

SUPREME COURT OF INDIA

Shree Shyam Agency

Vs.

Union of India

C.A.No.7589 of 2012

(K.S.Radhakrishnan and Dipak Misra JJ.)

18.10.2012

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are, in this appeal, concerned with the question whether the appellant is legally entitled to be intervened in a claim petition filed by the 3rd respondent herein under Section 16 of the Railway Claims Tribunal Act, 1987 (for short 'Tribunal Act').

3. The claim petition OA No. (1) 2 of 2010 was preferred by the 3rd respondent against the Southern and Eastern Central Railways before the Railway Claims Tribunal, Chennai Bench claiming an amount of Rs.9,46,85,726/- together with the interest @ 12% per annum from the date of filing of the petition till the date of payment and also for other consequential reliefs.

4. In the claim petition, the appellant herein filed I.A. 3/2011 for intervention claiming to be an interested party stating that its presence is necessary for a proper adjudication of the claim. I.A.4/2011 was also preferred by the 2nd respondent herein Central Railway to implead three other parties, namely Subham Sugar Agencies, Umesh Chaudhary, Ex. Goods Supervisor, Tatuha and Ambika Sugars Ltd., contending that the Railway Claims Tribunal (for short 'Tribunal') has no jurisdiction to proceed with the case since it involved contractual disputes, criminal

conspiracy, cheating and that a complaint filed by the above mentioned parties are pending before the Chief Judicial Magistrate, Muzaffarpur, Bihar.

5. The Tribunal heard both the applications, i.e. I.A.3/2011 and I.A.4/2011 and a common order was passed on 15.4.2011, stating that inter se disputes between private parties cannot be decided by the Tribunal in a claim petition. It also took the view that the Railway Administration through those parties is trying to linger on with the proceedings and, under no circumstance, the application for impleading the other three parties can be entertained. Both I.A.3/2011 and I.A.4/2011 were accordingly dismissed.

6. Aggrieved by the order passed by the Tribunal, C.R.P. (PD) No. 1713 of 2011 was preferred by the appellant herein, CRP (PD) No. 2152 of 2011 and CRP (PD) No. 2153 of 2011 by Southern Railway and Central Railway, before the High Court of Judicature at Madras. All the three civil revision petitions were heard and a common order was passed on 9.9.2011 dismissing all the revision petitions and confirming the order passed by the Tribunal, against which the appellant in C.R.P. (PD) No. 1713 of 2011 has come up before this Court with the present appeal. Railway Administration, however, accepted the order passed by the Tribunal which has been affirmed by the High Court by the impugned judgment.

7. For disposal of this appeal, reference to few facts is necessary. Claimant, the third respondent herein a company having its head office at Chennai, is engaged in the business of manufacturer of white crystal sugar having its factories at Thirumanthankudi village, Papiasam Taluk, Thanjavur District and A. Chittur Village, Virudhachalam Taluk, Cuddalore District. They used to sell free sugar in Northern Indian markets consisting of West Bengal, Bihar, etc. by transporting the consignments in racks through the services provided by the Railways. Railway receipts are made out showing the consignee as "Self" which are thereafter endorsed by the consignor to the buyer on payment of the sale price. The endorsed consignee/buyer takes delivery of goods of the respective destinations by surrender of the Railway Receipts. Claimant states that a dealer, by name Shubham Sugar Agencies, Kolkata, placed an order with the claimant for purchase of 27000 quintal of free sale sugar with payment conditions stipulating that the endorsed railway receipts would be released on receipt of entire sale consideration. Claimant stated that it has booked consignment on 1.2.2010 for transportation from Kumbakonam to Fatuha, Bihar and that the railway receipts were drawn as "Self" and were in the custody of the claimant and that the purchaser was expected to remit the sale price and get the railway receipts endorsed in its favour. The goods reached the

destination on 10.2.1010. The buyer failed to pay the sale price and the goods, as stated by the appellant, were kept at the railway godown incurring wharfage charges. Further, it was stated that the claimant then sent a letter to the Senior DGM/Southern Railway/Trichy on 23.4.2010 and informed that the railway receipts were in the custody of the claimant and requested either to shift the consignment to other destination or bring it back to Kumbakonam. The claimant was, however, informed on 4.5.2010 by the Railways that the consignment was delivered at Fatuha on 10.2.2010 on the strength of Indemnity Note without disclosing the person to whom it was delivered. Claimant maintained the stand that since the consignments were booked under “Self” basis, the delivery to a third party was without authority and amounted to negligence, misconduct and misappropriation and hence, the Railway Administration is legally liable to pay compensation being the value of the goods for non-delivery.

