Union of India

Vs

West Coast Paper Mills Ltd.

Civil Appeal No. 1742 of 1966

(J. C. Shah, A. N. Grover JJ)

14.10.1970

JUDGMENT

SHAH, J. -

1. This is an appeal with special leave against the order of the Railway Rates Tribunal constituted under Section 34 of the Indian Railways Act 9 of 1890.

2. The West Coast Paper Mills Ltd. - hereinafter called 'the Company' - is a manufacturer of paper and paper products. It has set up a factory at Benguranagar in Dandeli at the terminus of Alnawar-Dandeli branch line of the Southern Railway. This branch line is 32 Kilometers in length was a "light railway" constructed and opened for traffic by the Government of Bombay in 1919, principally for the purpose of transporting forest produce collected in the surrounding region. With the reorganisation of the State under the States Reorganization Act the ownership of the Railway passed to the Mysore Government. The Railway was finally taken over by the Government of Indian with effect from October 1, 1962, and now forms part of the Indian Railways.

3. The Company used the branch line for transporting coal, limestone etc. required for its manufacturing activities, and also for transporting its manufactured products. Initially the Railways were levying freight over this branch line at "common rates" for all commodities on "a weight basis". On representations made by the users of this branch line, the Indian Railways substituted, with effect from February 1, 1964, the "standard telescopic class rates". In charging the goods freight, however, the actual distance of the Branch line was multiplied by three.

4. The Company filed a complaint before the Railway rates Tribunal and challenged as "unjust, unreasonable and discriminatory" the method of levy of freight on goods traffic. The Company claimed that the levy of rates offended the provisions of Section 28 of the Indian Railways Act, 1890, and that the existing rates were per set unreasonable. The Company claimed a declaration that the rate between the stations specified in the complaint were unreasonable and a direction to the Railway to levy with effect from the date of the complaint standard rates and charges for the traffic on the branch line without "inflating the distance".

5. The Union of India a representing the Southern Railway defended the complaint. They contended that the introduction of "standard rates and fares" over the section "on a continuous distance basis with three times inflation of the chargeable distance" for goods was made on the authority of the Central government under its directive and the Railway Rates Tribunal is precluded from questioning its legality or propriety. They also contended that in any event the levy is not unjust, unreasonable or discriminatory; that the increased rate on the basis of "inflated distance" was in

vague in different section of the Indian Railways; that such inflation was adopted either because of the higher cost of operation of the particular section or because of unusually heavy capital costs involved on a particular system of Railway and for similar reasons; that the reason for inflation on the branch line was due to large capital investment for the rehabilitation of this branch line by the Central Government after it was taken over for the previous owners; that before the branch line was purchased it was working at a loss for a number of year and for effectively working the branch line it had become necessary to undertake extensive repairs and renewal work including complete relaying of the track, construction of crossing stations, etc.,; that the total costs of such repairs and renewal was Rs. 28.99 lakhs, and that even after the introduction of higher rates and fares with "three times inflation" in distance, the users of branch line will be paying less than what they were paying before the introduction of the new rates. The Union denied the charge of discrimination and undue preference and contended that the Tribunal had no jurisdiction to hear the complaint merely because the Company had selected certain commodities and certain sets of stations in support of its grievance under Section 41(1) (b) of the Indian Railways Act, 1890.

On the pleadings before the Tribunal, six issues were settled, four of which are material :

> "(1) Is the complaint not maintainable against the respondent (Union of India) under Section 41(1) (b) of the Indian Railways Act, 1890 (Act 9 of 1890) ?
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> (2) Whether rates for the carriage of complainant's traffic have become unreasonable as a result of inflating the chargeable distance over the Alnawar-Dandeli section ?
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> (3) Whether the impugned method of charging on inflated distance (at three times the actual distance over the Alnawar-Dandeli section to arrive at the distance for charge) is governed by any order of the Central Government, and if so, whether the complaint is not maintainable for the same reason ?
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> (4) Whether the respondent (Union of India) in charging the complainant's traffic over the Alnawar-Dandeli section at tariff rate on continuous distance basis, but with three times the inflation in the chargeable distance over the section, is subjecting the complainant's traffic to the undue prejudice in contravention of Section 28 of the Indian Railways Act ?"

