SUPREME COURT OF INDIA

Union of India

Vs.

West Coast Paper Mills Limited

C.A.Nos.1061-1062 of 1998

(R.C.Lahoti and Ashok Bhan JJ.)

25.02.2004

JUDGMENT

R. C. Lahoti, J.

1. The two appeals which are being disposed of by this common judgment have a chequered history of litigation. The West Coast Paper Mills Limited/ Dandeli and Dandeli Ferro Alloys Limited, Dandeli, the two plaintiffs arrayed as respondents in the two appeals (and which would include their predecessors) have their mills situated at Dandeli in the State of Karnataka. They were required to transport their goods between Ainavar and Dandeli by railways. They were being charged at a flat rate from Ainavar to Dandeli irrespective of the commodity carried and they were not given the benefit of telescopic system of rates which was allowed by the Railways to others and in respect of other goods. The effect of the benefit of telescopic system of rates being denied to the respondents was that they had to pay freight on certain goods at three times compared to what would have been payable in case the benefit of telescopic system of rates was allowed to them.

2. On 24th June, 1963, West Coast Paper Mills Limited filed a complaint (registered as Complaint No. 4/1963) against the Railway Administration complaining of illegality on account of contravention of the provisions of Section 28 of the *Indian Railways Act, 1890* (hereinafter referred to as "the Act") and of un- reasonability on the part of the Railway Administration in charging the freight at the impugned rates. The period for which the complaint related was 26th April 1963 to 1st October 1966 (both dates inclusive and inclusive of the period introduced into the complaint by way of amendment). By order dated 18th April 1966, the Tribunal held that in devising the freight rates the Railway Administration had contravened the provisions of Section 28 of the Act and the complainant i.e. the respondent West Coast was treated with discrimination and unreasonableness. In spite of holding so, the Tribunal did not direct the amount of freight illegally and unreasonably collected by the Railway Administration, to be re- funded in view of the holding of this Court in Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Railway Company Ltd. Where in this Court has taken the view that the Tribunal is competent only to

grant declaratory relief and there is no provision which authorises the Tribunal to grant the consequential relief also.

3. The Union of India preferred an appeal by special leave to this Court laying challenge to the decision of the Tribunal dated 18th April 1966 under Article 136 of the Constitution of India. By judgment dated 14th October 1970 [reported as Union of India v. West Coast Paper Mills Limited,], the appeal preferred by the Union of India was dismissed and the decision of the Tribunal was affirmed. During the course of its judgment, this Court also recorded a finding that the freight charges levied by the Railway Administration were in contravention of Section 28 of the Act and were unreasonable.

4. Another complaint under Section 41 of the Act (registered as Complaint No. 4/1966) came to be filed before the Railway Rates Tribunal by the West Coast Paper Mills Limited and this related to the period 2nd -October, 1966 to 14th August, 1972 and included certain commodities which were not the subject matter of Complaint No. 4/1963. This complaint came to be decided on 12th November, 1972. By that time, the decision of this Court dated 14th October, 1970 was available which was followed by the Tribunal and the complaint was allowed granting a declaration sought for by the complainant.

5. A similar complaint was filed by Dandeli Ferro Alloys Limited registered as Complaint No. 2/1967 which too came to be decided on 12th November, 1972 following the decision of this Court as abovesaid and granting the declaration sought for by the complainant therein. Thus the three decisions by the Tribunal in the three complaints holding the freight rates applied by the Railway Administration to be illegal and unreasonable achieved a finality. The issue is no more res Integra.

6. On 5th January, 1972, West Coast Paper Mills Limited filed a writ petition under Article 226 of the Constitution of India seeking a writ of mandamus commanding the Railway Administration to refund the amount of freight collected by the Railway Administration to the extent it was in violation of the declaration given by the Tribunal. This writ petition, related to the period 26th April, 1963 to 1st October, 1966 and the freight realised by the Railway Administration during this period. This petition came to be dismissed on 29th October, 1973 by the High Court forming an opinion that for a money claim of the nature made in the writ petition, writ jurisdiction was not appropriate forum and the writ petitioner was at liberty to file a civil suit for the claim. The merits of the claim were not adjudged by the High Court and rightly so.

