

Before Railway Claims Tribunal, Ahmedabad Bench.

Coram: Shri. Vinay Goel, Member (Judicial)
Shri. Raj Kumar Manocha, Member (Technical)

CASE No. OA(I)/ADI/2019/0001

Date of Institution: 15.04.2019

Date of Decision: 04.04.2024

Indian Farmers Fertiliser Co-Operative Ltd.

A multi-Unit Co-Operative Society registered under Mumbai Co-Operative Societies Act (Act VII of 1925) having its Registered Corporate Office at IFFCO SADAN, C-1, District Centre, Saket Place, New Delhi-110017 and its Plant at Kandla, Kutch-370210, Gujarat.

.....APPLICANT

-VERSUS-

(1) Union of India Through General Manager
Northern Railway, NDCR Building, New Delhi.

(2) Union of India Through General Manager
Western Railway, Churchgate, Mumbai.

(3) M/s. Manoj Ji & Company Pvt. Ltd. (Railway Out Agency),
Registered Office at B-4/94, Ashok Vihar, Phase-II, Delhi. ...RESPONDENTS

Mr. K.M. Shah, Ld. Counsel for the Applicant.

Ms. R.T. Jain, Ld. Counsel for the Respondent.

CLAIM FOR Rs. 2,07,05,278/-

Judgment

This OA has been filed for Rs. 2,07,05,278/- for non-delivery of DAP Indigenous Chemical Fertilizer of 1024 metric tons by the Respondent Railway(s) in respect of RR booked on 23.03.2017. Initially the Applicant Society filed claim against Union of India impleading Respondent No.1 and 2 through General Manager-Northern Railway and General Manager-Western Railway respectively. The Railway appeared and filed objection of non-joinder of necessary party, so by way of amendment the Applicant subsequently impleaded M/s. Manoj Ji & Company as Respondent No.3. but no relief has been claimed against Respondent No.3

2. In the OA it is pleaded that the Applicant is a Multi-Unit Co-operative Society registered under Mumbai Co-Operative Societies Act (Act VII of 1925). The Applicant booked DAP indigenous Chemical Fertilizer under invoice no. 16JK0015 under Railway Receipt (for short 'RR') no. 262006126 dtd 23.03.2017 from IFFCO BG siding Gandhidham (for short 'IFFCO siding') to Srinagar via Udhampur Railway station (for short 'UHP'). The said consignment was a chemical fertilizer for manure purpose and was to be delivered in a time bound manner. The consignment was hygroscopic in nature and its nutrient value would fall due to moisture and prolonged storage besides causing damage to granulated/prilled form of the contents. The Applicant has claimed that out of various goods entrusted to the Railway for safe delivery, the Railway had failed to deliver part of the consignment amounting to 1024 MT (metric ton) (20480 bags) as covered under the above RR.

3. The Respondent, upon notice, appeared and filed its written statement and denied its liabilities and also denied averments made in OA. The Respondent took objection that total booked consignment was 3944 MT as per RR, whereas the Applicant has filed the claim of non-delivery of consignment of 1024 MT including a claim of Rs. 2,07,05,278/- of its consignment, which was booked to "self" by the Applicant from IFFCO siding to Srinagar via UHP and all 58 wagons arrived with seal intact. After UHP, the Railway Out Agency i.e. M/s. Manoj Ji & Co., had taken the delivery under clear signature delivery as per station record. Further no remarks were made related to the consignment in the delivery book. Those 58 wagons were BCNHL wagons i.e. covered bogies, in which the consignment was in absolute sound condition material as loaded by the Applicant at the booking station. The consignment had arrived on 26.03.2017 at 17:50 pm and had been released on 27.03.2017 at 13:45 pm and delivered to M/s. Manoj Ji & Co. (hereinafter referred to as 'out-agency') under clear signature delivery at UHP.

4. It is further pleaded that, as per agreement made between the Railway Administration and the Out Agency for lapses regarding non-delivery or short delivery

to the Applicant, the Out Agency will be responsible and not the Railway administration. As per para 3.02 of the agreement, *“the contractor shall carry goods at its own risk and responsibility and shall be responsible for and shall make good and indemnify the Railway Administration against all the claims, demands, suits, losses, damages, costs and expenses what so ever on account of any injury, damages or loss, etc. Caused to any person and property resulting from directly or indirectly from any act of omission or commission on the part of the contractor or his servant or employee.”* Furthermore, as per para 3.09 of the same *“All inward goods shall be consigned to be in the contractor’s possession and in his care and custody and at his risk and responsibility from the movement these shall have been delivered to and signed for by the contractor or by a person authorized to act on his behalf, at the place where carriage by the Railway Ceases.”*

5. It is further submitted that the Applicant has stated that the consignment pending with Railway Out Agency and the Buffer Stockiest refused to unload because of the wet condition of goods. It is to state that all the transactions/ communications were held between the Railway Out Agency, and Buffer Stockiest at Srinagar. The Applicant has not mentioned anywhere the details of consignment offered first/second/third time by the Railway Out Agency to Buffer Stockiest and when the Buffer Stockiest refused and in what condition as the total consignment was 3944 MT and the Applicant are claiming non-delivery of 1024 MT only, which means the Buffer Stockiest has taken the delivery of the remaining consignment. The reasons are not clearly mentioned by the Applicant and no transactions/ communications are shown between the Railway Out Agency and Buffer Stockiest as and when on which date/dates the consignment was delivered to them.

