Upper Doab Sugar Mills Ltd.

Vs

Shahdara (Delhi) Saharanpur Light Railway Company Ltd.

Civil Appeal No. 9 of 1962

(J. L. Kapur, K. C. Gupta, Raghuvar Dayal JJ)

23.04.1962

JUDGMENT

DAS GUPTA, J. -

This appeal by special leave arises out of a complaint made by the appellant, the Upper Doab Sugar Mills Ltd., Shamli, to the Railway Rates Tribunal. The complaint as originally made was against the station to station rates on sugarcane on the Shahdara (Delhi) - Saharanpur Light Railway imposed by the respondent, the Railway Company, by their rates Circular No. 8 of 1953 with effect from October 1, 1953. The complaint was that these rates had been and were unreasonable. The Railway Company in their answer to the complaint pointed out that the rates imposed by the rate Circular No. 8 of 1953 had long before the date of the complaint ceased to be in force and that subsequent to the decision of this Court in S.S. Light Railway Co. Ltd. v. Upper Doab Sugar Mills Ltd. [[1960] 2 S.C.R. 926] a new rate had come into operation from February 10, 1960, under Local Rate Advice No. 2A of 1960. After this the complaint prayed for amendment of his complaint by adding a complaint against this new Advice rate. The prayer was allowed. The complaint as it stands after the amendments made on February 3, 1961, is both against the rates imposed under Local Rates Advice No. 8 of 1953 and also the rates under the new Advice No. 2A of 1960 and is that these rates and charges are all unreasonable.

The prayers are : (1) for a declaration that the rates charged under the Local Rates Advice No. 8 of 1953 and the surcharges were unreasonable from 1-10-1953 to 10-2-1960; (2) a declaration that the rates charged from 10-2-1960 under rate Advice No. 2A of 1960 are also unreasonable; (3) a direction of refund of the excess collected or which may be collected after the date of the amendment of the complaint on the basis of rate Advice No. 2A of 1960 over the reasonable rates that may be fixed the Tribunal and (4) the fixation of the rates as mentioned in the complaint as reasonable rates from various stations to Shamli.

The main contentions of the Railway Company with which we are concerned in the present appeal are : (1) that the Tribunal had no jurisdiction to entertain the complaint as regards the reasonableness of rates prior to the institution of the complaint (2) that the Tribunal had no jurisdiction grant any refund. These questions are raised in Issues Nos. 6 and 9A and are in these words :-

> "6. Has the Tribunal jurisdiction to entertain or try the present complaint regarding reasonableness or otherwise of rates and/or charges prior the institution of this complaint or, at any rate, prior to 27-7-1958.

> 9A. Has this Tribunal jurisdiction to grant refund."

The Tribunal rightly took up the consideration of these issues first. It held that it had no jurisdiction to entertain or try the complaint as regards the reasonableness or otherwise of rates and charges made prior to the institution of the complaint on May 6, 1960. It also held that it had no jurisdiction to grant any refund. In coming to these conclusions, the Tribunal followed the decision of the Madras High Court in Southern Railways v. The Railway Rates Tribunal [A.I.R. 1955 (Madras) 476]. It is contended before us in appeal that the Tribunal's decisions on these questions were wrong.

It will be helpful to consider briefly the background in which the Railway Rates Tribunals came into existence.

Till the establishment of these Tribunals the actions of the Government of India with regard to the regulations of rates and charges that may be charged by Railway Companies were largely influenced by the policy of laissez faire. The only provision as regards such a regulation was to be found for many years only in the contracts between the Government of India and the Railway Companies.

One of the earliest contracts with the Madras Railway Company, dated December 22, 1852, had a provision that the Company could charge only such fares and tolls as might have been approved by the East India Company and that no increase in approved fares etc., could be brought into effect without the previous sanction of the East India Company. In the contracts of most of the companies there used to be a provision in the following terms :-

> "The Secretary of State shall from time to time authorise maximum and minimum rates within which the Company shall be entitled to charge the public for services rendered by way of, or in connection with, the conveyance of passengers and goods on the undertaking, and shall prescribe the several classes and descriptions of passengers and goods to which rates shall be respectively applicable." (Srinivasan's Railway Freight Rates).

The maxima were fixed by the Local Governments for the railways within their provinces in 1869 while the Government of India prescribed the maxima for good grains and coal, and fares for the lowest class of passengers only.