7. During the pendency of the writ petition, on 5th October, 1973, West Coast Paper Mills Limited served a notice under Section 80 of the *Code of Civil Procedure, 1908* (for short "the Code") on the Union of India as also on the General Manager of the Railways stating the cause of action and the relief for the period referable to 26th April, 1963 to 14th August, 1972 i.e. the periods covered by Complaint Nos. 4/1963 and 4/1966, both.

8. Dandeli Ferro Alloys also filed a suit on 18th April, 1974 in respect of their claim basing the cause of action on the judgment dated 12th November, 1972 delivered by the Tribunal.

9. Both the suits have been decreed by the Trial Court and the decrees have been upheld by the High Court. The Union of India has come up in appeals by special leave.

10. Two contentions were principally advanced by Mr. P.P. Malhotra, the learned Senior Counsel for the appellant - Union of India: firstly, that the suits were barred by limitation and secondly, the suits could not have been entertained unless preceded by notification of claims under Section 78B of the Railways Act.

11. When we heard the matter earlier, Shri P.P. Malhotra the learned Senior Counsel for the appellants placed reliance on a 2-Judges Bench decision of this Court in P.K. Kutty Anuja Raja & Anr. v. State of Kerala & Anr. 3 wherein this Court has held that the limitation would commence from the date of decision by the Tribunal and unless and until the operation of the impugned judgment was stayed by any superior forum the plaintiff could not take shelter behind the plea that the decision of the Tribunal was put in issue in appeal. Indeed this Court in the earlier round of litigation had not stayed the declaration given by the Tribunal and the submission of learned Senior Counsel for the appellants was that the commencement of period of limitation and running thereof was not stalled. In his submission, the period of limitation shall have to be calculated by reference to 18th April, 1966, the date on which declaration was made by Tribunal and if the period of limitation was calculated by reference to that date, the suit instituted by West Coast Paper Mills Limited on 12th December, 1973 was hopelessly barred by time. We entertained a doubt about the correctness of the view taken in P.K. Kutty's case (supra) and, therefore, directed the matter to be placed for consideration before a 3-Judges Bench. The decision by 3- Judges Bench is available reported as *Union of India & Ors. v. West Coast Paper Mills Limited and Anr.*[1]. The 3-Judges Bench has laid down the law that the order of the Tribunal dated 18th April, 1966 has merged into the judgment of this Court dated 14th October, 1970 and, therefore, the limitation would run from 14th October, 1970 and not from 18th April, 1966. The 2-Judges Bench decision in P.K. Kitty's case (supra) has been overruled as not laying the correct law. Having decided the question of law, the 3-Judges Bench has referred the matter back to the present 2-Judges Bench for decision on facts and other pleas, if any.

12. Mr. P.P. Malhotra, the learned Senior Counsel for the appellants has submitted that even if it is assumed that the period of limitation commenced on 14th October, 1970, still the suit should have been filed on or before 14th October, 1973 and, therefore, the suit filed on 12th December, 1973 is barred by limitation. The plea cannot be upheld for two reasons. Firstly, the period of two months required by Section 80 of the Code whereunder notice is mandatorily required to be given before filing the civil suit has to be excluded from computing the period of limitation under sub-section (2) of Section 15 of the Limitation Act, 1963

13. The cause of action arose to the plaintiff on 14th October, 1970 when the dispute came to be finally adjudicated upon by this Court and in view of the 3-Judges Bench decision dated 5th February, 2004 referred to hereinabove there is no manner of doubt that the decision of the Tribunal has merged with the decision of this Court dated 14th October, 1970. The

plaintiff was justified in staking its claim based on the decision of this Court dated 14th October, 1970 and serving a notice under Section 80 of the Code. The notice so served squarely attracts the applicability of sub-section (2) of Section 15 of the Act.

14. In the submission of Mr. Malhotra, placing reliance on The Commissioner of Sales Tax, U.P., Lucknow v. M/s. Parson Tools and Plants, Kanpur- , to attract the applicability of Section 14 of the Limitation Act the follow- ing requirements must be specified.

> "(I) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
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> (2) the prior proceedings had been prosecuted with due diligence and in good faith;
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> (3) the failure of the prior proceedings was due to a defect of jurisdiction or other case of a like nature;
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> (4) both the proceedings are proceedings in a Court."
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> In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression "other cause of like nature" came up for the consideration of this Court in Roshanlal Kuthalia & Ors. v. R.B. Mohan Singh Oberai and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstances, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the Section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.

