

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 11581 of 2010

In the matter of an application under Articles 226 & 227 of the Constitution of India.

M/s. Sanwaria Steel Pvt. Ltd.
having its registered Office at 135/54K,
Girish Ghosh Road, Belurmath,
Howrah-711200, represented
By its Director Vinod Kumar Agarwal. Petitioner

-Vrs-

Union of India
represented by the General Manager,
South Eastern Railway,
Garden Reach Road, Kolkata-43,
and others Opp. parties

For Petitioner : M/s. L. Pangari, S. R. Pani &
A.K. Das.

For Opp. Parties : M/s. Anindya Ku. Mishra,
H.M. Das, A.K. Sahoo and
A.R. Das. (for O.Ps. 3 & 4)

P R E S E N T:

**THE HON'BLE THE CHIEF JUSTICE V. GOPALA GOWDA
AND
THE HON'BLE MR. JUSTICE B.N. MAHAPATRA**

Date of Judgment: 19.05.2011

B.N. MAHAPATRA, J. This writ application has been filed with a prayer
for quashing the letter dated 30.06.2010 under Annexure-9 and the
provisional stacking charge bill enclosed to the said letter raised on

the materials stacked by the petitioner at Barbil Railway Siding on the ground that the same is illegal, without jurisdiction and authority of law. Further prayer of the petitioner is for a direction to opposite parties to allow the petitioner to dispatch the stock of iron ore lying at Barbail Railway siding during pendency of the writ petition.

2. Petitioner's case in a nutshell is that it has a plant for crushing iron ore lumps/processing iron ore for selling the sized ore to Sponge Iron Plants and Steel Plants mainly located outside State of Orissa. The petitioner has been operating the said crusher plant for the last 5 years and has been selling processed iron ore to sponge iron plants outside the State of Orissa by transporting the same through opposite party-railways. To carry on its business, the petitioner obtained trade licence dated 20.06.2009 under Rule 7 of the Orissa Mineral (Prevention of Theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading & Transportation) Rules, 2007 (in short, "Rules, 2007"). By letter dated 08.06.2009, under Annexure-2, office of the Divisional Railway Manager (Commercial), Chakradharpur Division issued permission to the petitioner to dump iron ore at the Railway siding of Barbil Railway Station under Chakradharpur Division under sump and load system prior to loading into Railway rakes as and when the empty rakes will be supplied to the petitioner. Pursuant to the said permission issued by the office of

the Divisional Railway Manager (Commercial) dated 20.06.2009, the petitioner transported 2350.890 M.T. iron ore and stacked them at the Barbil Railway siding for dispatch of the same after empty rakes were made available by the opposite party-Railway Authority. At that stage, by order dated 31.10.2009, the Deputy Director, Mines, Joda suspended the trade licence of the petitioner under Rule 9 of the Rules, 2007. On 04.11.2009, the mining authorities rescinded the trade licence of the petitioner which disabled the petitioner from carrying on crushing operation, transporting and selling of the iron ore. The Deputy Director, Mines withdrew the order dated 31.10.2009 and allowed the petitioner to operate the crusher unit under Rule 3 of the Rules, 2007. While the unit started operating, by order dated 6.3.2010, the Sub-Divisional Magistrate, Champua imposed prohibitory order under Section 144, Cr.P.C. restraining entry of any person into the Railway siding and to conduct any loading or unloading at the railway siding. The said prohibitory order continued for two months and by order dated 01.05.2010 exercising power under Section 145, Cr. P.C. the S.D.M., Champua rescinded the prohibitory order dated 06.03.2010 passed under Section 144, Cr.P.C. The mining authorities on 26.6.2010 under Annexure-6 issued direction to the petitioner for loading of the materials which have been stacked at Barbil Railway siding. At that juncture, opposite party-

railway authorities forwarded a letter dated 30.06.2010 under Annexure-9 raising provisional stacking wharfage bill in respect of the materials of the petitioner lying at Barbil Railway siding from 01.05.2010 to 25.06.2010 for Rs. 52,41,600/- indicating therein that the final bill shall be submitted after lifting the materials. Being aggrieved by the said order, the petitioner has filed the present writ petition.

3. Mr. L. Pangari, learned counsel appearing on behalf of the petitioner submitted that the wharfage charges have been charged on hourly basis. As per rules regarding free time and rates of demurrage, wharfage and stacking charges issued by the Railway Board, the wharfage charge should be levied on goods/consignment not removed from railway premises after the expiry of free time (Section VI of the Railways Act, 1989). No wharfage will be levied on the consignment held by Railway administration on lien in terms of Section 83 of Railways Act, 1989. Calculation of free time has direct bearing on the goods stacked in goods sheds etc. and are waiting to be loaded in wagons/rakes or goods unloaded from wagons/rakes and waiting to be removed from goods sheds or railway premises etc. In the present case, the petitioner has not made an indent and the permission for dumping was issued subject to availability of the rake. Relying on the Rules and Circulars of the Railway Board pertaining to demurrage

and wharfage, it was submitted that the petitioner having not made an indent for placement of rake/wagon for loading, he is not at all liable for any charge or wharfage for stacking the goods at railway siding, Barbil with an open permission of the Railway authorities indicating that the goods could be stacked till rakes were available. There was prohibitory order restraining every one including the railway staff to enter into railway premises. According to the petitioner, as per guidelines of the Government of Orissa only after permission and valid forwarding note of the Mining Department, goods can be dispatched and such forwarding note was issued to the petitioner only on 25.6.2010. Therefore, the demand of wharfage for stacking of the materials for the period from 01.05.2010 to 25.06.2010 is unfair, illegal and contrary to Rules. Therefore, it is prayed for quashing of Annexure-9.

