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Puttu Lal Vs. General Manager, N.E. Railway, Gorakhpur and anr.

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Court : Allahabad

Decided On : Feb-19-1959

Reported in : AIR1960All438

Judge : B.R. James, J.

Acts : [Constitution of India](#) - Articles 14 and 226; Railways Act, 1890 - Sections 3(6), 3(14), 46C, 47(1) and 47(3); Indian Railway Board's Act, 1905 - Sections 2

Appeal No. : Civil Misc. Writ No. 2808 of 1956

Appellant : Puttu Lal

Respondent : General Manager, N.E. Railway, Gorakhpur and anr.

Advocate for Def. : Lakshman Swarup, Adv.

Advocate for Pet/Ap. : M.N. Shukla, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.R. James, J.

1. Wharfage is a charge levied by a Railway Administration on goods, the nature and attributes of which charge I shall endeavour to explain presently. Wharfage at

the railway station of Kaimganj, district Farrukhabad, is the subject of this petition under Article 226 of the Constitution,

2. The petition has arisen in the following circumstances. The Railway Board, which is admittedly the 'officer' appointed by the Central Government under Section 47(1) of the Indian Railways Act, 1890 (hereinafter referred to as the Act), in exercise of powers vested in it by Section 47 of the Act, issued a Notification dated 18-2-1926 (hereinafter called the Notification of 1926) framing rules with regard to wharfage. Only Rules 1 and 17 of this Notification are relevant to this case. Rule 1 provided that after the expiration of a free period (which meant from the time of arrival of the goods till the closing time of the day following) wharfage would be charged at a rate not exceeding one anna per maund or part of a maund per day Or part of a day calculated on the goods of which delivery had not been taken. Rule 17 was in these terms:

'17. If and for so long as the state of the traffic or any sudden emergency makes it necessary and after advertisement in the local newspapers, the rate of demurrage or wharfage may be increased and free time may be curtailed by the Railway Administration.'

The B. B. and C. I. Railway for many years levied wharfage at the rate given in Rule 1. Then on 16-2-1950 the Chief Traffic Manager of that Railway issued an order (hereinafter called the Order of 1950 for convenience) enhancing the rate to 'one anna per maund per day for the first three days, and two annas per maund per day for the subsequent period, after two days including day of arrival'. This revised rate came into force at Kaimganj on the 1st March 1950. In May 1953 the Kaimganj station, as a result of regrouping of the Indian Railways, came under the control of the North-Eastern Railway, and this Railway adopted the previous rates and has continued to levy wharfage at Kaimganj in accordance with the Order of 1950.

3. Now, the rate was lower at some other stations on the same Railway; consequently a number of merchants of Kaimganj combined together to file Writ Petition No. 24 of 1955 seeking to get the Order of 1950 set aside and the Railway prevented from charging wharfage at the enhanced rate. The petition was

dismissed by Chaturvedi, J., on 24-8-1955. Aggrieved by his judgment the merchants instituted Special Appeal No. 356 of 1955, which was on 27-2-1958 dismissed by a Bench composed of Mootham, C. J. and R, Dayal J. On 25-9-1956, while the Special Appeal was still pending, one Puttu Lal, who professes to carry on business in oil-cakes in Kaimganj, filed the present petition praying for the same reliefs as the merchants in the earlier case, and I might state that his petition was calculated to get over what were thought to be defects in the merchant's unsuccessful petition.

4. Before I proceed to examine the various contentions advanced by his learned counsel Mr. M. N. Shukla, I shall deal with two preliminary objections raised by Mr. Lakshman Swamp learned counsel for the respondent Railway, which are: first, that the petitioner Puttu Lal possesses no rights which require to be enforced; and second, that he has brought this petition with undue delay.