Statutory provisions for fixation of maxima and minima for rates and charges were first made the year 1939 by the Act 33 of 1939 which introduce s. 42(b) in these words :

> "The Federal Railway Authority may be general or special order fix maximum and minimum rates for the whole or any part of a railway, other than a minor railway, and prescribe the conditions in which such rates will apply.
>
> (2) Any complaint that a railway administration is contravening any order issued by the Federal Railway Authority in accordance with the provisions of this section shall be determind by that Authority."

Before this however, as a result of the investigations made by the Acworth Committee, a Railway Rates Advisory Committee had been established. This Committee was empowered to investigate and made recommendations on :

1. Complaints of "undue preference" - section 42(2) of the Indian Railways Act.

2. Complaints that rates are unreasonable in themselves.

3. Complaints or disputes in respect of terminals - section 46 of the Indian Railways Act.

4. The reasonableness or otherwise of any conditions as to packing of articles, specially liable to damage in transit or liable to cause damage to other merchandise;

5. Complaints in respect of conditions as to packing attached to a rate; and

6. Complaints that railways do not fulfil their obligations to provide reasonable facilities under section 42(3) of the Indian Railways Act."

It is to be noticed that this Committee could only make recommendations and could not make any effective order itself.

The Railway Rates Tribunal come into existence as a result of the amendment of the Railways Act of 1890 in 1948 (Act No. 65 of 1948). Section 34 of the Act as amended, provides that there shall be a Tribunal called the Rates Tribunal for the purpose of discharging functions specified in the Chapter. These functions were specified in ss. 41 and 42, while s. 39 empowered the Tribunal to pass interim and final orders including orders for payment of costs for the purpose of exercising the jurisdiction conferred. The first sub-section of s. 41 set out a number of matters of which complaints might be made against a railway administration or jointly against two or more railway administrations and states that such complaints "shall be heard and decided by the Tribunal". The second sub-section of s. 41 provided that in the case of a complaint under cl. (d) of sub-s. 1, that is, where the complaint is that a railway administration or railway administrations is or are unreasonably refusing to quote a new station to station rate the Tribunal may fix a new station to station rate. The first sub-section of s. 42 gave the Tribunal the exclusive power to re-classify any commodity in a higher class but added that such power shall not be exercised except on the application of the Central Government. The third sub-section of s. 42 provided that the Tribunal as well as the Central Government would have power to re-classify any commodity in lower class. In December, 1949, the Indian Railway Act was further amended by the Act No. 56 of 1949. Some changes were then made in s. 41 which it is unnecessary to set out. There was amendment again in December, 1957, by Act No. 53 of 1957 by which amongst other changes, s. 41 was changed. As a result of these changes cl. 1 of s. 41 reads thus :

"41(1) Any complaint that a railway administration

(a) is contravening the provisions of section 28, or

(b) it charging for the carriage of any commodity between two stations a rate which is unreasonable, or

(c) is levying any other charge which is unreasonable shall hear and decide any such complaint in accordance with the provisions of this Chapter."

The second sub-section (which was not changed by the 1957 Act) deals with the question of burden of proof in connection with complaints under cl. (a) of the first sub-section and also says that in

deciding whether a lower charge to any trader or class of traders does amount to undue preference or not the Tribunal will take into consideration whether such lower charge is necessary in the interest of the public. The third sub-section runs thus :- "In the case of a complaint under cl. (b) or cl. (c) of sub-s. 1 the Tribunal may fix such rate or charge as it considers reasonable : Provided that the rate to be fixed under cl. (b) of sub s. 1 shall be within the limits of the maximum and minimum rates fixed by the Central Government under sub s. 1 of s. 29."

Section 41A which was added by the amending Act of 1957 gives the Tribunal a power to vary or revoke an order made by it on being satisfied on an application made by the Railway Administration that since the order was made there has been a material change in the circumstances on which it was based, but such application cannot be made till the expiry of one year from the date of the order. The old s. 42 was substituted by a new section in these words : "The Central Government alone shall have the power to classify or reclassify any commodity, (b) to increase or reduce the level of class rates and other charges." It will be noticed that this amendment took away the power which the Tribunal formerly had in the matter of classification of commodities. The amendment of s. 41 however gave the Tribunal jurisdiction to entertain and consider complaints in respect of standard terminal charges which had been excluded in the old s. 41. At the same time it took away the Tribunal's jurisdiction to entertain any complaint that a Railway Administration had unreasonably placed a commodity in a higher class or that it was unreasonably refusing to quote a new station to station rate which it had under the old cl. (d) and (e).