4. Mr. A.K. Mishra, learned counsel appearing on behalf of opposite party-Railway Department submits that the writ petition is barred for non-compliance of Section 80, C.P.C. It is also not maintainable in view of the disputed questions of fact involved. The petitioner has committed unlawful act of dumping the alleged materials at the railway premises without any authority and required permission. The petitioner has contravened the Railway Rules and is therefore liable to pay stack/wharfage charges as per the provision of

Para 3.3. of the Divisional Rate Circular No.12(G) dated 29.06.2009 wherein it has been clearly mentioned that the stacking permission shall be granted by the Senior Divisional Commercial Manager in consultation with the Senior Divisional Operations Manager only to those Rail users, who have indented for the wagons/rakes. Referring to para 3.4 of the said Circular, Mr. Mishra submitted that there is clear procedure provided in the Circular as to how to apply for stacking permission and obtain it. In the present case, the same has not been followed. Referring to para-3.2 of the said Circular, it was submitted that the consignor shall be allowed to dump and load the materials at the loading point on the confirmed forecast from the Chief Controller (Minerals) of the Division. In the instant case, the petitioner without making any indent has dumped the materials in the Railway premises. Provisional bill was raised for the period from 01.05.2010 to 25.06.2010 for an amount of Rs.52,41,600/- against 2316.024 MT iron ores un-authorisedly stacked at Barbil Station siding. The petitioner has illegally stacked/dumped the materials in the Railway Premises without making any indent for transportation through railway. The petitioner has not informed the railway authority regarding the alleged stacking and dumping of materials when it came to the notice of the railway authorities, the matter was reported to the Deputy Director, Mines, Joda for proper verification. After verification,

Deputy Director, Mines informed that the alleged materials (iron ore) belonged to the petitioner. Thereafter, provisional stacking charges bill was raised and served upon the petitioner to make payment.

5. The petitioner's case does not fall within the ambit of "Dump & Load" system as under the said system no permission is granted for advance stacking. The validation of forwarding note to place indent of various customers started from 19th April, 2010. The petitioner has not made any effort to place the indent for supply of rakes. The petitioner has willfully and deliberately violated the provision of para- 3.2 of Circular dated 29.6.2009. The provision of Section 83 of the Railway Act, 1989 empowers the Railway to exercise its lien for freight or any other sum dues. Free time is allowed to a customer, who is intimated regarding the placement of the rakes under "Dump & Load system". In the present case, no intimation has ever been communicated to the petitioner for supply of rakes. The permission and validation of forwarding note by the Mines Department is only applicable for the customers who intend to place the indent. Therefore, prior to placing of indent, nobody is authorized to stack the iron ore in the railway premises under the Dump & Load system. Under the similar circumstances, various other parties have paid the stacking charges to opposite party-railway to the tune of Rs.7,39,05,600/- . This Court in the case of M/s Pattnaik Steel and

Alloys Ltd. in Misc. Case No. 103 of 2010 arising out of W.P.(C) No.194 of 2010 has directed the petitioner therein to make payment of stacking charges from 14.02.2010 to 03.03.2010

6. On rival contentions of the parties, the only question that falls for consideration by this Court in the present case is as to whether opposite party-railway authorities are justified in charging demurrage/wharfage against stacking/dumping of materials under bill dated 30.06.2010 under Annexure-9.

7. The petitioner challenges the validity and legality of the impugned order passed under Annexure-9 basically on two grounds i.e. (i) that by letter dated 08.06.2009, the office of the Divisional Railway Manager (Commercial), Chakradharpur allowed the petitioner to dump the iron ore at the railway siding of Barbil Railway Station under Dump & Load System prior to loading of materials into railway rakes; (ii) "Wharfage" means the charge levied on goods for not removing them from the railway siding after expiry of the free time, and therefore, no wharfage charges can be levied in case of the petitioner who has not placed indent for rakes.

According to Mr. Pangari, Railway may take any step including confiscation of the goods stacked unauthorizedly by the petitioner within the railway premises, but it cannot levy any wharfage charges. Secondly, when the petitioner has admittedly not

placed any order requisitioning rakes, there is no question of allowing him any free time for removal of materials illegally stacked inside the railway premises.