5. Now the Supreme Court in the State of Bombay v. United Motors (India) Ltd., AIR 1953 SC 252, has laid down that where relief under Art. 226 is sought on allegations of infringement of rights it is always desirable that before proceeding further with the matter the Court should satisfy itself that such rights do exist. Accordingly the preliminary question to which I propose to address myself is whether or not the petitioner is vested with any rights which might be considered to have been infringed by the Order aforesaid. Contradicting him, the Railway allege that he himself is not a merchant or trader, but on the contrary is a mere munim of one of the merchants who had lost the earlier writ petition. Consequently, when the case was first taken up I specifically directed him to satisfy me that he possesses the right that he claims.

Although the Railway have not succeeded in establishing that he is a mere servant of one of the losing merchants, he has himself failed to prove to my satisfaction that he possesses the rights which the present petition is designed to enforce. In his supplementary affidavit he has referred to eight occasions when he paid demurrage-or wharfage, and has also shown me their receipts; but these payments are perfectly consistent with having been made by him as a railway dalal, and it is highly significant that in paragraph 4 of the rejoinder affidavit he

admits that he acts as a 'part-time agent' for a number of firms. I also take notice of the fact that the various affidavits filed on his behalf have been sworn by one Harish, Chandra, who has described himself as his 'paikar'. He has himself never appeared on any of the various dates on which the case was heard by me. More important still, he has not shown, me any bahi khata although he was specifically directed to do so. Needless to say, a bahi khata is the hall-mark of a businessman or trader in this country. I have therefore no hesitation in holding that he is not a trader and without doubt he has come to this Court as a tool in the hands of some traders of Kaimganj so that he has no* rights which can conceivably be affected by the Order of 1950 and consequently require enforcement. On this ground his petition deserves to fail.

6. There has also been unjustifiable delay in filing this petition. The impugned Order was passed as long ago as February 1950, but the petitioner approached this Court for the first time in September 1956, and that too thirteen months after Chaturvedi, J., dismissed the earlier petition. The feeble explanation attempted is that the petitioner started doing business only in 1956. An excuse of this character is by itself corroboration of the finding just recorded by me that he is not genuinely engaged in business.

7. Although the petition deserves to fail on the two grounds just mentioned, in particular the first one, raises questions of considerable importance to the trading community and the Railway, hence I propose to consider it on merits. At the very start of the hearing I had made it clear to learned counsel that I would hear them only on those points which were not covered by the judgment of the special Appeal Bench dated 27-2-1958, as on those points I was bound by that judgment. Three contentions of the merchant petitioners were examined by the Bench: first, that under Rule 17 of the Notification of 1926 wharfage could be enhanced only by the Railway Administration but the Order of 1950 had been passed by the Chief Traffic Manager; second, that the new rates were null and void inasmuch as there was no prior advertisement in local newspapers; and third, that the enhancement of the rates under the Notification of 1926 was designed to be temporary but the Order of 1950 has made them permanent.

All these three contentions were overruled by the Bench, I turn now to examine the various Submissions put forward by the present petitioners' counsel Mr. Shukla. But before I do so I must make mention of a matter of vital importance. After I had heard learned counsel on a number of dates Mr. Swarup for the Railway tiled before me a document of which no one appears to have been aware before. This was Notification No. TC-III/3036/58 dated 28-8-1958, published in the Official Gazette dated 6-9-1958. I shall refer to this Notification as 'the Notification of 1958'. It purports to have been made under Section 47 (1) (f) of the Act and deals inter alia with wharfage.