6. It is further submitted that as per the copy of RR the Cartage Charges are paid by the Railway administration to the Railway Out Agency at Udhampur Railway Station, at the rate of Rs. 1810/- per ton i.e. $\text{Rs. } 1810 \times 3944 \text{ MT} = \text{Rs. } 71,38,640/-$. A total amount of Rs. 71,38,640/- as Cartage Charges are paid to the Railway Out Agency for delivery of the consignment from Udhampur Railway Station to Srinagar. As per the Delivery Book, all the consignment was taken under clear signature and no

DDPC (Damage & Deficiency Post Card) has been issued with respect to the quantity short received by the SS/UHP. A letter has been issued by the SS/UHP for the delivery of consignment. In delivery book it is clearly written that, "Received all the 74,240 Bags complete" at Khasra No. 44, Mauza Nursing Garh, Srinagar (Kashmir). It is further submitted that the Railway Administration is protected against the liability under section 93 of the Railways Act, 1989. Hence the Applicant is not entitled to get alleged sum as compensation and the application is required to be dismissed.

7. From the pleadings of the parties following issues framed on 10.10.2019.

- (1) Whether the Applicant prove the case of non-delivery of booked consignment – DAP Indigenous Chemical Fertilizer 1024 MT (20480 bags) due to negligence of Respondent Railway?*
- (2) Whether the consignment goods delivered under clear signature to the Applicant at Udhampur and as such no claim is maintainable?*
- (3) Whether the Agent Manoj Ji & Co.Pvt. Ltd. Is necessary party and its effect of non-joinder of the party?*
- (4) Whether the Railway Administration is protected against the liability in view of Section 93 of the Railways Act, 1989?*
- (5) What compensation, if any, the Applicant entitled to?*
- (6) What order?*

8. On behalf of the Applicant, Sh. Gauran Kanubhai Amin, Sr. Manager (Transportation) at IFFCO Ltd. at Kandla stepped into witness box as AW/1 and proved on record certified documents i.e. Railway Receipt no. 262006126 dtd. 23.03.2017 at Exh.A/1, CRR report of RR at Exh.A/2, Dispatch Invoice for the RR at Exh.A/3, Material Dispatch Advice cum Gate Pass dtd. 23.03.2017 at Exh.A/4, Certificate issued by the Railway Out Agency at Exh.A/5, Letter/Notice issued by the Applicant company to various authorities of Railway at Exh.A/6, Acknowledgement Receipt of above Notice at Exh.A/7, Letter issued by the Applicant company at Exh.A/8, Reply letter of Railway dated 23.10.2017 at Exh.A/9, Letter issued by CCO,

Western Railway at Exh.A/10, Reminder Letter by Applicant at Exh.A/11-20, Letter issued by IFFCO-Jammu to CCO, New Delhi at Exh.A/21, Minutes of meeting at Exh.A/22 and Forwarding Note at Exh.A/23. The Respondent cross-examined him as under:

“There was non-delivery of 1024 M.T. We have lodged the claim for said 1024 M.T. I have gone through the Railway receipt (exhibit A-1) after having booked the goods from Western Railway to Northern Railway. It is true that there is mention in exhibit A-1 from ‘A’ to ‘B’ about the goods being carried from Udhampur to Srinagar through Railway Out Agency namely M/s Manoj Ji and Company Private Limited. I am aware about the reconciliation meeting held among Sr.DCM-Firozpur, IFFCO and Manoj Ji and company private limited on 09.08.2018. I am aware about the commitment made by Manoj Ji and company private limited to deliver the subject material within 21 days.

शपथपत्र के मद सं 3 में अंकित तथ्य बिल्कुल सही है। Exh A/1, RR पर कुल 3712 मीट्रिक टन माल बुक किया था। यह वज़न Exh A/1 में ‘C-D’ स्थान पर अंकित है। Exh A/1 में कुल कितने बैग बुक किए गए थे यह मुझे मुह जुबानी याद नहीं है, मैं RR देखकर बता सकता हूँ। गवाह ने RR देखकर बताया कि इस RR में 74240 बैग बुक किए गए थे जोकि ‘E- F’ पर अंकित है। यह माल उधमपुर, श्रीनगर के लिए बुक किया गया था जोकि Exh A/1 में ‘A-B’ स्थान पर अंकित है। मेरे द्वारा Exh A/1 के जरिये 74240 बैग बुक कराये गए थे, इसमें से कितने बैग नहीं मिले, यह मैं क्लैम याचिका देखकर बता सकता हूँ। क्लैम याचिका देखकर गवाह ने कहा कि हमारी कंपनी को 20480 बैग delivered नहीं हुए। कंपनी ने 20480 बैग की no delivery का ही क्लैम दायर किया है। Non-delivered बैग के अलावा बचे हुए बेगो की जो delivery ली गयी, वह किस व्यक्ति ने, किस तारीख को और किस स्थान पर ली, यह मैं कोर्ट की फ़ाइल देखकर बता सकता हूँ। गवाह ने पत्रावली देखकर कहा कि यह delivery दिनांक 07.09.2017 को Shri U.C. Bajpayee, Jt. General Manager, Kandla, IFFCO, ने उधमपुर में ली। मैंने क्लैम याचिका के साथ जो बैग deliver हुए, उससे संबन्धित कागजात पेश किए हैं, यह मैं पत्रावली देखकर बता सकता हूँ। गवाह ने पत्रावली देखकर कहा कि वह Exh A/5 है। गवाह ने पुनः कहा कि मैंने delivery लेने वाले अधिकारी का नाम - Shri U.C. Bajpayee, Jt. General Manager, Kandla, IFFCO, बताया है वह मैंने गलती से बता दिया। Exh.A/5 के आधार पर मैं यह नहीं बता सकता कि यह delivery किस अधिकारी द्वारा ली गयी। delivery लेने वाले अधिकारी के हस्ताक्षर Exh.A/5 में ‘A-B’ स्थान पर अंकित है।