8. To deal with the first question, it is necessary to know the relevant provisions relating to transport of materials through rakes/wagons more particularly under “Dump & Load” system. Some of the relevant provisions of Circular No.12(G)/2009 dated 29.06.2009 are extracted below:

“3.2. Under “Dump and Load” system the consignor will be allowed to dump his material at the loading point on receipt of the confirmed forecast from CHC (mineral) regarding placement of empties on the following day. In this system, no materials should be left over after completion of loading. In the event of any left over material not removed from the Railway premises within the specified time limit prescribed for different categories of stations, it shall accrue wharfage charges as per prescribed rate (as stated in para 2.2, 2.3, 2.4 and 2.5 of this Comprehensive Policy).

3.3. The stacking permission for locations as mentioned in para 3.1 above shall be granted by Sr. DCM in consultation with Sr. DOM only to those rail users who have indented for the wagons/rake, i.e., stacking shall be permitted only after registration of indents.

3.4 The modus operandi as mentioned below shall be followed for the grant of advance stacking permission.

(i) Rail users will apply for stacking permission in writing to CGS/GS or SMR (where commercial staff is not posted) giving details about the indent, type of the commodity and type of the wagons. The rail users shall also submit an undertaking to the

effect that the stacking will be done at their own risk and responsibility. No claim for loss, damage etc. arising out of stacking will be admissible.

(ii) The concerned CGS/GS or SMR (where commercial staff is not posted) will then issue a numbered diary entry to the Commercial Control, stating in detail about;

- (a) Name of the Rail User.
- (b) Indent Number against which stacking permission is sought.
- (c) Type of wagon and commodity.
- (d) Number of stacking permission already existing on that date.
- (e) Availability of space.

(iii) The diary entry shall be put up to Sr. DOM or an official authorized by him, who shall give his clearance about the probable date of supply of rake if stacking permission is granted on that date, keeping in view the inward and outward traffic projections for concerned station.

(iv) Sr. DCM or an official authorized by him shall grant/reject permission based on the remarks given by Sr. DOM and subject to availability of space.

(v) Commercial Control shall then issue numbered commercial order to the concerned CGS/GS or SMR (where commercial staff is not posted).

Xxx xxx xxx ”

9. In para 3.2 it has been clearly envisaged that under the Dump and Load system the consignor will be allowed to dump his material at the loading point on receipt of the confirmed forecast from the Chief Controller (Minerals) regarding the placement of empty rake on the following day. Under para 3.3 stacking permission for location as mentioned in para-3.1 shall be granted by DCM in consultation with Sr. DOM only to those rail users who had indented for

wagons/rakes i.e. stacking shall be permitted only after registration of the indent.

10. In the instant case, the petitioner never made any indent for supply of rakes. So, in absence of any confirmed forecast from CHC (minerals) regarding placement of empties, the petitioner was not allowed to dump his material at the loading point. It is not disputed that the petitioner has not made any indent for supply of rakes. So, there is no question of allowing the petitioner to dump his materials at the loading point. Therefore, Annexure-2 on which strong reliance has been placed by the petitioner is of no help to him. Para-3.4 provides the procedure with regard to application and grant of advance stacking permission. In the present case, since the modus operandi provided in para 3.4 of the Circular has not been complied with, it can be safely concluded that the petitioner was not entitled for advance stacking. On the other hand, opposite parties' stand is that the materials were stacked without their knowledge for which they informed the Deputy Director, Mines and thereafter came to know that the alleged materials belonged to the petitioner.

11. In view of the above, we are of the opinion that the petitioner has illegally dumped and stacked materials in the railway premises without any permission from opposite party-railway authorities.

12. To deal with the second question we have to again refer to para- 3.2 of the Circular dated 29.06.2009. Para-3.2 says that under the said system no materials should be left over after completion of loading. In the event, any left over material is not removed from the railway premises within the specified time limit prescribed for different categories of stations, it shall accrue wharfage charges as per prescribed rate provided in the said Rule. Thus, the purpose is that nobody is permitted to dump/stack its material illegally in the railway premises which can be utilized by any genuine and valid users and in case of illegal stacking, wharfage charge shall be levied. We are not inclined to accept the contention of Mr. Pangari that wharfage charges are leviable only where any person places indent for wagons/rakes, but does not load the goods in the wagons/rakes within the permitted free time and since the petitioner has not placed any indent for rakes no wharfage charge can be levied. Levy of wharfage charge always relates to unauthorized occupation of railway premises. Stacking/dumping is permitted awaiting confirmed forecast from CHC(Minerals) regarding placement of empties. It is needless to say that wharfage charge is penal in nature for not loading the goods into the wagon within the permitted free time thereby occupying the railway premises beyond permitted time. The case of the petitioner is worse. The petitioner utilized/occupied the railway

premises by stacking/dumping its goods without any permission from railway authorities. Therefore, levy of wharfage charge is justified.

13. In view of the above, we do not find any infirmity or illegality in the order passed by opposite party-railway authorities under Annexure-9 warranting any interference by this Court.

14. In the result, the writ petition is dismissed.

No order as to costs.

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B.N. Mahapatra,J.

V. Gopala Gowda, C.J. I agree.

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V. Gopala Gowda,C.J.