

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 21187 of 2012

Rameshwar Lal Agarwal

-Vs-

Union of India & Ors.

For the Petitioner:

Mr. Ram Anand Agarwala. Adv.,
Ms. Nibedita Pal, Adv.,
Mr. Ananda Gopal Mukherjee, Adv.,
Ms. Sonam Ray, Adv.,
Ms. Nasrin Khatoon, Adv.

For the respondents:

Ms. Aparna Banerjee, Adv.

Hearing concluded on:

28.02.2025.

Judgment on:

05.03.2025.

PARTHA SARATHI SEN, J. :-

1. The subject matter of the instant writ petition is the letter dated 13.01.2012 as issued by the respondent no.4/authority addressed to the writ petitioner whereby and whereunder the writ petitioner was communicated regarding rejection of the appeal as made by the writ petitioner for waiver of demurrage charges and wharfage charges.

2. For effective adjudication of the instant *lis* some facts leading to the filing of the instant writ petition are required to be discussed and those are dealt with hereinbelow in seriatim:-

- i. On 05.03.2010 at about 17:05 hours one rake containing 90 containers of salt belonging to the writ petitioner was placed at Raniganj Goods Shed in DD I line.
- ii. According to the writ petitioner in DD 1 line there was no room for unloading the said consignment and accordingly a letter of request dated 05.03.2010 was submitted with the Divisional Operating Manager, Eastern Railway, Assansol requesting him to place the said rake in DD II line for unloading the said consignment which according to the writ petitioner was not conceded to.
- iii. Ultimately the entire consignment was unloaded from the said rake on 06.03.2010 and the process of unloading was completed on the said date at 20:04 hours.
- iv. Thereafter the entire consignment was removed from the railway premises on 08.03.2010 at about 20:00 hours.
- v. For the alleged delay in unloading the consignment and for removing the said consignment from the railway premises, the railway authority levied demurrage charges and wharfage charges upon the writ petitioner to the tune of Rs.67,500/- and Rs.1,01,900/- respectively.
- vi. The writ petitioner by issuing a letter dated 16.03.2010 addressed to the respondent no.4 requested for waiver of aforementioned demurrage charges and wharfage charges.

- vii. On 23.03.2010 the respondent no.4 while replying to the letter dated 16.03.2010 asked the writ petitioner to deposit the said two charges for consideration of his appeal as per rule.
- viii. On 03.06.2010 the writ petitioner made payment of the said two charges on protest and without prejudice to his right to recover the said two charges.
- ix. On 13.08.2010 the respondent no.4/authority under cover of a memo informed the writ petitioner regarding grant of waiver to the extent of 50 per cent of the demurrage charges only.
- x. On 31.08.2010 the writ petitioner filed a re-appeal petition with the respondent no.6 praying for complete waiver of the said two charges mentioned in the said petition of appeal.
- xi. On 27.09.2010 the respondent no.4 under cover of a memo conveyed the writ petitioner that his re-appeal cannot be considered on the ground of late submission.
- xii. The writ petitioner under cover of his letter dated 08.10.2010 conveyed to the respondent no.6 that the re-appeal petition as filed by the writ petitioner was very much within the time and thus requested the said respondent no.6 to decide the said re-appeal on merit and in accordance with law.
- xiii. The respondent no.4 under cover of its memo dated 23.05.2011 conveyed the writ petitioner that his re-appeal for complete waiver of the aforementioned two charges was

considered in all respect and the same was rejected having found no merit.

xiv. The aforementioned orders of rejection was assailed before this Hon'ble Court by the writ petitioner by filing WPA 1045 of 2011 wherein a co-ordinate bench while disposing the said writ petition was pleased to set aside the said orders of rejection with a direction to the respondent no.3 of the said writ petition to rehear the appeal of the writ petitioner and to dispose of the same within a stipulated period by passing a reasoned order.

xv. By a memo dated 13.01.2012 the said reasoned order was communicated to the writ petitioner wherein the respondent no.4/authority found no reason to grant complete waiver of demurrage charges and wharfage charges. Hence the instant writ petition.

3. In course of his argument Mr. Agarwala, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page nos.119 to 132 of the writ petition being the copy of the petition of appeal. It is submitted by Mr. Agarwala that in the said petition of appeal the writ petitioner has specifically contended that on 05.03.2010 when the rake containing the consignment of the writ petitioner was placed at DD I Line at the Raniganj Goods Shed of the respondent/authorities, the writ petitioner could not unload the said consignment of salt since the previous consignee had not removed the

goods lying on the wharf and there was no place to unload the consignment of the writ petitioner.

4. It is further contended by Mr. Agarwala that the specific request of the writ petitioner to place the rake containing the consignment of the writ petitioner to DD II line was also not considered by the respondent /authorities though such request was made in writing. Drawing attention to the affidavit-in-opposition as filed by the respondent/authorities it is further submitted by Mr. Agarwala that in paragraph nos. 4(b) to 4(i) of the said affidavit-in-opposition, the respondent/authorities however practically accepted the contention of the writ petitioner regarding partial blockage of DD I line with the consignment of the earlier consignee as well as their inability to place the rake containing the consignment of the writ petitioner in DD II line for non-availability of shunting pilot.