Our first task is now to construe the words of cl. (b) and (c) of the first sub-section of s. 42. The question is what did the legislature mean by the words "is charging" in clause (b) and "is levying" in cl. (c) ? The use of the present progressive tense is to denote something which is taking place at present. What has already taken place cannot be described by saying that "it is taking place." Just as one cannot say of a man who has ceased to exist, that he is existing; so also, one cannot say of a charge which has already been made that "it is being made." Of the charge which has already been made a person aggrieved can complain that "the Railway Administration has charged me at this rate." It will not be correct to say that "the Railway Administration is charging me at this rate."

This, it is true, proceeds on the assumption that the words "charging a rate" was used by legislature in its ordinary meaning of "demanding a price." This, it is contended on behalf of the appellant, is not however the only sense in which the words "charging a rate" can be used; and one of its senses, it is urged, is "Collecting a price that was demanded in the past." It is pointed out that in cl. (c) the words used are "levying a charge" and "levying" can certainly mean "collecting." It will be legitimate, argues the learned Counsel, to think that the word "charging" in cl. (b) and the word "levying" in cl. (c) were used by the legislature in the same sense. According to him, both these words should be construed widely so as to include "collecting a price."

The words "charging" in cl. (b) and "levying" in cl. (c) were used in the one and the same sense. We find it impossible to agree however that they were used to include "collecting". It appears to be clear that if the intention of the legislature was to give the Tribunal jurisdiction over complaints in connection with charges already made the legislature would have used the words "has charged and is charging" and would not merely say "is charging". Special jurisdiction of such a nature would be given clearly and the very fact that the words "has charged" have not been used is sufficient ground for thinking that it was not the legislatures intention to give the Tribunal jurisdiction over complaints in connection with charges made in the past. In our opinion, the words "is charging" in cl. (b) and "is levying" in cl. (c) must be construed to mean "is demanding a price at the present time for services to be rendered." The conclusion of the Railway Rates Tribunal that it had no jurisdiction

to entertain or try the complaints as regards the reasonableness or otherwise of rates and charges made prior to the institution of the complaint is therefore correct.

When the Tribunal had no jurisdiction to consider the reasonableness or otherwise of any charges made prior to the institution of the complaint, it follows necessarily that it could have no occasion to order any refund. For, the question of refund could arise only after a decision that the charges made were more than what was reasonable. It is clear however that even in respect of those charges and rates for which the Tribunal had jurisdiction to entertain a complaint the Tribunal had no power to order any refund. It is necessary to consider this question as the prayer for refund as made in the complaint was not only for charges already made but for charges that might be made in future under the rate Advice No. 2A of 1960. On behalf of the appellant it has been urged that it would be inequitable for the Tribunal not to make an order of refund in respect of charges made after the date of the complaint, if it comes to the conclusion that those charges were more than what was reasonable. The question of equity does not however arise. The Tribunal can have no more jurisdiction that what it is given by the Act which brings it into existence; and if on a proper construction of the words of the statute we find that the Tribunal was not given any such jurisdiction we cannot clothe it with that jurisdiction on any consideration of convenience or equity or justice.

What the Tribunal has to do after a complaint is made is mentioned in s. 41(1) itself. It is said there that the Tribunal shall hear and decide the complaint. The complaint being that something is unreasonable all that the Tribunal has to decide whether that thing is unreasonable or not. A finding that it is unreasonable does not involve any consideration or decision of what would flow from the finding. In other words, in making the complaint the complainant can ask only for a declaration that the rate or charge is unreasonable and it only this declaratory relief which the Tribunal has been authorised to give. There is no provision that the Tribunal can also give a consequential relief.

The only other thing which the Tribunal authorised to do in connection with the complaint is to fix "such rate or charge as it consider reasonable". In the absence of anything to indicate to contrary it is reasonable to think that this fixation can only be prospective, that is, the Tribunal in making this order fixing the reasonable rate or charge will mention a future date for this to come into operation. Even if it was assumed for the sake of argument that the Tribunal can fix the rates from the date of the complaint that would give the Tribunal any power to order refund.