Superseding all previous Notifications on the subject it maintains the previous 'free time' but declares that wharfage 'may be charged at rates not exceeding 25 np. (i.e., four annas) per md. or part of a md. per day or part of a day in excess of the free time'. Realising the importance of this Notification Mr. Shukla requested for, and was granted, time to enquire if there was any other Notification to the contrary, but he has admitted that he has not been able to discover any. The Notification of 1958 has obliged him to considerably modify his earlier position. His contentions now are: first that wharfage is included in terminals, hence any charge for wharfage over and above the terminals falls beyond the ambit of the Act and is therefore illegal; second, that the Railway Board, in its capacity as the 'officer' under Section 47 (1), alone can enhance the rates and cannot delegate this power to a subordinate authority like the Chief Traffic Manager, hence the Order of 1950 has been passed without jurisdiction and is therefore invalid; third, that the Order of 1950 purports to have been made under Rule 17 of the Notification of 1926, which rule is inconsistent with Rule 1 of the same Notification; fourth that Order of 1950, as well as the Notification of 1958, are without legal effect inasmuch as it has not been shown that they have received the sanction of the Central Government; fifth, that the Railway Board under Section 47 (1) is entitled only to frame rules but cannot direct the charge to be collected which can be done only by the Central Government; sixth that the Railway Board should itself prescribe the rate for each station and cannot leave this to the discretion of a particular Railway Administration or other subordinate authority; and seventh, that the Order of 1950 is discriminatory and consequently violates Article 14 of the Constitution.

Mr. Shukla's first contention is based on the definition of 'terminals' given in Section 3 (14) of the Act, which is that it 'includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat,' and he argues that since wharfage is a charge in respect of services rendered at wharves and warehouses provided by the Railway, it must be deemed to be included in 'terminals', which is admittedly a compulsory charge and is made separately. The point does not seem to have been considered in any case reported so far and requires careful examination. This makes it necessary for me to discuss the nature and attributes of 'wharfage' in so far as it applies to our railways.

8. For much of what follows in this and the next three paragraphs I acknowledge my debt to the standard work 'The Law of Carriage by Rail-ways' by Henry W. Disney, a book which deals with the law relating to Railways in England, but upon which law our own Railways Act draws heavily. Now, all the services rendered to a trader by a Railway in the ordinary course of business of carrying goods must be considered under two heads:(i) the actual conveyance of the goods; (2) all other services rendered which are incidental to the business of the Railway as carriers and the accommodation provided at stations and sidings. Under the first head is included haulage, the use of the railway-line with all the necessary signalling etc., and generally the use of wagons. The second head includes charges which might be made by the Railway for services rendered and accommodation provided which are not affected by the distance the goods are carried. In the first place, charges may be made for loading and unloading,, for covering and uncovering goods.

These are known as 'service terminals', and the standard charges for these services include all sums payable for labour, machinery, plant, stores and sheets used in their performance. Again, the Railway supplies certain accommodation for merchandise at its stations and renders services in respect of the traffic thereat, such as sorting,, checking, weighing etc., and a considerable amount of clerical work. Charges paid for these matters are known as 'station terminals'. An ordinary station-to-station rate for the carriage of goods Includes these service terminals and station terminals. The distinction between these two varieties of 'terminals' is however not observed in India but they are instead bracketed together, so that In

Section 3 (.14) of the Act we find the definition which has just been quoted.

9. It is clear that such charges are levied for services incidental to the business of the Railway as a carrier. Over and above these the Railway renders other services; for example, where the Railway's wagons are detained or any accommodation is occupied, before or after carriage, for longer period than the time reasonably necessary for dealing with the traffic. A trader is invariably allowed a reasonable time to enable him to load or unload his wagon, or to deliver his goods at or remove them from the station; this is known as 'free time', and no charge is made for it. The charge levied after the expiry of the 'free time' allowed for loading or unloading a wagon is known as 'demurrage' vide Section 46C(d) of the Act.

10. For the warehousing of goods for the convenience of the trader beyond the permissible 'free time' the charge levied is a 'wharfage' incidentally a term not specifically employed by Disney but explained by him nevertheless In the principal Act. (Act No, 9 of 1890), this term had not been defined, but the amending Central Act (No. 53 of 1957) has introduced a new clause. Clause (h), in Section 46C of the Act, and this defines wharfage as 'the charge levied on goods for not removing them from the railway premises after the expiry of the free time allowed for such removal', thereby dispelling any doubts which might previously have existed on account of the non-definition of the term in the Act, though I might state that it was a term freely used and perfectly understood both by the Railway and the trading community. Thus wharfage is a charge levied by the Railway, not in its capacity as a carrier, but as the involuntary warehouseman of the trader who has failed to take delivery of his goods within the prescribed time. It should be emphasised that, unlike the charge for haulage or terminals, it is not a charge which every trader is compelled to pay; it can always be avoided by his removing his goods within the permissible 'free time', which is in-variably a reasonable one and dictated by existing or local conditions.

