IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 21862 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.16615 OF 2016]

M/S HINDUSTAN PETROLEUM CORPORATION LIMITED ...APPELLANT(S)

VERSUS

UNION OF INDIA ...RESPONDENT(S)

WITH
CIVIL APPEAL NO(S). 21863-22910 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.20776-21823 OF 2016]

ORDER

1. Leave granted.

2. The challenge in the present appeals is to the order of the High Court of Punjab and Haryana at Chandigarh dated 31st March, 2016 by which the rejection of the claim of amount paid in excess by the appellant to the respondent – railways between the period 1st April, 2008 to 30th

September, 2010 by the Railway Claims Tribunal, Chandigarh has been upheld by the High Court.

3. The core facts that will be required to be noticed are as follows:

The appellant, a public sector organization, had dispatched various petroleum products through Railway Tank Wagons of the respondent from Asaudah Railway Station, District Rohtak, Haryana to Partapur, District Meerut, Uttar Pradesh and to some other destinations located in different parts of the country. The freight was paid by the appellant as per the notified distance i.e. 125 kilometers, so notified by the Chief goods Supervisor, the competent authority at the relevant point of time. The dispatch of the petroleum products continued for a long period between the year 2008 and 2011 and the freight charges were paid according to

the distance between the destinations as notified by the competent authority of the respondent. When the manual system of generating railway receipts was discontinued and the respondent had installed computerized railway freight charges system called Terminal Mechanism Railway (TMS) at Asaudah Railway Station, the distance between Asaudah Railway Station, District Rohtak, Haryana and Partapur, District Meerut (Uttar Pradesh) was notified as 100 kms. instead of 125 kms. This was on 27th February, 2011.

Thereafter, it appears, that the appellant issued a notice/letter dated 30th March, 2011 seeking refund/return of the illegally recovered freight amount for extra distance(s) charged against manually generated railway receipts during the period between 1st April, 2008 and 27th February, 2011. While the claim of the

appellant for the period from 1st April, 2008 to 30th September, 2010 was rejected on the ground that the same was beyond the six months' period prescribed under Section 106(3) of the Railways Act, 1989, the claim for the period from 1st October, 2010 to 27th February, 2011 was entertained and an amount of Rs.3.81 crore was paid by the respondent to the appellant. Aggrieved, the appellant filed a total number of 1648 applications before the Railway Claims Tribunal, Chandigarh along with delay condonation applications in respect of 1041 claims which were dismissed by the learned Tribunal on the ground of non-compliance with the requirement of notice under Section 106(3) of the Railways Act, 1989. The order of the learned Tribunal was taken in appeals before the High Court and the appeals having been dismissed, the present appeals have been filed upon grant of

special leave under Article 136 of the Constitution of India.

4. We have heard the learned counsels for the parties.

5. The submission advanced by Shri K.V. Vishwanathan, learned Senior Counsel appearing for the appellant has been short and precise. Referring to the provisions of Section 106(3) of the Railways Act, 1989, the learned Senior Counsel has urged that requirement of giving notice within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later, is only in cases of overcharge by the Railways. The present, according to the learned Senior Counsel, is not a case of overcharge but is one of illegal realization of freight. This, learned Senior Counsel contends, is on account of

the fact that the freight was paid as per the fixed rate on the basis of the notified distance(s). There was really no overcharge. Subsequently, the distance was corrected and re-notified which would make the realization an illegal one and not one of overcharging.

6. Learned Senior Counsel has relied on a decision of this Court in *Union of India and others* vs. *West Coast Paper Mills Ltd. And another*[1] to contend that the distinction between overcharge and illegal realization of freight has also been acknowledged by this Court in the above case which dealt with the pari materia provision contained in Section 78-B of the erstwhile Act i.e. the Railways Act, 1890.

7. Learned counsel for the respondent, on the other hand, has relied on a decision

1 (2004) 3 SCC 458

of this Court in *Birla Cement Works* vs. *G.M. Western Railways and another*[2] to contend that the notice issued by the appellant to the respondent in the present case on 30th March, 2011 was well beyond the period of six months stipulated under Section 106(3) of the Railways Act, 1989 and, therefore, the claim would be barred by limitation.

8. We have considered the rival submissions advanced at the bar.

9. Birla Cement Works (supra) was a case where the petitioner therein (i.e. Birla Cement Works) came to know of the alleged excess amount of freight on wrong calculation of distance through a letter dated 12th October, 1990 issued by the Railway Authorities. This primary fact is conspicuously absent in the present case.

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2 (1995) 2 SCC 493

In the present case what was paid was as per the fixed rate on the basis of notified distance which subsequently was corrected by another Notification upon introduction of the Terminal Mechanism System (TMS) at Asaudah Railway Station, District Rohtak, Haryana.

10. On the other hand, in *West Coast Paper Mills Ltd.* (supra) this Court in paragraph 20 of the said report took the view that as the freight paid was as per the rates notified the case would not be one of overcharge at all. If that is the view taken by this Court on an interpretation of the pari materia provision in the erstwhile Act i.e. the Railway Act, 1890 (i.e. Section 78-B) we do not see why, in the facts of the present case which are largely identical, we should be taking any other view in the matter.

11. Consequently and in the light of the above we allow the present appeals; set aside the order of the High Court as well as that of the Railway Claims Tribunal, Chandigarh and allow the claims of the appellant which will be paid forthwith on due and proper calculation.

.....,J.
(RANJAN GOGOI)

.....,J.
(R. BANUMATHI)

NEW DELHI
DECEMBER 14, 2017

ITEM NO.10 COURT NO.3 SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 16615/2016
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 31-03-2016 IN FAO NO. 707/2014 PASSED BY THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

M/S. HINDUSTAN PETROLEUM CORPORATION LTD. PETITIONER(S)

VERSUS

UNION OF INDIA RESPONDENT(S)

WITH

SLP(C) NO. 20776-21823/2016 (IV-B)
(FOR STAY APPLICATION ON IA 1/2017)

Date : 14-12-2017 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) **Mr. K.V. Vishwanathan, Sr. Adv.**
Mr. Sanjay Kapur, AOR
Ms. Mansi Kapur, Adv.
Ms. Megha Karnwal, Adv.

For Respondent(s) **Mr. A.K. Panda, Sr. Adv.**
Mr. N.K. Karhail, Adv.
Ms. Sushma Verma, Adv.
Mr. Raj Bahadur, Adv.
Mrs. Anil Katiyar, Adv.
Mr. S.N. Terdal, Adv.
Mr. A. N. Arora, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

[VINOD LAKHINA]
AR-cum-PS

[TAPAN KUMAR CHAKRABORTY]
BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]