Mr. Veda Vyasa has argued that the power to order refund flows from s. 39 of the Act. Section 39 is in these words : "For the purpose of exercising the jurisdiction conferred on it by this Chapter, the Tribunal may pass such interim and final order as the circumstances may require, including orders for the payment, subject to the provisions of this Chapter, of costs; and it shall be the duty of the Central Government or the State Government, as the case may be, on whom any obligation is imposed by any such order to carry it out." Is it necessary for the Tribunal to make the order for refund - at least in respect of the charges made after the date of the complaint in excess of what is held to be reasonable - "for the purpose of exercising the jurisdiction conferred on it ?" The utmost that could be said is that the relief for making an order of refund has a connection with the order holding the rates already charged after the date of the institution of the complaint to be unreasonable. It is impossible to say however that such an order is necessary for the purpose of exercising the jurisdiction conferred - that jurisdiction in connection with complaints, being under s. 41, only to arrive at a decision whether a certain rate was reasonable or not and if it was unreasonable to fix a reasonable rate. An order for refund can by no stretch of imagination be considered to be "necessary for the purpose of exercising the jurisdiction". Section 39 is therefore of no assistance to the appellant's contention.

It was next urged that unless the Tribunal is held to have power to make an order of refund, s. 46(B) will be meaningless. Section 46(B) provides that the Tribunal may transmit any order made by a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree. It is obvious that an order for payment of costs which may be made by the Tribunal could under s. 46(B) be transmitted to a civil court and executed by a civil court as if it were a decree. Even if the Tribunal can pass no other order, which may require execution, s. 46(B) will serve its purpose in connection with the orders for costs. Nor is it necessary for us to speculate as to what order orders made by the Tribunal could require execution by the civil courts. For, such considerations cannot in any way throw any light on the nature of the orders that can be made under s. 39. It is hardly necessary to mention that s. 39 does not confer any jurisdiction; but only provides for means for exercise by that Tribunal the jurisdiction which it has otherwise got under other sections.

It is interesting to remember in this connection the words used by the British Parliament in s. 196(3) of the Government of India Act, 1935. The first sub-section of s. 196 provided for the constitution of the Railway Tribunal and then the third sub-section proceeded to say : "It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every federated state and of every other person or Authority affected thereby to give effect to any such order". These important words "orders for the payment of compensation or damages" have been omitted from the present s. 39.

Mr. Veda Vyasa strenuously contended that unless the Tribunals be held to have jurisdiction to order refund, the appellant and others in his position would be deprived of their right to obtain relief against unreasonable charges already paid in view of the provisions of s. 26 of the Act. Section 26 (which is in the same words as the old 41) runs thus : "Except as provided in this Act no suit shall be instituted or proceedings taken for anything done or any omission made by a Railway Administration in violation or contravention of any provisions of this Chapter" (Ch. V). The argument is that s. 26 stands in the way of bringing any suit in the civil courts on a claim for refund of charges made in excess of reasonable charges. This proceeds on the misconception that such a suit would be "for anything done or any omission made by a Railway Administration in violation or contravention of Ch. V of the Act". There is no provision in Ch. V however saying that unreasonable charges shall not be made by a Railway Administration. If therefore any Railway Administration has received payment of unreasonable charges or rates that is not "anything done in violation or contravention of any provisions of Chapter V". If under the law, apart from the Railways Act, a consignor is entitled to obtain relief against unreasonable charges which he has paid in the past, s. 26 will not stand in his way. What his rights in law are in respect of such past charges; and whether any claim for repayment of charges made in excess of reasonable charges can succeed in law in civil courts on the theory that as a common carrier the Railway is not entitled to charge anything more than reasonable rates and charges, need not be examined here. As a suit on such a claim would not be on anything done or any omission made by the Railway Administration in violation or in contravention of any provisions of Ch. V, the provisions of s. 26 are quite irrelevant for the decision of the question whether the Tribunal has any jurisdiction to make an order for refund.

Our conclusion therefore is that neither expressly nor by necessary implication has the Railway Rates Tribunal been given any jurisdiction to make any order for refund. The decisions of the

Railway Rates Tribunal, in the present case, on both the issues are therefore correct.

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