5. In course of his argument Mr. Agarwala also draws attention of this Court to page nos. 29 and 30 of the affidavit-in-opposition as filed by the respondent/authorities. It is submitted on behalf of the writ petitioner that the respondent/authorities for the reason best known to them had charged for 13 hours towards wharfage charges commencing from the expiry of free time for removal of consignment from railway premises which should be reckoned from the time of completion of unloading of consignment from the rake to wharf. It is further submitted by Mr. Agarwala that the respondent/authorities had levied demurrage charges and wharfage charges for the fault of their own and not for the fault of the

writ petitioner which is transpiring from the materials as placed before this Court.

6. It is thus argued by Mr. Agarwala that in view of the admission of the respondent/authorities in their affidavit-in-opposition appropriate relief may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.

7. Per contra Ms. Banerjee, learned advocate appearing on behalf of the respondent/authorities at the very outset draws attention of this Court to the copy of the circular dated 19.12.2005 relating to free time and rates of demurrage charges, wharfage charges and stacking charges of the Ministry of Railways as has been annexed with the affidavit-in-opposition. It is submitted that from Clause 2.2 of the said circular dated 19.12.2005 it would reveal that free time for loading and unloading of wagons at goods sheds and sidings of the railway authority is 9 hours for 26 wagons and above and Clause 4 of the self same circular also provides that permissible free time for removal of goods from railway premises after unloading on the day of unloading, is also 12 working hours. It is further submitted that the said circular dated 19.12.2005 further specifies the rates of demurrage charges and rates of wharfage charges to be levied beyond the permissible free time. Drawing further attention of this Court to page no.24 of the affidavit-in-opposition it is submitted that by a subsequent corrigendum, the aforesaid rates have been revised with effect from 01.02.2008.

8. In course of her submission Ms. Banerjee draws attention of this Court to a clarification dated 17.03.2010 as issued by the Railway Board, Ministry of Railways, Government of India in the subject of commercial placement of rake for levying demurrage charges and wharfage charges. Drawing attention to letter dated 13.01.2012 at page no.156 of the instant writ petition (which is the subject matter of challenge in the instant writ petition) vis-à-vis to page nos. 37 to 38 A of the affidavit-in-opposition as filed by the respondent/authorities it is submitted by Ms. Banerjee that the said letter dated 13.01.2012 is a mere communication of the reasoned order as passed by the respondent no.3 however, the said reasoned order has been passed upon a note-sheet which has been annexed at page nos. 38 to 38 A of the affidavit-in-opposition.

9. It is submitted by Ms. Banerjee that while considering the re-appeal of the writ petitioner the respondent no.3 i.e. the DRM, Eastern Railway has duly considered the grievances of the writ petitioner vis-à-vis the two reports dated 30.07.2010 of the goods shed superintendent, Eastern Railway, Raniganj. It is contended by Ms. Banerjee that the respondent no.3 noticed that the said superintendent reported to him that on 05.03.2010 at about 17:05 hours when the rake containing the consignment of the writ petitioner was placed on DD 1 line only two wagons of salt of the previous consignor was lying in scattered position for removal which caused no encumbrances to the writ petitioner to unload his consignment from the rake as well as for removal of the consignment from wharf and the said superintendent further reported that the delay in

unloading and removing the consignment occurred for want of adequate nos. of man power and non-availability of adequate nos. of transport vehicles on the part of the consignor.

10. In course of her argument Ms. Banerjee, learned advocate appearing on behalf of the respondent/authorities draws attention of this Court to page nos. 31 to 32A of the affidavit-in-opposition being a copy of the circular no.39 of the 2004 regarding rules of waiver of demurrage charges /wharfage charges. It is submitted by Ms. Banerjee that while passing the said reasoned order the respondent/authorities have followed the said rules more specifically Rules 2.8, 2.9 and 2.10 of the said circular no.39/04.

11. It is thus submitted by Ms. Banerjee that in absence of any procedural illegality this Court sitting in writ jurisdiction ought not to interfere with the factual findings as arrived by the respondent no.3 after considering the relevant materials as placed before him.

12. On careful perusal of the entire materials as placed before this Court and after giving due consideration over the arguments as advanced by the learned advocates for the contending parties it appears to this Court that in order to arrive at a logical conclusion of the instant *lis* some portions of the relevant circulars are required to be looked into.

13. From circular no.74 of 2005 (page nos. 17 to 23 of the affidavit-in-opposition) it reveals that the Railway Board, Ministry of Railways, Government of India, prescribed 9 hours time for loading/unloading of wagons at goods shed and sidings of the Railway Authority in respect of

26 wagons and above. It is pertinent to mention herein that the consignment of the writ petitioner reached at its destination at Raniganj goods shed with 35 wagons. From the self same circular it reveals further that permissible free time for removal of goods from railway premises is 12 working hours after unloading on the day of unloading.