8. Appellant, however, maintained the stand that it was the purchaser of sugar from the claimant through broker Shubham Sugar Agencies, Kolkata and that the entire payment was made by it on instruction through various instruments like cheques/RTGS etc. which was accepted and acknowledged by the claimant. Further, it was also pleaded that the claimant has suppressed the full facts. It was stated that the appellant had not obtained the delivery of sugar without payment and out of the total consideration of Rs.7,87,52,850/-, it had already paid Rs.7,30,22,052.40 and the balance of a sum of Rs.57,30,797.60 was offered, but the claimant did not accept.

9. We are, in this appeal, primarily concerned with the question whether the appellant has got the right to get itself impleaded in the Claim Petition No. OA(1) No.2 of 2010 pending before the Tribunal and whether the findings recorded by the Tribunal as well as the High Court are legally sustainable or not. Since the claim petition is pending before the Tribunal, we are not expressing any opinion on the merits of the case. But the question whether the Railway Administration and the appellant therein are proper and necessary parties to the claim petition, has to be decided.

10. The Tribunal has been established under the Tribunal Act, 1987. Reference to its preamble would indicate the purpose and object of its creation. The Preamble of the Tribunal Act, 1987 reads as follows: “An Act to provide for establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non- delivery of animals or goods entrusted to it to be carried by railway or for the refund of

fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto.”

It is evident from the preamble that the Tribunal has been established for inquiring into and determining the claims against the Railway Administration for loss, destruction, damage, deterioration or non-delivery of animals or the goods entrusted to it to be carried by railway and not for adjudication of any claim or dispute against a third party.

11. Chapter III of the Tribunal Act deals with the jurisdiction, powers and authority of the Claims Tribunal. Section 13 of the Tribunal Acts reads as follows:

“13. Jurisdiction, powers and authority of Claims Tribunal.-(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for- compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway; compensation payable under section 82A of the Railways Act or the rules made thereunder; and (b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway. (1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder. (2) The provisions of the Railways Act 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.”

Section 16 of the Tribunal Act deals with the application to Claims Tribunal and reads as follows:

“16. Application to Claims Tribunal.- (1) A person seeking any relief in respect of the matters referred to in sub-sections (1) or sub-section (1A) of section 13 may make an application to the Claims Tribunal.

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed :

Provided that no such fee shall be payable in respect of an application under sub-clause (ii) of clause (a) of sub-section (1) or, as the case may be, sub-section (1A) of section 13.”

Section 18 of the Tribunal Act deals with the procedure and powers of Claims Tribunal and the same reads as follows:

“18. Procedure and powers of Claims Tribunal.-

(1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of nature justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

(2) The Claims Tribunal shall decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :

a) summoning and enforcing the attendance of any person and examining him on oath;

- b) requiring the discovery and production of documents; c) receiving evidence on affidavits;
- d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- e) issuing commissions for the examination of witnesses or documents;
- f) reviewing its decisions;
- g) dismissing an application for default or deciding it ex parte;
- h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- i) any other matter which may be prescribed.”

Rule 44 of the Railway Claims Tribunal (Procedure) Rules, 1989 confers inherent powers on the Tribunal to meet the ends of justice. On a conjoint reading of the above mentioned provisions, it is clear that the Tribunal has been constituted to adjudicate the claim made against the Railways and not against a third party. The claim petition, it is seen, is based on the contract of carriage entered into between the claimant and the railways.

12. The question to be decided by the Tribunal is whether the Railway administration has caused any loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or the refund of fares or freight or for compensation for death or injury to the passengers as a result of railway accidents or untoward incidents etc. Chapter III of the Act deals with the jurisdiction, powers and authority of the Tribunal.

13. Section 13(1)(a) of the Tribunal Act, as already indicated, confers exclusive jurisdiction on the Tribunal to decide the responsibilities of the Railways as carriers under Chapter VII of the Railways Act, 1989 in respect to the above mentioned claims made against the railways. Chapter IX of the Railways Act, 1989

deals with carriage of goods. Section 61 of the Railways Act, 1989 says that every railway administration shall maintain the rate-books etc. for carriage of goods and Section 62 imposes conditions for receiving etc. of goods. Section 65 is also important for the purpose of disposal of this case and hence extracted hereunder:

“65. Railway receipt.

(1) A railway administration shall,-

(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or

(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein:

Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.”

Section 74 of the Railways Act, 1989 deals with the passing of property in the goods covered by railway receipt and the same reads as follows: “74. Passing of property in the goods covered by railway receipt.- The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor.”