Exh.A/5 में delivery लिए गए 53760 बैग अंकित नहीं है। Exh.A/5 में delivery की दिनांक 07.09.2017 'C-D' व delivery का स्थान उधमपुर, 'E-F' स्थान पर अंकित है। यह कहना सही है कि non-delivery का नोटिस Exh.A/6, दिनांक 07.09.2017 को दिया गया। गवाह ने पत्रावली देखकर कहा कि इस पत्रावली में उधमपुर स्टेशन पर माल की delivery लेने का कोई भी असल दस्तावेज़ पेश नहीं किया है। delivery लेने का स्थान श्रीनगर, IFFCO का गोदाम था। यह गोदाम श्रीनगर में किस स्थान पर स्थित है, यह मुझे पता नहीं। गवाह ने पत्रावली देखकर कहा कि श्रीनगर के गोदाम का पता Exh.A/3 में 'A-B' स्थान पर अंकित है। 'A-B' पते में लिखा हुआ नाम "Shauqut Ahmad Bhat" का अर्थ है कि यह एक Co-operative mandali है जोकि उस क्षेत्र में किसानों को IFFCO का खाद देती है। Exh.A/1 के जरिये जो माल कांडला से भेजा गया वह "Shauqut Ahmad Bhat" नाम की एक Co-operative mandali को भेजा गया। यह कहना सही है कि Exh A/1 में consignee "Shauqut Ahmad Bhat" जो Co-operative mandali है। Exh A/1 में consignee का नाम 'G-H' स्थान पर अंकित है जोकि M/s IFFCO, Srinagar (Somu) O/A IFFC है। यह कहना सही है कि Shauqut Ahmad Bhat द्वारा Exh A/1 में वर्णित माल की डेलीवरी ली गयी, इस बात का कोई भी दस्तावेज़ मैंने पत्रावली में पेश नहीं किया है। मुझे इस बात की जानकारी नहीं है कि रेल्वे ने Exh A/1 में अंकित कुल 74240 बैग, रेल्वे Out agency M/s Manoj ji & Company को उधमपुर रेल्वे स्टेशन पर 27.03.2017 को सही हालत में deliver कर दिये। मुझे इस बात की जानकारी नहीं है कि Shri Swatenter Sharma, State Marketing Manager, IFFCO - J&K, ने दिनांक 09.08.2018 को reconciliation meeting में यह माना कि Exh.A/1 में अंकित सम्पूर्ण माल सही हालत में रेल्वे ने Out agency - M/s Manoj ji & Company को, deliver कर दिया था। मुझे इस बात की जानकारी नहीं है कि Exh.A/1 का माल उधमपुर स्टेशन पर, दिनांक 27.03.2017 को पहुँच गया। यह कहना गलत है कि हमने दिनांक 23.03.2017 से दिनांक 07.09.2017 तक का रेल्वे या out agency से किया गया पत्राचार, इस पत्रावली में पेश नहीं किया गया है। गवाह ने पत्रावली देखकर कहा कि वह पत्राचार Exh.A/6 है जोकि दिनांक 07.09.2017 को बना है। यह कहना सही है कि दिनांक 23.03.2017 से दिनांक 07.09.2017 के बीच में Exh A/1 के माल जोकि moisture sensitive and storage sensitive के बावजूद भी उस माल की delivery, partial delivery, non-delivery के संबंध में कोई पत्राचार पेश नहीं किया है। यह कहना सही है कि वह पत्राचार इसलिए पेश नहीं गया क्योंकि ऐसा कोई पत्राचार हुआ ही नहीं था। मुझे Railway Act, 1989, Section 81 & 82 की जानकारी नहीं है। मुझे इस बात की जानकारी नहीं है कि रेल्वे में माल की open delivery व partial delivery लेने का प्रावधान हो। चूंकि इस प्रावधान की जानकारी नहीं है इसलिए रेल्वे से कभी भी open delivery व partial delivery नहीं मांगी गयी। मैं 'Buffer stockist' शब्द का अर्थ नहीं समझता हूँ। शपथपत्र के मद सं 6 में 'Buffer stockist' शब्द मैंने गलती से अंकित कर दिया है। शपथपत्र की मद सं 7 में भी मैंने गलती से अंकित कर दिया है। मुझे याद नहीं है कि मैंने क्लैम याचिका व शपथपत्र में

