SUPREME COURT OF INDIA

Jaipur Udyog Ltd.

Vs.

Union of India

C.A.Nos.1479 and 1547 of 1974

(A. N. Ray, C.J.I., K. K. Mathew, V. R. Krishna Iyer and A. C. Gupta, JJ.)

05.03.1975

JUDGEMENT

GUPTA, J.:-

1. These two appeals by special leave are directed against two orders of the Railway Rates Tribunal (hereinafter referred to as the Tribunal) revoking under Sec. 41A of the Indian Railways Act, 1890 (hereinafter referred to as the Act) two previous orders passed by the Tribunal upon complaints made under Section 41 of the Act by the appellant before us.

2. The material facts are as follows. Jaipur Udyog Limited, appellant in each of these appeals, owns a cement factory at Swaimadhopur a station on the Western Railway and a limestone quarry at Phallodi at a distance of 24 Kilometers from the factory. Phallodi is about 8 kilometers from Rawanina Dungar station on the Western Railway. There is a siding connecting the main railway line at Rawanja Dungar station with the quarry at Phallodi. The siding is maintained by the railway administration on payment of charges by the appellant. On November 22, 1965 the appellant filed a complaint under Section 41 of the Act registered as Complaint No. 6 of 1965, alleging that the

charges levied by the Railway administration were unreasonable. Civil Appeal No. 1479 of 1974 arises out of this complaint. By its order dated January 31, l969 the Tribunal disposed of the complaint reducing the maintenance, siding and the supplementary charges. On December 1, 1971 the railway administration applied under Section 41A of the Act for revision of the earlier order of the Tribunal praying that the earlier order be revoked or a fresh order made refixing the rates and charges. Civil Appeal No. 1547 of 1974 has its origin in a similar complaint, registered as Complaint No. 7 of l965 made by the appellant on November 18, 1965, in respect of similar charges made by the railway administration for the placement of wagons on and their removal from the railway lines within the appellant's premises and for maintenance of these lines. In this case also the Tribunal had reduced the charges by its order dated July 30, 1970. The railway administration applied under Section 41A of the Act for variation or revocation of the said order. However, at the hearing of these applications under Section 41A, the railway administration prayed for complete revocation of the previous orders which the Tribunal allowed. In these appeals the appellant contends that instead of revoking the earlier orders the Tribunal should have refixed the rates and charges on the evidence before it.

3. It appears from the impugned orders that the Tribunal did not find sufficient material for refixing the charges and vary the previous orders accordingly. On behalf of the appellant it was contended that if the railway administration had failed to adduce proper or sufficient evidence to enable the Tribunal to vary the earlier orders by refixing the charges, their application under S. 11A should have been dismissed. Sec . 41. so far as it is relevant for the present purpose, and Sec. 41A of the Act read as follows:

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

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

(b) is 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,

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

(2) x x x

(3) x x x

(4) x x x

41 A. Where a railway administration` bound by an order of the Tribunal, considers that since the order was made there has been a material change in the circumstances on which it was based, the railway administration may, after the expiry of one year from the date of the order, make an application to the Tribunal for revision of the order and the Tribunal may, after making due inquiry into the matter in accordance with the provisions of this Chapter, vary or revoke the order."

4. The Tribunal held that since the previous orders were made the cost of the operations as well as the wages of the staff have gone up appreciably and there has thus been a material change in the circumstances on which the said orders were based. On the application under Section 41-A arising out of complaint No. 6 of 1965 the Tribunal found, as regards the maintenance charges, that the formula on the basis of which the charges had been fixed in the previous order involved many arbitrary assumptions and was of no help in estimating reasonable maintenance charges for the siding. The Tribunal further held that the "payable cost of siding charges" had increased and found that the basis adopted in the previous order for fixing the siding charges was of "no significance." With regard to supplementary charges, the Tribunal noted that in the earlier order 'the supplementary charges were "fixed on the basis of the percentage, in force for similar charges on freight" and that there being no supplementary charges on freight with effect from April 1, 1970, the circumstances upon which the charges under this head were fixed by the earlier order had undergone a material change on the other application under S. 41A, directed against the order made-on complaint No. 7 of 1965 the Tribunal recorded similar findings on the placement-charges, maintenance charges and supplementary charges fixed by the said order. Having found that there has been material change in the circumstances justifying the exercise of the revisional jurisdiction under Section 41A of Act, the Tribunal considered which of the two alternatives permitted by Section 41A, variation or revocation of the previous orders would be appropriate. As stated already, the Tribunal held that on the evidence before it, it was not in a position to vary the earlier order by refixing the charges.

5. Before us it was contended on behalf of the appellant that the railway administration by choosing not to lead evidence necessary for variation of the previous orders could not compel the Tribunal to revoke these orders. It was submitted that under Section 41A the Tribunal had a discretion either to very or to revoke the previous orders and it was not permissible for the railway administration to lead evidence in such a way as would compel the Tribunal to exercise its discretion in one Particular manner only leaving no alternative. That may be so, but the main difficulty that the Tribunal appears to have experienced in refixing the charges was that it found the basis on which some of the charges were fixed not proper or reliable and felt that- certain relevant factors which should have been taken note of were not considered in the previous orders. These difficulties felt by the Tribunal

in the way of refixing the charges could not have been anticipated by the railway administration while adducing evidence in these cases and under the circumstances revocation of the previous orders was the only choice left to the Tribunal.

6. It was stated before us that after the revocation of the previous orders the railway administration has refixed the charges at rates which according to the appellant are exorbitant. It was submitted that if we found that evidence was lacking for fixation of the charges by the Tribunal we should remit the matters to the Tribunal for variation of the earlier orders with liberty to the parties to adduce further evidence; otherwise, it was submitted, if the appellant were driven to make fresh complaints under Section 41 of the Act. orders reducing the charges made on such complaints would be effective only from a future date, as held by this Court in Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Rly. Co. Ltd., (1963) 2 SCR 333 = (AIR 1963 SC 217) and the appellant would be denied any relief for the interim period. It was further submitted that the law stated in that decision that the Tribunal in passing an order fixing reasonable rates or charges under S. 41 of the Act cannot make the order effective even from the date of the complaint but has to "mention a future date for this to come into operation" required reconsideration. The decision in Upper Doab Sugar Mills case (supra) does not arise for consideration in these appeals in which we are concerned only with the propriety of the two orders made under Section 41A of the Act. We do not also think that it would be more advantageous to the appellant if the matters were remanded to the Tribunal for being reheard, especially when the railway administration has admittedly refixed the charges. The appellant will be free to make fresh complaints regarding these charges under Section 41 of the Act, and we were told by the learned counsel for the respondent that these complaints are now disposed of without much delay.

7. For the reasons stated above the orders of revocation passed in these cases cannot be said to be illegal or without jurisdiction. Accordingly. we dismiss both the appeals but, considering all the relevant circumstances, without any order as to costs.

Appeals dismissed.