Section 76 of the Railways Act, 1989 deals with the surrender of railway receipt and reads as follows:

“76. Surrender of railway receipt.- The railway administration shall deliver the consignment under a railway receipt on the surrender of such railway receipt:

Provided that in case the railway receipt is not forthcoming, the consignment may be delivered to the person, entitled in the opinion of the railway administration to receive the goods, in such manner as may be prescribed.”

Section 77 deals with the power of railway administration to deliver goods or sale proceeds thereof in certain cases which reads as follows:

“77. Power of railway administration to deliver goods or sale proceeds thereof in certain cases.-Where no railway receipt is forthcoming and any consignment or the sale proceeds of any consignment are claimed by two or more persons, the railway administration may withhold delivery of such consignment or sale proceeds, as the case may be, and shall deliver such consignment or sale proceeds in such manner as may be prescribed.”

Section 87 of the Railways Act, 1989 confers rule making power on the Central Government, the relevant portion of which reads as under: “87. Power to make rules in respect of matters in this Chapter:-

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:-

xxx xxx xxx

xxx xxx xxx

(e) the manner in which the consignment may be delivered without a railway receipt under section 76;

(f) the manner of delivery of consignment or the sale proceeds to the person entitled thereto under section 77;

xxx xxx xxx

xxx xxx xxx”

14. The Central Government in exercise of its powers conferred by Clauses (e) and (f) of Section 87(2) of the Railways Act, 1989 read with Section 22 of the General Clauses Act, 1897 has framed the Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt), Rules, 1990 (for short “1990 Rules”).

15. The appellant or the Railway administration has no case that M/s Subham Sugar Agencies, Calcutta, the consignee had presented the railway receipt for claiming the goods. On the other hand, it has been the specific stand of the railway administration that the consignment was delivered at Fatuha on 10.2.2010 to a third party on the strength of “Indemnity Note” and not on production of the “Railway Receipt”. 1990 Rules, as already indicated, deals with the manner of delivery of consignments and sale proceeds in the absence of railway receipt. Sub-rules (1) and (2) of Rule 3 of 1990 Rules is relevant for our purpose and the same is extracted hereunder:

“3. Delivery of consignments when the railway receipt is not forthcoming:-
(1) Where the railway receipt is not forthcoming, the consignment may be delivered to the person, who in the opinion of the railway administration is entitled to receive the goods and who shall receive the same on the execution of any Indemnity Note as specified in Form I:

Provided; however, that if the consignee is a Government official in his official capacity, such delivery may be made on unstamped Indemnity Note).

(2) Where the railway receipt is not forthcoming and the consignment is addressed by the sender to self, delivery shall not be made unless Indemnity Note, duly executed in Forms I-A and I-B are produced by the persons claiming delivery of the consignment.”

Rule 5 of the 1990 Rules deals with delivery of perishable articles when the railway receipt is not forthcoming and the same reads as follows:

“(5) Delivery of perishable articles when the railway receipt is not forthcoming:-

(1) notwithstanding anything contained in these rules, where the consignment consists of perishable articles and the railway receipt is not forthcoming, such consignment may be delivered to the person who, in the opinion of the railway administration is entitled to receive such consignments, and such person shall take delivery subject to the following conditions, namely:-

a) if the invoice copy of the railway receipt is available at the time of taking delivery and the booking is to be named consignee who is claiming delivery, such person shall, before taking delivery execute an Indemnity Note specified in Form I; or

b) (i) if the invoice copy of the railway receipt is not available at the time of taking delivery; or

ii) if such invoice copy is available and the consignment is booked to “self”,

Such person shall, deposit an amount equivalent to the cost of consignment by way of security apart from freight and other charges before taking delivery of such consignment.

(2) If any amount has been deposited by way of security under clause (b) of sub-rule (1), such amount shall be refunded by the railway administration on production of the original railway receipt within six months from the date of taking such delivery.

(3) In the absence of original railway receipt refund may be granted on execution of an Indemnity Note in Form I or I-A and I-B, as the case may be, provided the invoice copy of the railway receipt is available and the particulars of consignment can be connected with reference to the invoice copy, within six months from the date of taking delivery.”

