

WP(C) 1616/2008

BEFORE

HON'BLE MR JUSTICE HRISHIKESH ROY

Heard Ms. B Goyal, learned counsel appearing for the petitioner. Also heard Mr. S. Sarma, learned standing counsel for the Railways.

2. This matter pertains to a consignment of coal booked at originating Station Jogighopa to its final destination at Indara in U.P. The grievance of the petitioner is with regard to the weighment of the coal loaded on volumetric basis.

It is contended that the weighment of the rake en route at New Bongaigaon Weighbridge is not accurate as the said Weighbridge is a defective Weighbridge.

3. Accordingly, the petitioner is seeking a direction for weighment of the consignment as per the Provisions of Section 79 of the Railways Act, 1989 which may be extracted herein below for ready reference:

79. Weighment of consignment on request of the consignee or endorsee.- A railway administration may, on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any:

Provided that except in cases where a railway servant authorized in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit:

Provided further that no request for weighment of consignment in wagon-load or train-load shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed.

4. Learned counsel for the petitioner has also referred to earlier orders passed by this Court in similar matters which have been enclosed as Annexure IV to the writ petition.

5. Mr. S Sarma, learned standing counsel for the Railways refers to the second proviso to section 79 of the Railways Act and submits that re-weighment may not be allowed if weighment is not feasible due to congestion in the yard or similar such reasons.

6. Having regard to the rival submissions made and also in view of the argument of the counsels for the parties, this writ petition is disposed of with the direction that the respondent should allow re-weighment of the petitioner's coal rake in any Weighbridge en route to the destination or at the destination point in accordance with the norms in force in presence of competent Railway Officials. Such re-weighment would be done only if the same is found feasible under the second proviso of section 79 of the Railways Act.

7. If such re-weighment is found feasible and carried out, the petitioner shall execute a bond guaranteeing payment of the charges payable for the goods carrying including the extra freight charge, penal charge, etc., if such charges become payable on re-weighment.

8. It is needless to state that all expenses for re-weighment, if the same is to be carried out, would be borne by the petitioner.

9. The loaded consignment shall be released by the Railways on clearance of all dues by the consigner in favour of the Railways.

10. The writ petition stands disposed of in terms of the above order.