14. At this juncture this Court also proposes to look to the relevant circular no.39 of the 2004 as available at page nos. 31 and 32 of the affidavit-in-opposition and those are quoted hereinbelow in verbatim:-

“2.8. The circumstances, which lead to accrual of demurrage/wharfage charges, can be broadly grouped in three categories as under:

- i. Reasons within the control of the consignor/consignee.*
- ii. Reasons beyond the control of consignor/consignee like labour strike, transportation strike, general bandhs, agitations, riots, curfew, fire, explosion, heavy rains or other abnormal/unforeseen circumstances.*
- iii. Act of God, act of War and act of public enemies.*

2.9. In case of Category (i), waiver should normally be not done. However, if at all waiver is to be granted on justified and meritorious facts, speaking orders should be recorded in all such cases.

As regards case pertaining to Category (ii) or (iii), waiver can be considered on merits of individual case.

2.10. The powers of waiver as mentioned above should be exercised judiciously keeping in view the merits of each case as per instructions

contained in this letter. The waiver should not be granted in a routine manner.”

15. Keeping in mind the aforementioned clauses of the said circular no.39 of 2004 which deals with the rules of waiver of demurrage charges and wharfage charges it reveals to this Court that the Railway Board while issuing the said circular had expressed that the power of waiver should be exercised judiciously. On perusal of the reasoned order as passed in re-appeal on 18.05.2011 as available at page nos. 38 to 38A of the affidavit-in-opposition it reveals to this Court that the respondent no.3 while passing the said order acted as a quasi judicial authority and in doing so he had considered the relevant facts as placed before him both by the writ petitioner and the functionaries of the respondent/authorities more specifically by the Goods Shed Supervisor, Eastern Railway, Raniganj.

16. It appears to this Court that the respondent no.3 in exercise of its quasi judicial power after assigning reason accepted the version of its functionaries regarding the cause of delay in unloading the consignment from the rake as well as the cause of delay for removal of consignment from the wharf.

17. This Court being a writ court sitting in a judicial review is not supposed to act as an appellate authority and therefore it is not desirable to reassess the said evidence as considered by respondent no.3 while passing the reasoned order in absence of any material that such reasoned order is based on extraneous materials.

18. In course of his argument Mr. Agarwala strongly contended that the reasoned order as passed by the respondent no.3 requires interference since while calculating the demurrage charges and wharfage charges the respondent no.3/authority misinterpreted the provisions of the free time for unloading the consignment from the rake as well as from removing the said consignment from the railway premises and thus the said wrong calculation strongly affected the decision making process of the respondent no.3/authority. However, on conjoint perusal and on consideration of Clauses 2 and 4 of the circular no.74/2005 (page nos. 17 to 23) it appears to this Court that free time for unloading of wagons starts from the actual time of arrival of the wagon at the railway shed/ sidings and the permissible free time for removing of consignment from the railway premises also starts immediately after expiry of the free time for unloading of consignment from the wagons.

19. In further considered view of this Court no other interpretation in this regard would be misnomer and the same would be against the true spirit of the said circular no.74 of 2005. The aforementioned position has been clarified in the subsequent circular dated 17.03.2010 (at page no.45 of the affidavit-in-opposition) in the following manner:-

“ A clarification has been sought as regards reckoning of free time for a rake which has been placed on a line where free space is not available on adjoining platform due to non-removal of consignment unloaded from other rake.

The matter has been examined and it is to clarify that commercial placement of a rake will commence from the time of its operational placement in the railway goods shed/siding irrespective of the fact that unloading/loading could not commence immediately for reason such as non-availability of free space on adjoining platform, non-availability of covered shed, rain,etc., provided that such time of operational placement lies within the working hour of that particular railway goods shed/siding.

.....

The reason for non-commencement of loading/unloading from the rake immediately after its commercial placement (for reasons like non-availability of wharf due to occupancy by consignment unloaded from earlier rakes etc.) would be considered at the time of granting waiver. The application of waiver, if preferred by the rail user, will be forwarded by the concerned Station Manager/Chief Goods Supervisor to the Divisional Officer giving full details of the factual position, as prescribed under rules of waiver vide Para 2.5 of Rates Circular No.39 of 2004”.

20. On careful consideration of the reasoned order dated 11.01.2012 as communicated on 13.01.2012 it reveals that the respondent no.3/authority has considered the sufferings of the writ petitioner on account of partial occupation of the railway premises beside DD I line at the time of unloading of the consignment of the writ petitioner and thus granted waiver of 50 % on demurrage.

21. This Court thus finds no irrationality/irregularity/illegality in the reasoned order dated 11.01.2012 as communicated to the writ petitioner under cover of letter dated 13.01.2012.

22. This Court thus finds no merit in the instant writ petition and the same is thus dismissed.

23. There shall be however no order as to costs.

24. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)