for

16

transport of goods to Delhi Kishan Ganj and Ghaziabad by 'Two point train load facility' and to Ludhiana and Jalandhar separately also by a similar facility. A letter dated 11th September, 1998 requesting respondent No. 6 to arrange the supply of 58 N-boxes two point rake with train load facility to transport 29 boxes to Delhi Kishan Ganj and another 29 boxes to Ghaziabad was submitted to the Station Superintendent, South-Eastern Railway, Mandhar. In response to the said letter, the Station Superintendent issued a communication dated 11th September, 1998 informing the petitioner that its request for 29 N-box to Delhi Kishan Ganj and 29 N-box to Ghaziabad via KMZ, TKD had been accepted and the rake placed in the petitioner's railway siding for loading purposes. The petitioner appears to have paid a sum of Rs.39,02,025/- as freight charges in terms of railway receipts issued in its favour. The cargo was accordingly loaded and transported by the railways to his destination at Delhi Kishan Ganj and Ghaziabad and released at the said stations without any objection.

4. By another letter dated 23rd September, 1998, a similar request, it appears, was made by the petitioner for a similar 'two point rake' with 33 boxes for Dhandhari Kalan (Ludhiana) and 25 boxes for Kartarpur, Jalandhar with train load facility. The freight indicated on the RR was deposited and the consignment transported and delivered at the

destination without any objection.

5. A third consignment was similarly transported to Dhandhari Kalan and Kartarpur on payment of the freight charges indicated in the railway receipts issued by the respondents.

6. Three years after the transportation of the goods, the respondents raised a claim for further payment on the ground that the 'two point train load facility' availed of by the petitioner was not permissible and that the petitioner company was liable to pay freight charges calculated on wagon load basis. The petitioner was accordingly directed to deposit the amount undercharged from it, failing which the railways threatened to exercise its lien over the petitioner's goods in terms of Section 83 and 84 of the Indian Railways Act. Aggrieved by the said demands, the petitioner company has filed the present writ petition challenging the same as arbitrary, unreasonable and contrary to the provisions of the Indian Railways Act, 1989. The petitioner's case primarily is that the consignments in question having been transported after permission had been obtained and with the approval of the respondents and the goods transported having been released at the destination stations without any objection, a demand raised after three years of such transportation was wholly illegal and unenforceable in law. A writ in the nature of certio rari quashing the demand apart from a writ

of prohibition restraining the respondents from enforcing the same has, therefore, been prayed for.

7. In the counter affidavit filed on behalf of the respondents, it is inter alia stated that in the case of 'wagon load facility', charges are calculated on the basis of the number of wagons to be transported to a particular station whereas in the case of 'train load facility', the entire rake consisting of 30 to 58 wagons is transported at the request of a particular customer. This facility may be for one destination or two destinations combined together provided the combination is one provided for by the policy or is approved by the competent authorities. Ghaziabad and Delhi Kishan Ganj was not, according to the respondents, an approved combination according to the policy then prevalent. The respondents further submit that no approval or permission was taken by the petitioner or granted by the South-Eastern Railway for the two point movement of goods, nor was any permission given for taking the benefit of train load facility for such movement. The undercharges demanded from the petitioner by treating the transportation as wagon load consignments was, therefore, justified. It is further pointed out that the discrepancy regarding the undercharge had come to light on account of an audit check and that the recovery of the excess amount of the undercharge was legally permissible under Section 83 of the Railways Act.

19

8. Appearing for the petitioner company, Mr. Neeraj Kaul, learned senior counsel strenuously argued that the demand for undercharge was totally unjustified and arbitrary. It was contended that the railways having indicated the amount payable by the petitioner towards freight, the petitioner had deposited the said amount and availed of the facility on the clear understanding that the demand made was the only charge that the petitioner would be liable to bear. He submitted that the letter issued by the petitioner company clearly sought the 'two point train load facility', which facility was granted by the railways and that any demand raised on an audit objection would be unjustified, especially when the same was being raised three years after the transaction was completed and contrary to the representation made to the petitioner that he was entitled to the 'train load facility' and that nothing in excess of what was demanded in the railway receipt would be recovered from it.