16. Form I under Rule 3(1) of the 1990 Rules deals with the “Indemnity Note” that when the consignment is to be delivered to the ‘person’, not to ‘self’. If it is to a ‘person’ then he has to furnish an indemnity note signed by the ‘consignee’. Sub-rule (2) of Rule 3 specifically states that, when the railway receipt is not

forthcoming and the consignment is addressed to "Self", delivery shall not be made unless Indemnity Note, duly executed in Forms I-A and I-B are produced by the persons claiming delivery of the consignment. The relevant portion of Form I-A and I-B are extracted below for easy reference:

"Form I-A

[See Rule 3(2)]

FORM OF INDEMNITY NOTE

_____ RAILWAY INDEMNITY NOTE

** I/We hereby acknowledge to have received from _____ Railway _____ valued at Rs. _____ which was dispatched by ** me/us and booked to self/as value payable, from the _____ Station of the _____ Railway on or about the _____ day of _____ the railway receipt for which has been _____ and ** for myself, my heirs, executors and administrators / and for our Company / Firm, their assigns, and successors.

** I/We undertake in consideration of such delivery as aforesaid to hold.

* President of India, his agents and servants the _____ railway administration, its agents and servants harmless and indemnified in respect of all claims to the said goods. ** I/We also undertake to pay on demand to the railway administration freight charges, undercharges, wharfage and any other charges that may be subsequently found due in respect of this transaction.

And ** I/We the undersigned, signing below the consignor of these goods certify that the first signor is the bona fide owner of the goods; and that ** I/We undertaken the whole of the said liability equally with the consignor, and for this purpose ** I/We affix ** my/our signature hereto.

Signature of Witness _____ Signature of Consignor _____ Father's name _____
**Father's name _____ Age _____
Age _____ Profession _____ Profession _____
_____ Residence _____ Residence _____

Designation and Seal of the Co./Form

Registered Office/Place of business”

Signature of witness _____ Signature of Surety _____ Father’s
name _____ **Father’s name _____
Age _____ Age _____
Profession _____ Profession _____”

“Form I-B

[See Rule 3(2)]

FORM OF INDEMNITY NOTE

_____ RAILWAY

INDEMNITY NOTE

** I/We hereby acknowledge to have received from _____ Railway
_____ valued at Rs. _____ which was dispatched by _____ from
_____ Station of the _____ Railway on or about the _____ day of
_____ and booked to self/as value payable, the railway receipt for which has
been _____ and ** for myself, my heirs, executors and
administrators / and for our Company / Firm, their assigns, and successors.
** I/We undertake in consideration of such delivery as aforesaid to hold.

* President of India, his agents and servants the _____ Railway
Administration, its agents and servants harmless and indemnified in respect
of all claims to the said goods. ** I/We also undertake to pay on demand to
the railway Administration freight charges, wharfage and any other charges
that may be subsequently found due in respect of this transaction. ** I
enclose a copy of a stamp Indemnity Note executed by the consignor and
countersigned by the Station Master of the Forwarding Station which has
been duly endorsed by the Consignor in my favour authorizing me to take
delivery of the consignments on his behalf. And ** I/We the undersigned,
signing below the person authorized by the consignor to take delivery of the
goods. I hereby certify that the first signor is the bona fide owner of the

goods and ** I/We undertake the whole of the said liability equally with the signor, and for this purpose **I/We affix ** my/our signature hereby.

Signature of Witness _____ Signature of Consignor _____ Father's name
 _____ Father's name _____ Age _____
 Age _____ Profession _____ Profession
 _____ Residence _____ Residence

Designation and Seal of the Co./Form

Registered Office/Place of business”

Signature of witness _____ Signature of Surety _____ Father's
 name _____ **Father's name _____
 Age _____ Age _____
 Profession _____ Profession _____”

17. In Form 1-A, Indemnity Note, the consignor has to sign certifying that his is the bona fide owner of goods. Form 1-B, Indemnity Note, has to be signed by the consignor authorizing the person to take delivery. The copy of a stamped Indemnity Note has to be executed by the consignor and counter signed by the Station Master of the forwarding station. In other words, all the formalities prescribed under Form 1-A and Form 1-B have to be complied with, when the Railway Receipt is not forthcoming and the consignment is addressed by the sender to Self. The Railways cannot effect delivery unless those formalities have been complied with.

18. On going through the Railways Act, 1989, the Tribunal Act as well as the 1990 Rules and the statutory forms, we are of the considered view that what the Tribunal has to inquire into and determine is the claim against the Railway Administration, that is whether the Railway Administration is at fault in discharging its responsibilities under the Railways Act, Rules and Regulations and not the inter se disputes between the claimants and third parties.

19. In view of the above facts and circumstances of the case, we find no error in the view taken by the Tribunal, which was affirmed by the High Court. Consequently, the appeal is dismissed. We, however, make it clear that we are not expressing our opinion on the merits of the case and the same has to be adjudicated by the Tribunal in accordance with law.