The Tribunal decided the case against the Railway Administration. In the view of the Chairman and Mr. Munshi (one of the members of the Tribunal) on issue No. (1) the complaint was maintainable against the Union of India under Section 41(1) (b) of the Indian Railways Act. They observed that though a class rate between two stations for a commodity would fall outside the scope of Section 41(1)(b), it was still open to the Company to make a grievance in respect of the selected few items for the purpose of attack. On Issue No. (2) they held that the Railway had not made out any "justifications for inflating the chargeable distance over the Alnawar-Dandeli section". On Issue No. (3) they held that the jurisdiction of the Tribunal to examine the validity of the impugned method of charging the distance by a multiple of three of the actual distance over the section to arrive at the distance for determining freight, though governed by the order of the Central Government, was not excluded. On Issue No. (4) the Chairman observed :

> "There is ..... no doubt that the order in question (Ext. R-4) is one issued under Section 29(1) of the Act. If the Tribunal were to give any relief which might have been indirectly the effect of cancelling the said order, it would amount to changing

> the maxima and minima rates and the level of class rates applicable to Alnawar-Dandeli section which would not be within its power or jurisdiction. However, if it declared only certain rates for specific commodities between specific pairs of stations to be unreasonable and fixed new rates in lieu thereof, the level of class rates as such would not be affected. If such rates are based on the actual distance they would also fall within the maxima and minima under the inflated distance sanctioned by Ext. R-4. I, therefore, find that though the method of charging on inflated distance over the Alnawar-Dandeli section is governed by the order of the Central Government (Ext. R-4) this Tribunal does not lose jurisdiction to decide on the unreasonableness of rates arrived thereby and the complaint cannot be said to be not maintainable for that reason."

Mr. Munshi agreed with that view. In his view charging the Company's traffic over the branch line at tariff rates on continuous distance basis but at three times the chargeable distance over the branch line was "unwarranted, unjustified and therefore unreasonable".

6. Mr. V. K. Rangaswami the third member of the Tribunal agreed with the Chairman and Mr. Munshi on the issue of unreasonableness of the rate charged by multiplying the distance by three. He also agreed that the jurisdiction of the Tribunal to entertain a complaint relating to levy of unreasonable charges between specific stations was not excluded. But the differed with the other members on the competence of the Tribunal to declare invalid the method of levy of freight and to fix new rates in lieu of rates declared unreasonable. In the opinion of the majority it was competent to the Tribunal to do so. Mr. Rangaswami held that it was for the Railway Administration to consider the matter and to take action to cancel the inflated distance over the branch line generally, and to fix new rates.

7. The Tribunal by a unanimous order made the following directions :

> "..... that the class rate with inflated distance applicable to the Alnawar-Dandeli Branch, subject the complainant to an undue disadvantage in contravention of Section 28 of the Indian Railways Act, and also render unreasonable per se the rates for the complainant's traffic to and from Dandeli."

Against that order, this appeal has been filed with special leave.

8. The relevant provision of the Indian Railways Act 9 of 1890 may be briefly set out :

> "Section 28. A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."
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> "Section 29. (1) The Central Government may by general or special order fix maximum and minimum rates for the whole or any part of a railway, and prescribe the conditions in which such rates will apply.
>
> #(2) .....##

(3) Any complaint that a railway administration is contravening any order issued by the Central Government under sub-section (1) shall be determined by the Central Government."

"Section 41. (1) Any complaint that a railway administration -

(a) is contravening the provision of Section 28, or

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

#(c) .....##

may be made to the Tribunal, and the Tribunal shall hear and decide any such complaint in accordance with the provisions of this Chapter.

..... ."##

"Section 42. The Central Government alone shall have power -

(a) to classify or reclassify any commodity;

(b) to increase of reduce the level of class rates and other charges."

9. The jurisdiction conferred upon the Tribunal by Section 41 and relating to matters set out in clauses (a) to (c) thereof is restricted by the terms of Section 29(3) and Section 42. Section 28 prohibits a railway administration from making undue preference or subjecting any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage. But even in a dispute relating to the matters set out in Section 41(1) (a), (b), and (c) where the Central Government has fixed by general or special order maximum and minimum range of rates for the whole or any part of a railway the complaint that the railway administration has contravened any order issued by the Central Government may be determined by the Central Government and not by the Tribunal. Similarly, the Central Government alone has and the Tribunal has not power to classify or reclassify any commodity and to increase or reduce the level of class rates and other charges. Subject to these restrictions, the Tribunal has the power to determine whether the Railway Administration has acted in contravention of the provision of Section 28, i.e. it was granted any undue or unreasonable preference or advantage to, or in favour of any particular person, or shown any undue or unreasonable prejudice or disadvantage to any person or railway administration or any particular description of traffic, and was charging for the carriage of any commodity between two stations a rate which was unreasonable or was levying any other charge which was unreasonable.