मैंने यह लिखा हो कि मेरे कंपनी के Buffer Stockist ने माल उतारने से इंकार किया हो। यह कहना गलत है कि उधमपुर स्टेशन पर पहुंचा हुआ सही हालत का माल, 'Buffer stockist' की गलती के कारण, श्रीनगर में नहीं उतारा जा सका। मुझे Buffer Stockist का नाम नहीं पता और न ही माल के खराब होने के संबंध में Buffer Stockist के खिलाफ कोई कार्यवाही करी। यह कहना गलत है कि कंपनी ने Buffer Stockist को बचाने के लिए दिनांक 27.03.2017 से 07.09.2017 तक की अवधि का delivery/non-delivery से संबन्धित पत्राचार पेश नहीं किया है। मुझे इस बात की जानकारी नहीं है कि रेल्वे ने 27.03.2017 को Exh A/1 का सम्पूर्ण माल उधमपुर रेल्वे स्टेशन पर, M/s Manoj Ji & Company, Respondent no 3 को "under clear signature" सही हालत में handover किया गया था। मुझे इस बात की जानकारी है कि उधमपुर रेल्वे स्टेशन से श्रीनगर के IFFCO के गोदाम तक माल पहुँचाने की ज़िम्मेदारी Respondent सं 3 की थी। मुझे इस बात की जानकारी नहीं है कि IFFCO के श्रीनगर गोदाम में माल को उतारना, तोलना व stock register में अंकित करने की ज़िम्मेदारी Buffer Stockist की थी। मेरे अनुसार तो उक्त सभी कार्य कंपनी के field officer को करने थे। Field officer ने यह सभी कार्य किए थे। Field officer की सम्पूर्ण रिपोर्ट Exh.A/2 है। यह Exh.A/2 दिनांक 25.01.2019 को बना है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 13.04.2017 को पहुँचा, उसकी Field officer द्वारा दिनांक 13.04.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 02.05.2017 को पहुँचा, उसकी Field officer द्वारा दिनांक 02.05.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 02.05.2017 को और पहुँचा, उसकी भी Field officer द्वारा दिनांक 02.05.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 16.05.2017 को पहुँचा, उसकी Field officer द्वारा दिनांक 16.05.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 31.05.2017 को पहुँचा, उसकी Field officer द्वारा दिनांक 31.05.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 17.06.2017 को पहुँचा, उसकी Field officer द्वारा दिनांक 17.06.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। Exh.A/1 में से जो माल श्रीनगर गोदाम में दिनांक 30.06.2017 को पहुँचा, उसकी Field officer द्वारा दिनांक 30.06.2017 को जो रिपोर्ट बनाई गयी वह रिपोर्ट पत्रावली में पेश नहीं है। यह सभी रिपोर्ट हमारे कार्यालय में सुरक्षित है और मैं उन्हें पेश कर सकता हूँ।

मैं अपने साथ आज Exh.R/1 से Exh.R/14 दस्तावेज़ लाया हूँ। Exh.R/1 दिनांक 13.04.2017 को 1 pm पर बनाया गया है। यह कहना गलत है कि यह रिकॉर्ड प्लेसमेंट का तारीख व समय हो बल्कि यह तो Exh.R/1 को बनाने की तारीख व समय है। यह कहना सही है कि Exh.R/1 पर कमेटी के अन्य सदस्य हरजिन्दर सिंह के हस्ताक्षर नहीं हैं। यह कहना भी

सही है Exh.R/1 पर कमेटी के सदस्य शौकत बट्ट के हस्ताक्षर कि नीचे दिनांक नहीं है इसलिए यह नहीं कहा जा सकता कि शौकत बट्ट ने इस Exh.R/1 पर कब हस्ताक्षर किए हैं। Exh.R/1 में जो माल 640 मीट्रिक टन प्राप्त हुआ है वह दिनांक 13.04.2017 को ही प्राप्त हुआ है। 640 मीट्रिक टन माल दिनांक 13.04.2017 को प्राप्त होने की बात Exh.R/1 में A से B स्थान पर अंकित है। यह कहना गलत है कि Exh.R/1 शौकत बट्ट द्वारा दिनांक 13.04.2017 को हस्ताक्षरित नहीं किया गया। यह कहना गलत है कि Exh.R/1 जिस दिन माल प्राप्त हुआ उसकी रिपोर्ट न होकर उसके बाद बनी हुई consignment receipt report हो। यह कहना सही है कि consignment receipt report बनाई जाती और वह रिपोर्ट कार्यालय की पत्रावली में होती है और उस पर फील्ड ऑफिसर के हस्ताक्षर होते हैं। यह रिपोर्ट माल प्राप्त होने के तुरंत बाद वर्ष 2017 में हाथ से बनाई जाती थी। Exh.R/2 प्रत्येक वेगन में कितने बेग व कितनी मात्रा में माल आया उसका विवरण जो कि computer से बना हुआ है। Exh.R/2 दिनांक 13.04.2017 को बना है। यह कहना सही है कि Exh.R/2 consignment receipt report है। Exh.R/1 व Exh.R/2 साथ-साथ बनाए जाते हैं। Exh.R/2 में A से B स्थान पर वेयर हाउस अधिकारी के हस्ताक्षर नहीं हैं फिर कहा कि शौकत ही वेयर हाउस अधिकारी है और उसके हस्ताक्षर C से D स्थान पर हैं। यह कहना सही है कि शौकत जिसके हस्ताक्षर Exh.R/2 में C से D स्थान पर हैं वह वेयर हाउस अधिकारी नहीं है। यह कहना सही है मैंने आज जो दस्तावेज़ Exh.R/1 से Exh.R/14 पेश किए हैं उसमें माल जिस गोदाम में गया उस गोदाम के buffer stockiest के हस्ताक्षर नहीं है। यह कहना सही है कि Exh.R/1 से Exh.R/14 व मेरे द्वारा दावा याचिका के साथ प्रस्तुत सम्पूर्ण दस्तावेज़ में भी माल जिस गोदाम में गया उसकी प्राप्ति रसीद नहीं है। यह कहना सही है कि Exh.R/1 से Exh.R/14 जिन रजिस्ट्रों के आधार पर बने हैं वे रजिस्टर न्यायालय में पेश नहीं किए गए हैं। ऐसे रजिस्टर अस्तित्व में हैं या नहीं मैं नहीं बता सकता, पूछताछ करके ही बता पाऊंगा। हमारी कंपनी में buffer stockiest को stockiest ही बोलते हैं परंतु मैं आज 2017 के श्रीनगर गोदाम के stockiest का नाम नहीं बता सकता। Exh.A/5 Manoj Ji कंपनी द्वारा बनाया गया है व इस पर हमारी कंपनी के अधिकारी के भी हस्ताक्षर हैं परंतु किसके हैं ये मैं आज नहीं बता सकता। Exh.A/5 यूरिया व DAP दोनों के संबंध में है इस पत्र के अनुसार 32,228 बेग जो कम है उसमें यूरिया व DAP दोनों तरह के बेग शामिल हैं। यह कहना सही है कि Exh.A/5 में लिखा है कि दिनांक 07.09.2017 को 21,179 बेग DAP के deliver नहीं हुये। यह कहना सही है कि हमारी दावा याचिका DAP के 20,480 बेग कि non-delivery के संबंध में पेश की गई है। यह कहना सही है दिनांक 07.09.2017 को 21,179 बेग कम थे इसके बाद buffer stock में कुछ बेग और मिले इसलिए हमने 20,480 बेग का दावा पेश किया। दिनांक 07.09.2017 के बाद कितनी वेगन आए या नहीं यह मैं नहीं बता सकता। यह कहना सही है कि अंतिम consignment receipt report दिनांक 30.06.2017 की है और इसके पश्चात कोई भी consignment receipt report नहीं बनी। दिनांक 07.09.2017 के बाद जो बेग मिले उनकी

