

## **SUPREME COURT OF INDIA**

Union of India

Versus

E.I.D. Parry (India) Ltd

(S. Saghir Ahmad and D.P. Wadhwa, JJ.)

Civil Appeal No. 1763 of 1989.

01.02.2000

### **JUDGMENT**

S. Saghir Ahmad, J –

Respondent's suit for recovery of a sum of Rs. 2,333.61 charged as demurrage by the Railway Administration on account of failure to unload wagons within the free time, was decreed by the trial Court, namely, the District Munsif at Guntur, for Rs. 966\ - with interest at the rate of 6 per cent per annum. The decree was set aside by the first Addl. District Judge, Guntur, on the ground that all the ten box wagons through which bulk - rock phosphate fertiliser was transported from Vishakhapatnam Port to Krishna Canal Railway Station had reached destination and thereafter shunted to the respondent's siding on May 5, 1971 at 3.30 A.M. and during the course of unloading, which commenced at 6.30 A.M., only five wagons were unloaded by 9.00 A.M. within the free time available to the respondent, and since all the text box wagons were not unloaded, the Railways were entitled to levy demurrage for all the 10 wagons under the Rules. The lower appellate Court had placed reliance upon the Goods Tariff Rules of the Southern Railway, Part 1-A, which provides as under :

"The entire group of box wagon placed for unloading will be treated as one unit for the purpose of levy of demurrage charges, i.e., even if one wagon out of the group of two or more is detained for unloading beyond the prescribed free time, the demurrage will be levied on all the box wagons in the group."

The above Rule was struck down by the High Court in the Second Appeal as ultra vires and the decree passed by the trial Court was maintained.

2. In the present appeal, which is directed against the judgment of the High Court, it is contended on behalf of the learned counsel for the appellant that there was no occasion for the High Court to have looked into the validity of the Goods Tariff Rule quoted above or to hold that Rule to be ultra vires the Railways Act, 1890. This contention appears to be absolutely correct.

3. The suit was filed for the recovery of excess demurrage allegedly charged by the appellant from the respondent. The claim depended upon Goods Tariff Rules, specially the Rule quoted above, which authorises the respondent to claim damages in respect of the entire block of wagons supplied to a party who does not empty those wagons at the siding within the time permitted for that purpose. There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provision of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law that a question, which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject matter of any issue, could not be decided by the Court. The scope of the suit was limited. The pleadings comprising of the averments set out in the plaint and the defence put up by the present appellant in their written statement did not relate to the validity of the Rule struck down by the High Court. The High Court, therefore, travelled beyond the pleadings in declaring the Rule to be ultra vires. The judgment of the High Court, therefore, on this question cannot be sustained.

4. So far as the question relating to the demand of demurrage for the entire block of ten wagons is concerned, the trial Court recorded the following finding :

"The question to be determined is whether the defendant has a right to collect demurrage for all the 10 wagons or only for the five wagons remained to be unloaded after free time. The learned counsel for the debit placed before one Goods Tariff Part I-A published by Southern Railway in 1965. Rule 28 of Chapter thereof provides the rates of charges to be collected as wharfage and demurrage. Item II of this rule specifies the rates of demurrage. A table is given under this item. Sub-item II relates to wagons waiting to be unloaded by the consignee. In column (2) of the table it is mentioned that in the case of a group of 1 to 10 box wagons the time allowed free is five working hours from the time at which the wagons are placed in position for unloading. In the remarks column No. 4 it is stated that the entire group of Box Wagons placed for unloading will be treated as one unit for the purpose of levy of demurrage charge, i.e. even if one wagon out of the group of two or more is detained for unloading beyond the prescribed free time, the demurrage will be levied on all the Box Wagons in the group. The learned counsel for the defendant argued that it is only in accordance with the above rule the defendant collected demurrage charges on all the 10 wagons even though five wagons were unloaded within the free time. According to the plaintiff the above rule is not applicable to private siding. As stated supra, the plaintiff has a private siding at Krishna Canal Railway Station. The wagons were unloaded at the private siding of the plaintiff. In the table given in Rule 48 referred to above a separate heading was given as 'In private sidings'. It is specified therein that in respect of the loaded vehicles waiting to be discharged in private siding the time allowed free is 5 working hours from the time at which is the vehicles are shunted within the limits of such siding. column 4 intended for 'Remarks' is left blank. It is not mentioned in Remarks column as in the case of general siding that even if one wagon out of a group of wagons

remained unloaded beyond the prescribed free time, the demurrage will be levied on all the Box wagons in the group. That column is left blank. In the absence of the above provision, I consider the defendant does not have a right to collect charges in even respect of unloaded wagons taking the wagon remained to be unloaded and the unloaded wagons as one unit. If in the case of private sidings also the Railways Board intended to collect demurrage charges as in the case of General siding it would have been specified in the Remarks column that demurrage charges will be collected for all prescribed free time. The defendant can collect demurrage only for these five wagons and not for all the 10 wagons. The plaintiff is entitled to refund of charges paid by him for five wagons unloaded within the free time. The issue is answered accordingly."

5. The trial Court has drawn a distinction between "general siding" and the "private siding" and has held that in regard to private siding, demurrage could not have been claimed in respect of the entire block of ten wagons and that it could be charged only in respect of those wagons which had not been emptied or unloaded within the free time allowed under the Rules. This finding is not assailed before us and it has not been shown as to how it is erroneous. Even the Goods Tariff Rules, upon which reliance has been placed by the trial Court in coming to this finding, were not placed before us in spite of our insistence.

6. In view of the above, the appeal is partly allowed. The judgment of the High Court so far as it purports to strike down the Goods Tariff Rules extracted above is set aside, but the other part of the judgment by which the decree passed by the trial Court has been upheld, is maintained. There will be no order as to costs.

Appeal partly allowed.