10. In the present case the maximum and minimum range of rates have been fixed by the Central Government. A complaint that the railway administration has acted in contravention of the order issued by the Central Government may be determined by the Central Government and not by the Tribunal. Again the Central Government alone has the power to classify or reclassify any commodity or to increase of reduce the level of class rates and other charges. The Tribunal accepted these limitations upon the exercise of its powers. The Tribunal however found that the charge made by the railway administration under the order of the Railway Board levying tariff at the standard rates but on the footing that for each kilometer the goods are transported the charge will be levied at

three times the standard rate is unreasonable and discriminatory. The finding proceeds upon appreciation of evidence which has been examined in great detail. The finding of the Tribunal cannot be challenged in this appeal with special leave under Article 136 of the Constitution, and no attempt has been made to challenge before us that finding.

11. On behalf of the Union it was urged by the Solicitor-General, that the impugned rates were station to station rate and relying upon certain rules framed by the Railway Board, counsel contended that in respect of station-to-station rates the Tribunal has no jurisdiction to give relief. Rule 63 of Goods Tariff No. 28 in force from August 1, 1950, provided for the station-to-station rates as one of the types of rates chargeable. Clause (7) provided that a "station-to-station rate", is a special rate for the total distance between two specific points (stations only) : and clause (5) provided that :

> "Station-to-station rates are as follows -
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> (i) those between two stations on the same Railway, that is, local station-to-station rates;
>
> (ii) those between a station on one railway and station on another railway."

Similarly in Rule 67 of Goods Tariff No. 29 in force from June 1, 1954, similar definition of station-to-station rates was given. In Rule 67 of Goods Tariff No. 29 effective from October 1, 1958, rates were divided into two types - (i) Class rates; and (ii) station-to-station rates. By clause (3) it was provided :

> "(i) 'Station-to station rate' means a special reduced rate applicable to specific commodity booked from one specified station to another specified station.
>
> (ii) Station-to-station rates may be quoted form and to stations on the same Railway or from a station on one Railway to a situation on another railway."

These rules have, in our judgment, no relevance in determining the matter in dispute in this appeal, for in Section 41(1) (B) the expression used is not "station-to-station rates", but a rate between two stations which is unreasonable. There is nothing in the rules which even indirectly affects the jurisdiction of the Tribunal to determine whether the rates for carriage of certain specified commodities between two stations are unreasonable. The Tribunal has expressly observed that the relief granted to the Company must be within the range of rates prescribed by the Central Government. The Tribunal has expressly observed that it is incompetent to grant relief which might even indirectly cancel the order of the Central Government under Section 19(1), for, it would amount to changing the range and level of class rates applicable to the branch line. But if the Tribunal declared that any certain rates for specific commodities, between specified pairs of stations, are unreasonable, the level of class rates is not affected. The Tribunal is invested with the authority subject to the limitations contained in Section 29(3) and Section 42 to entertain a complaint and to give relief in respect of rates which are found to be unreasonable between two stations. The complaint made by the Company did not seek intervention of the Tribunal in matters which may be raised only for decision to the Central Government by Section 29 and Section 42 of the Act, and the Tribunal has not given any relief in contravention of those provisions. The Tribunal has merely declared that the chargeable rate of freight determined by multiplying by three the distance over which the goods are transported for specific commodities is in contravention of

Section 28 of the Indian Railways Act, 1890.

12. We do not see force in the opinion expressed by Mr. V. K. Rangaswami and even if the Tribunal holds that the rates between two stations in respect of a specific commodity are unreasonable, it cannot make a declaration to that effect. Such a view would deprive the Tribunal of its power to give formal shape to its view. We are not called upon to decide whether the Tribunal has power to fix rates in substitution of rates declared unreasonable in exercise of the jurisdiction under Section 41(1) (b), because no such rates are fixed by order of the Tribunal.

13. The relief granted by the Tribunal is, in out judgment, within its jurisdiction.

The appeal fails and is dismissed with costs.

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