consignment receipt report क्यों नहीं बनी यह बात Manoj Ji & Company ही बता सकती है । consignment receipt report बनाने का काम Manoj Ji & कंपनी का नहीं है यह काम IFFCO के फील्ड ऑफिसर शौकत बट्ट का है । यह रिपोर्ट क्यों नहीं बनी यह बात केवल शौकत बट्ट ही बता सकता है । शौकत बट्ट ने यह रिपोर्ट उसने क्यों नहीं बनाई यह पूछताछ marketing division ने की होगी, उस समय के marketing डिविजन के इंचार्ज का नाम मैं नहीं बता सकता । उस समय की files CBI की enquiry में जब्त की होगी । यह कहना गलत है कि जीतने बेगों की non-delivery का claim दायर किया है वे सभी बेग श्रीनगर के गोदाम में पहुँच गए थे पर buffer stockiest द्वारा उन बेगों की प्राप्ति स्वीकृति न देने व refusal to unload consignment के कारण आपके द्वारा non-delivery दिखाई जा रही है । शपथ पत्र के मद संख्या-6 से मेरा अभिप्राय है कि “हम जिस condition में माल भेजते हैं उसी condition में प्राप्त करते हैं । शपथ पत्र के मद संख्या-7 से मेरा अभिप्राय है कि “out agency व नेशनल रेक पॉइंट, buffer stockiest कि रसीद, दिनांक 17-22.08.2017, उसके साथ जो कंपनी का रेकॉर्ड है वह Exh.A/5 में है ।” यह कहना गलत है कि भेजे गए माल के संबंध में मुख्य विवाद reconciliation of dispatches from Railway Out Agency with records of receipt and acknowledgment by the buffer stockiest था । दिनांक 30.06.2017 से 07.09.2017 के मध्य किसी प्रकार का पत्र व्यवहार रेलवे से क्यों नहीं किया गया इसका कारण मैं नहीं बता सकता हूँ यह बात marketing division बता सकता है । हमारा विवाद तो यह है कि हमें 1024 मीट्रिक टन माल रेलवे से नहीं मिला है । यह कहना सही है कि दिनांक 30.06.2017 से 07.09.2017 के मध्य का रेलवे से किसी प्रकार का पत्र व्यवहार हमने पेश नहीं किया है । मैं Railways Act, 1989 का Section 82 ना मैंने पढ़ा है और ना ही मैं इसके बारे में नहीं जानता हूँ । मैं यह नहीं बता सकता कि हमने जिस consignee को माल भेजा था उसने रेलवे से partial delivery certificate लिया था या नहीं । हमने consignee से partial delivery certificate नहीं मांगा । मैं तो Exh.R/15 के आधार पर कहता हूँ कि रेलवे ने हमें माल कम दिया था । रेलवे द्वारा 1024 मीट्रिक टन माल कम दिया गया है यह बात Exh.R/15 में A से B स्थान पर लिखी है ।”

9. Whereas the Respondent has produced evidence of Sh. Vinod Sharma S/o Sh. Pursottamdas, Chief Goods Supervisor at Martyr Captain Tushar Mahajan (earstwhile Udhampur) Railway station, as RW/1. The Respondent has proved on record certified documents i.e. CRR report of RR and Details of how many bags and how much goods came in each wagons at Exh.R/1 to R/14, Certificate issued by Station Supdt.- Udhampur, N.R. regarding RR No. 262006126 at Exh.R/15, Wagon transfer register at Exh.R/16, Unloading Register at Exh.R/17, Railway Receipts at Exh.R/18,