9. On behalf of the respondents railways, it was argued by Mr. Rakesh Tikku that the petitioner company having paid a sum of Rs.5,50,000/- in terms of the order passed by this court, any claim for refund of that payment ought to be made before the tribunal established under the Railway Claims Tribunal Act. The present writ petition was not, according to Mr. Tikku, maintainable since an equally efficacious alternate remedy was available to the petitioner under the said Act. It was

alternatively submitted that the railways had, at no stage, sanctioned the train load facility in favour of the petitioner company, nor was any such facility admissible in terms of the policy then prevalent. The fact that the railway receipt mentioned a lower freight on an assumption that such a facility had been sanctioned did not, according to Mr. Tikku, estop the railways from raising a claim for undercharges in terms of Section 83 of the Indian Railways Act, 1989. The challenge to the demand was, in that view of the matter, untenable and deserved to be rejected.

10. I have given my anxious consideration to the submissions made at the bar. Before I examine the merits of the contention raised by Mr. Kaul, I may deal with the objection raised by Mr. Tikku regarding the maintainability of this writ petition. The writ petition was admitted to hearing in March, 2003 after notice to the respondents. No objection to the maintainability of the petition on the ground of availability of an alternate remedy under the Act was urged in the counter affidavit. That being so, it is neither fair nor proper to dismiss the same at this stage only to relegate the parties to a remedy which the petitioner could have been directed to invoke even at the threshold. That apart, there is hardly any disputed question of fact which may call for production or appreciation of evidence before the tribunal. The availability of an alternate remedy is, even otherwise, a self-imposed restriction and not a bar to the exercise of

jurisdiction by a writ court. The matter having been argued at considerable length on the merits, I consider it unnecessary to shut out the petitioner at this stage only on the ground that it could or ought to have approached the tribunal for an appropriate relief, even assuming that the tribunal was, in the facts and circumstances of the case, competent to entertain any such claim. The objection to the maintainability of the writ petition, therefore, fails and is accordingly rejected.

11. On the merits of the case, two precise questions arise for consideration. The first is whether a train load facility was, in the light of the policy then prevalent, admissible to the petitioner for a two point transportation. The second aspect is that even if the policy did not envisage such a facility, did the railways sanction any such facility as alleged by the petitioner. The railways have, on affidavit, stated that Ghaziabad and Delhi Kishan Ganj was not an approved combination for the grant of train load facility as per the policy prevalent at the relevant time. That position the petitioner company has not been able to controvert. There is nothing on record before me to prove that the stations for which the undercharge is being demanded was an approved combination of stations as per the prevailing policy. In the circumstances, it is reasonable to hold that transportation which forms the basis of the charge did not admit of train load facility erroneously availed of by the

22

petitioner.

12. In so far as the grant of sanction for the said facility is concerned, the petitioner company has placed reliance upon the letter of the Station Superintendent of Mandhar Railway station dated 11th September, 1998. A careful reading of the said letter also does not however show that the train load facility was sanctioned in favour of the petitioner. The letter issued by the Station Superintendent may, at this stage, be extracted. It runs as under :

S.E. Railways

Dt. 11.9.98

To
G.M. Marketing
NACAST SDG
MDH

Please note that 58 N Box E+ 1 MT. Released Hard Coke Rake placed in your siding at 19/45 hrs of 11.9.8 for loading P/Iron to 29 N Box to DKZ and 29 N Box to GZB via KMZ, TKD vide BSF 01 No. WC/1979 of 11.9.98.