15. The issue as to the legality and reasonability of the rates charged by the Railways Administration having been finally adjudicated upon by this Court, there is nothing wrong in the respondent West Coast Paper Mills Limited having proceeded on an assumption that what had remained to be done was a simple direction to the Railway Administration to refund the amount of freight to which it had already been adjudged not entitled to recover. However, the High Court was not inclined to grant such relief in exercise of its writ jurisdiction and, there- fore, left open the remedy of civil suit available to the respondents. By no stretch of imagination, it can be said that the West Coast Paper Mills Limited was

actuated by mala fides or want of good faith in instituting the writ proceedings. In our opinion, the period lost during the pendency of the writ proceedings is liable to be excluded from computing the period of limitation under Section 14(2) of the Limitation Act. Not only we have independently arrived at this finding on the submissions made by the learned Counsel for the appellant, but we may also refer to the finding recorded by the 3-Judges Bench vide Paragraphs 17 and 18 of the judgment dated 5th February, 2004 wherein it has been specifically held that the respondents were also entitled to get the period during which the writ petition was pending excluded from computing the period of limitation and in that view of the matter, the civil suit was filed within the prescribed period of limitation. The finding recorded by the Trial Court as also the High Court that the respondents were entitled to the benefit of Sections 14 and 15 of the Limitation Act, 1963 has been expressly upheld by the 3-Judges Bench holding, "we have no reason to take a different view".

16. We are clearly of the opinion that the suit filed by the respondent West Coast Paper Mills Limited was within the period of limitation.

17. So far as the suit filed by Dandeli Ferro Alloys Limited is concerned, Mr. Malhotra, the learned Senior Counsel for the appellants very fairly conceded that in view of the decision dated 12th November, 1972 which was given by the Tribunal in favour of the respondent Ferro Alloys Limited the suit filed on 18th April, 1974 was certainly within limitation.

18. So far as the plea based on Section 78B of the Act is concerned, we find no merit therein as well. Section 78B provides as under:

> “78B. Notification of Claims to refunds of overcharges and to compensation for losses: A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf –
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> (a) to the railway administration to which the animals or goods were delivered to be carried by railway, or
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> (b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway :
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> xxx xxx xxx
>
> The crux of the controversy is whether the claim preferred by the respondents can be said to be a claim for refund of an 'overcharge'.”

19. The term overcharge is not defined in the Act. In its dictionary meaning "overcharge" means "a charge of a sum more than as permitted by law"[see. The Law Lexicon, P.

Ramanatha Aiyar, 1997 Edition, Page 1389]. The term came up for the consideration of the High Court of Gujarat in *M/s. Shah Raichand Amulakh (D) by his heir v. Union of India & Ors.*[2]. Chief Justice P.N. Bhagwati (as His Lordship then was) interpreted the term by holding that "Overcharge" is not a term of art. It is an ordinary word of the English language which according to its plain natural sense means any charge in excess of that prescribed or permitted by law. To be an overcharge, a sum of money must partake of the same character as the charge itself or must be of the same genus or class as a charge, it cannot be any other kind of money such as money recovered where nothing is due. Overcharge is simply a charge in excess of that which is due according to law.

20. In the case at hand, the freight rates notified by the Railway Administration in exercise of its statutory power to do so, so long as they were not declared illegal and unreasonable by the Tribunal under Section 41 of the Act, were legal and any one carrying the goods by rail was liable to pay the freight in accordance with those rates. The freight paid by the respondents was as per the rates notified. Thus the present one is not a case of overcharge at all. It is a case of illegal recovery of freight on account of being unreasonable and in violation of Section 28 of the Act, consequent upon such determination by the Tribunal and the decision of the Tribunal having been upheld by this Court. A case of 'illegal charge' is distinguishable from the case of 'overcharge' and does not attract the applicability of Section 78B of the Railways Act.

21. For the foregoing reasons, we find the appeals devoid of any merit and liable to be dismissed. The appeals are dismissed, accordingly and the decree of the Trial Court as upheld by the High Court is affirmed.

[1]*(2004) 2 SCALE 285*
[2]*1971 (12) GLR 93*