Production cum Seizure Memo at Exh.R/19 and Notice u/s 91 of CrPC by CBI at Exh.R/20. The witness was cross examined as under:

“जब का यह consignment का केस है उस समय मैं Chief Goods Supervisor (CGS) के पद पर या किसी भी स्थान - कांडला, ऊधमपुर, श्रीनगर में किसी भी स्थान पर पदस्थापित नहीं था। यह ठीक है कि मुझे कोई निजी व्यक्तिगत जानकारी लोडिंग या unloading व इस consignment के बारे में नहीं है। यह बात ठीक है कि material जोकि consignment में लिखा है, यदि समय पर न पहुंचे तो खराब होने की संभावना है। रेल्वे रिकॉर्ड्स के अनुसार सारा consignment out-agency के माध्यम से ऊधमपुर स्टेशन पर दे दिया गया पर मुझे इस बारे में निजी जानकारी नहीं है कि उस out-agency ने वह consignment को श्रीनगर भेजा या नहीं।

प्रश्न: जो रिकॉर्ड आज आपने पेश किया है उसके आधार पर क्या सामान की delivery श्रीनगर हो गयी या नहीं?

उत्तर: हमें कोई भी missing या non-delivery of consignment, की शिकायत, ऊधमपुर को नहीं मिली थी।

प्रश्न: क्या आपने Exh.A/5, अपना शपथपत्र बनाने से पहले देख लिया था?

उत्तर: जी हाँ, देख लिया था।

यह ठीक है कि हमने IFFCO को सीधे कोई material handover नहीं किया था, हमने तो रेल्वे के out-agency को माल सौंपा था। यह बात ठीक है कि CBI ने मामला Manoj Ji & Company के खिलाफ पंजीकृत किया है तथा उसमें IFFCO कंपनी को दोषी नहीं बनाया है। यह ठीक है कि Exh.R/18, के तहत कांडला से श्रीनगर तक material की transportation की ज़िम्मेदारी रेल प्रशासन की थी। out-agency को ऊधमपुर से श्रीनगर तक transportation के Freight पेमेंट का जिक्र मेरे रिकॉर्ड में नहीं है, इसलिए मैं यह नहीं कह सकता हूँ, पेमेंट हुआ है या नहीं। क्योंकि हमें shortage या non-delivery का कोई नोटिस नहीं आया है, इसलिए मैं यह नहीं कह सकता हूँ कि यह दावा क्यों फ़ाइल हुआ है। Exh.A/6 और Exh.A/7 के बारे में मैं कुछ नहीं कह सकता हूँ क्योंकि यह मेरी जानकारी में नहीं है।”

10. At the time of oral arguments both the parties argued as under:

“Counsel for Applicant submitted that it is a case of short delivery/non-delivery of goods, entrusted to the Railway for transportation and in its written statement Railway has taken only one ground that Railway cannot be held liable and liability should be of out agency and Railway has admitted consignment and entrustment of goods as such this OA may be allowed. As per sec. 232 (b) of the Railways Act, 1989, OA can be instituted against Railway administration and the outsource agency being agent of the Railway is not even necessary party to further proceedings. Although Applicant have impleaded out agency as Respondent no.2 upon objection.

Counsel for the Respondent submitted that Railway has arrangement up to Udhampur only and consignment was to be delivered at Srinagar and before taking goods it was disclosed to the Applicant that the goods would be transported from Udhampur to Srinagar through out-agency and it was the duty of the out-agency to transport goods from Udhampur to Srinagar within knowledge of the Applicant so, Railways cannot be liable. She further submitted that goods were of perishable nature as per claim but Applicant initiated process only after 5/6 month so by its acting conduct Applicant is not entitled to any relief in this case.

In rebuttal counsel for the Applicant submitted that Applicant have initiated process within time as per sec. 106 of the Railways Act, 1989.”

FINDINGS

11. We have carefully gone through the pleadings of the parties, material made available on record; evidence adduced by them and heard the arguments advanced on behalf of rival parties by their counsel. Our findings on the aforesaid issues are as under:

Regarding Issue No. 3:

12. This issue has become redundant because ultimately upon objection of Respondent Railway, the Applicant impleaded Manoj Ji & Company as Respondent No. 3. So, this issue has become redundant and as such issue has put at rest.

Regarding Issue No. 4:

For adjudication this issue let us read section 93 of the Railways Act, 1989.

13. Section 93 is read as under:

93. General responsibility of a railway administration as carrier of goods.—

Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or non-delivery of any consignment, arising from any cause except the following, namely:—

- (a) act of God;*
- (b) act of war;*
- (c) act of public enemies;*
- (d) arrest, restraint or seizure under legal process;*

(e) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf;

(f) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;

(g) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;

(h) latent defects;

(i) fire, explosion or any unforeseen risk:

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.”

14. It is the simple case of Applicant that they booked total 1024 metric ton fertilizer as consignor to self to be delivered at Srinagar and up to Udhampur goods were to be transported in rail Wagons upto Udhampur and from Udhampur to Srinagar goods were to be transported by Railway through its out agency for delivery of goods at the Godown of Applicant company by road transport. It is case of Railway that goods were handed over to the out agency at the behest of company and at Udhampur so Railway has denied its liability. How and under what circumstances Railway has invoked protection under section 93 of the Railways act 1989 has not been explained by the Respondent. There was no flood nor act of God, nor there was any fire explosion or unfore seen risk, natural deterioration or wastage in bulk due to inherent defect, quality or vice of goods. It is a case of short delivery, it is not the case of Railway that goods were hygroscopic so they vanished or damaged to such an extent that delivery was not possible.