Sd/-
11/9/98
Station Supdt
S.E. Railway
Mandhar

13. There is no other material on record to suggest that the railways had indeed sanctioned the train load facility in favour of the petitioner. In the absence of any documentary evidence to the contrary, I

have no hesitation in holding that the railways had not sanctioned any train load facility in favour of the petitioner for the transportation of goods relevant to the demand raised against the company. That being so, it is difficult to see how merely because there was a delay of three years in raising a demand for undercharge, could the demand be said to be illegal arbitrary or fanciful. So long as the demand was sound on the facts of a given case, the failure of the railways to recover the amount chargeable by it at the appropriate stage would not prevent it from raising or enforcing the same at a subsequent point of time. In the instant case, neither the prevalent policy nor the sanction granted to the petitioner entitled the petitioner to the benefit of train load facility. It was, therefore, open to the railways to raise a demand for the amount recoverable from the company but not recovered whether on account of a mistake or because of a deliberate omission on the part of the official concerned. That is precisely what had happened in the instance case also. If the official charged with the duty of preparing the railway receipts had acted diligently, it would have prevented the resultant confusion arising from his charging an amount lesser than what was payable. While it is true that the railways have not made any allegations of mala fide against the official charged with the duty of preparing railway receipts and calculating the freight payable by the petitioner, yet the absence of any such allegation makes

little difference. It is precisely for this reason that the Parliament has incorporated in the Railways Act a provision which caters to such situations. Section 83 reads as under :

Lien for freight or any other sum due :

(1) If the consignor, the consignee or the endorsee fails to pay on demand any freight, or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain any other consignment of such person which is in, or thereafter comes into its possession.

(2) The railway administration may, if the consignment detained under sub-section (1) is -

(a) perishable in nature, sell at once; or

(b) not perishable in nature, sell, by public auction, such consignment or part thereof, as may be necessary to realise a sum equal to the freight or other charges :

Provided that, where a railway administration for reasons to be recorded in writing is of the opinion that it is not expedient to hold the auction, such consignment or part thereof may be sold in such manner as may be prescribed.

(3) The railway administration shall give a notice of not less than seven days of the public auction under clause (b) of sub-section (2) in one or more local newspapers or where there are no such newspapers in such manner as may be prescribed.

(4) The railway administration may, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus of such

proceeds and the part of the consignment, if any, shall be rendered to the person entitled thereto.

14. The object underlying the above provision is that even if the consignment regarding which there is a demand for payment of freight or other charges has been delivered, the railways can exercise its lien for recovery of any sum payable to it by detaining any other consignment of such person which may thereafter come into its possession. The fact that goods were transported and released in favour of the petitioner company without demur, therefore, loses significance. As and when a charge is sought to be recovered from the consignor under Section 83 of the Act, what is important is whether the charge was lawfully recoverable. The railways have, in the instant case, satisfactorily established that the demand for the undercharge was justified in as much as the facility which the petitioner had availed of was not truly admissible to him. It was argued by Mr. Kaul that if the petitioner had known that it was not entitled to the train load facility, it may not have transported the goods by rail and may have chosen to avail of the alternate mode of transport by trucks or lorries. The petitioner had, according to the learned counsel, changed its position to its detriment by acting upon the representation made to it that the train load facility was actually available and admissible to it. The argument though attractive on its face value, does not bear

closer scrutiny. There is no foundation in the pleadings for the plea sought to be urged. There is nothing even to suggest that transportation by road was at all an option available to the petitioner for the kind of goods that were being transported or that the cost involved in such transaction would have been less than what is being demanded from the petitioner on 'wagon load' basis. In the absence of any pleading leave alone any cogent evidence to support the same, the argument needs to be noticed only to be rejected. That apart the very fact that the party has availed of the facility on payment of freight demanded from it does not absolve it from the rigors of Section 83 of the Railways Act. Principles of Estoppel do not apply in derogation of specific statutory provisions. The statute entitles the railways to recover the amount charged less which cannot be avoided on the ground that the railways were estopped from going back on the representation. That may be implicit in the transformation of goods or issue of railway receipts showing a lesser amount chargeable towards freight.

15. In the totality of the above circumstances, there is no merit in this petition which fails and is dismissed but in the circumstances without any order as to costs.

August 6, 2004
pk.

T.S. THAKUR
JUDGE

- Fresh CM 14001/10 - by Respondent for withdrawal of amount

CM 14003/10 - for exemption