15. In fact, Railway has entered in agreement with its out agency that in case of non-delivery or short delivery of goods entrusted to the out agency, the out agency would be responsible for the same. Once Railway has entered into such agreement with the out agency, Railway has covered all unfore seen risk. Further any contract between

Railway and out agency would not be binding upon the Applicant, as the Applicant was not party or signatory of such agreement. If this Tribunal comes to conclusion that if Railway is liable for short delivery, Railway would be able to invoke its agreement for out agency and recover the amount from its out agency to enforce said contract in accordance with law.

16. The out agency is also a party before us and has failed to counter in an effective and proper manner. Even out agency has facilitated as ex-parte proceeding on 07.10.2022 as if it has nothing to say against the claim of the Applicant. So, under these given circumstances we are of the considered opinion that Railway cannot claim protection of section 93 of the Act under given circumstances. Hence, the issue is decided in favour of Applicant and against the Respondent. No observation made above will have any bearings on the merits of the case.

Regarding Issue No. 1 and 2:

Both the issues are being taken up together as they interconnected. Our findings on the issues are as under:

17. The Applicant has proved on record Railway Receipt at Exh.A/1 and also upon direction of Tribunal has placed on record Forwarding Notes at Exh.A/23 dated 23.03.2017 for 58 wagons. So, practically the Railway has admitted delivery contract with the Applicant and has further admitted that the Applicant entrusted goods to the Railway for Transport from IFFCO siding to Srinagar and up to Udhampur Railway station transported the goods in its wagon and from Udhampur it was to be transported by the out-agency company of Railway through road transport. So, the contract was to deliver the goods to Applicant at Srinagar. There is no dispute about payment of freight between the parties. If we go by the pleadings made in the OA, practically Respondent has admitted short delivery but contention of Respondent about difference in quantity as pleaded in the Written Statement would not have any bearings on the merits of this case because practically Respondent has admitted missing quantity but at higher side,

whereas the Applicant has preferred this OA for smaller quantity. If by one reason or other in its own wisdom the Applicant has not filed claim for higher missing quantity that would not absolve Railway from its liability to explain whether it has delivered the quantity claimed in the OA though it is on lower side. At the most we can say that the Applicant has for go and relinquished its rights for higher shortage quantity. But on that ground the Applicant cannot be non-suited. It was the duty of the Respondent to deliver entire booked goods at the destination with safety under same condition as were entrusted to it.

18. The Respondent has pleaded that it has given delivery of entire goods to the out agency at Udhampur and has tried evade of its liability. We have carefully gone through the documents on record and Railway has tried to say that on delivery of goods to M/s. Manoj Ji & company, the Railway gave delivery as per mandate in Forwarding Note & RR and has relieved from its liabilities. Let us refer documents on record in this respect, the main feature of documents are as under:

(i) Forwarding Note Exh.A/23 of dated 23.03.2017

Name of consignor	Name of consignee	Weight of consignment
IFFCO-Kandla	IFFCO-Srinagar (J&K)	372209 kg.

(ii) Railway receipt Exh.A/1:

Name of consignor	Name of Out Agency	Weight of consignment
IFFCO-Kandla	IFFCO-Srinagar (J&K)	3944MT

(iii) Main feature of Agreement form for Out Agency as under:

“This agreement made this day of 15.03.2016 between the President, Union of India acting through the Sr. Divisional Commercial Manager, Northern Railway, Firozpur. (hereinafter called Railway Administration) of the one part and.

M/S Manoj Ji & Company Pvt. Limited a company registered and formed under the Indian Companies Act 1913, having its registered office at B-4/94, Ashok Vihar, Phase-II, Delhi (hereinafter called the contactors) of the other part.

In respect of the City Booking Agency / Out Agency of Northern Railway at Srinagar served via Udhampur Railway Station.

Whereas the Railway Administration has established a Out Agency at Srinagar served via Udhampur Railway Station for the purpose of local and through booking of Goods in full wagon load and rake load both outward and inward (except-Live stock, coal and goods in bulk or loose, dangerous and explosive goods as laid down in the Railways Red Traffic, arms and ammunitions, offensive goods and excepted articles) between the said Out Agency and all stations on the Northern Railway and other connected Railways and City Booking Agencies/ Out agencies with which the Northern Railway has or may hereinafter have through booking arrangements, of Goods between the Out Agency and Udhampur Railway Station, only by a special arrangement, the Railway may permit booking of the Goods in Bulk, or loose, dangerous and explosive etc. and whereas the Contractors have agreed to serve the Railway Administration in the capacity of agent for the above purpose and to engage honestly and faithfully to perform all duties incidental to the offices of such agents on the terms and conditions hereinafter appearing in this agreement.”

19. The agreement executed between Railway and Manoj Ji and company as city Booking Agency of Northern Railway Srinagar via Udhampur for the purpose of local and through booking of goods and Manoj Ji & Company being contractor had agreed to serve Railway administration in the capacity of Agent for the purpose booking of full Wagon load and rack load both outward and inward except coal, loose dangerous & explosive goods. So, as per said agreement Railway had appointed Manoj Ji & company as its agent. Once the Railway admitted the company as its agent and the Respondent Railway was required to deliver goods at Srinagar, any delivery of good at Udhampur by no stretch of imagination can be considered as delivery of goods to the Applicant Co-operative Society.

20. The rule of vicarious liability would come to play in this case and the Railway is not free to push Manoj Ji & Company in the court of the Applicant. It was the condition of the contract that the Railway would deliver goods at Srinagar. So, till safe delivery of goods, the Railway would be considered as *custodian* of the goods, entrusted to it for transportation. For all acts, omission, over acts, inaction, foul play or deeds of an agent its principle can always be held liable and it is the settled law that privity of contract between principle and agent would not affect rights of third party in any manner.

21. The mandate given in Forwarding Note and Railway receipt would be complete/complied with only upon delivery of goods at the destination i.e. Srinagar. The Applicant nowhere authorised the out agency to receive goods on its behalf, whereas Railway has entered in to agreement of out agency with the company to act on its behalf and also designated said company as its agent. Further Railway has itself placed on record report of Investigation as Exh.R/20 submitted before learned Chief Judicial Magistrate of Srinagar under section 173 of CRPC. The said report contains recitals regarding matter in issue and as per said report Manoj Ji & Company while acting as Railway out agency for Northern Railway took goods for transportation from Railway head Point Udhampur to delivery at Godown of Applicant in Srinagar and misappropriated 1024 metric ton of fertilizer meant for supply to Farmers and Fruit Grovers of Kashmir division. The said document so produced by the Railway itself in fact is corroborating the averments made in the OA. The Railway is bound by said document as it has been produced by it and it can be read against Railways, as such, without any further proof. The Applicant wrote various representation to the Railway but the Railway ignored and declined such demand on the pretext that it has already delivered goods to the out agency at Udhampur rail head so, it was a good delivery to the Applicant.

22. Having considered argument from both sides, defence taken and document on record particularly Forwarding Note, Railway receipt, agreement for out agency we are of the considered opinion that delivery of good to the out agency cannot be considered as good and valid delivery to the consignee and there is no evidence that the out agency delivered the goods to the Applicant to its satisfaction. It was duty of Respondent to produce all such evidence on record about delivery. There is no document on record that the Railway had delivered entire load of all the Wagons to the Applicant at Srinagar. Rather somehow in a disguised manner Railway has tried to question validity of this claim on the ground that the out agency is admitting non delivery of larger quantity then quantity claimed in the OA.

23. Under given circumstances we find no legal impediment to hold that there was short delivery of the goods and negligence of Railway cannot be ruled out as it was duty of Railway to keep vigilance and eye over its out agency. Hence, the issues are decided in favour of Applicant and against the Railways.

Regarding Issue No. 5 & 6:

24. It is the case of Applicant that the Respondent has failed to deliver 1024 metric ton and the Applicant have claimed such amount from the Railway. As per Exh.A/1 i.e. RR, the goods were entrusted to the Railway for transportation at Railway Risk rate. So, there would be additional enhanced responsibility of Railway as a transporter. There is no record or evidence which shows that there was any short coming flaw in packing of material which was brought on Railway Risk rate. The Responded has failed to rebut genuineness of said claim even at the time of arguments, the Applicant have proved on record Railway receipt and invoices etc. and delay in initiating its process would not affect merits of claim made in OA as the Applicant has initiated legal remedy within prescribed period of limitation. The Applicant is entitled to amount of Rs. 2,07,05,278/- as compensation along with interest as per calculation shown as under:

RAILWAY CLAIMS TRIBUNAL
AHMEDABAD BENCH

1024 MT X Product Rate 20019.80 = 2,05,00,275.20/- Plus

1% Excise Duty paid by IFFCO = 2,05,002.75/-

Total compensation amount = Rs. 2,07,05,278/-

25. However, in case the Respondent Railways pays the amount to the Applicant, the Respondent would be able to recover all amount from Respondent No. 3 in accordance with law. So, this issue is decided in favour of the Applicant and against Respondent No. 1 and 2. Accordingly, we pass the following order:

ORDER

26. In view of the claim is allowed. Respondent No. 1 and 2 shall pay to the Applicant a sum of Rs. 2,07,05,278/- as compensation within 30 days from the date of this order. The awarded sum will carry simple interest @ 6% per annum from the date of the cause of action i.e. 23.07.2017 till the date of this order. If the Respondents fails to pay the amount within above stipulated time (30days), the awarded sum will carry simple interest @ 8% per annum from the date of cause of action till the date of realization. The liability of Respondent No. 1 and 2 be joint and several.

27. The Respondent Railways are directed to deposit the whole amount along with interest with the Registry of RCT/Ahmedabad within a period of 30 days from the date of this order. Further the Respondent is directed to place the proof of the awarded amount on record with up-to-date interest along with the calculation sheet. Respondent No. 1 and 2 would be able to recover the amount paid to the Applicant along with interest from Respondent No.3 by initiating appropriate legal proceedings in accordance with law.

28. In terms of the above, the present claim application is disposed of. Let this case file be consigned to the Records Room. No order as to costs.

[R.K. Manocha] **Member (Technical)** [Vinay Goel] **Member (Judicial)**
Judgment pronounced and signed in open court today i.e. on 04.04.2024.

Place : Ahmedabad
Date : 04.04.2024.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)