11. The significance of wharfage arises in this way. For the free flow of traffic it is necessary that the station godowns and yards be not kept occupied indefinitely with goods, so that in the interest of the efficient working of the Railway the speedy

removal of goods is essential. But the natural tendency of the trader is to allow goods to remain on the station premises, thereby using them as a free, or at any rate a very cheap, ware-house. Consequently, in order to ensure that he does not remain under this temptation for an unduly long period, the Railway {after allowing a reasonable time for which no charge is made) levies a charge the object of which is to penalise him for making delay in taking delivery. Clearly, even a charge on a telescopic rate becomes justifiable.

What commonly happens in this country is that the trader consigns the goods to 'Self', and sends the railway receipt to a Bank, and after the consignee has taken delivery of it, he sells it in the market on the best available terms, the railway receipt often passing from hand to hand before it is finally presented at the railway-station. This inevitably causes delay in the taking of delivery of the goods. The current practice therefore compels the Railway, in the interest of efficient working, to impose wharfage, not unoften on penal lines. It is obvious that if no wharfage were to be charged, or its rate kept very low, there would be no incentive on the part of the trader to take early delivery of the goods, thereby cluttering up the station premises with unnecessary goods at the cost of more legitimate goods traffic.

12. This commentary on the nature of wharfage immediately makes the first contention of Mr. Shukla untenable. Terminals, as explained above, is the charge levied for services incidental to the business of the Railway as a carrier, while wharfage is the charge made for services rendered by it as the involuntary warehouseman of the trader or as a bailee, and therefore falls outside the scope of terminals. That our legislature acknowledges this distinction is made manifest from the separate definitions of 'terminals' and 'wharfage' given respectively in Sections 3 (14) and 46 C (h) of the Act. The operation of the terminals, it will be noted, ends, with the expiry of the unauthorised free time, while wharfage comes into operation from the point the free time terminates.

13. Mr. Shukla's second contention is based on the wording of Section 47(1)(f), which runs:

'Every railway company and in the case of a railway administered by the Government an officer to be appointed by the Central Government in this behalf shall make general rules consistent with this Act for the following purposes, namely, for regulating the conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner.....'

It is common ground that the Railway Board is the 'officer appointed by the Central Government in this behalf, and accordingly has jurisdiction to frame the required rules, including a rule to enhance the rates. But there is no provision in the Act authorising the Board to delegate the power of enhancement to a subordinate authority, e.g., the Chief Traffic Manager, nor does anyone allege that the Central Government has ever appointed that functionary, the prescribed 'officer' under Section 47(1). The Railway Administration, which under Section 3 (6) means the Manager of the Railway, is entitled to fix rates provided the rules framed by the Board lay down necessary conditions for his guidance in this regard. Rule 17 of the Notification of 1926, no doubt gives the Administration some guidance, but it is defective inasmuch as it does not prescribe the maximum limit of the rates.

Hence in the absence of maximum limit in the Board's Notification I am inclined to agree with Mr. Shukla that the Chief Traffic Manager had no jurisdiction to enhance the rates of wharfage through his Order of 1950. Nevertheless this does not assist Mr. Shukla in any way for the Notification of 1958 has radically altered the legal position and has authorised individual Railway Administrations to fix rates of wharfages so long as the rate does not exceed four annas -- the rate prescribed by the Order of 1950 is much less than this. It will be re-called that the Notification of 1958 has been issued by the Railway Board in exercise of the powers conferred by Clause (f) of Section 47(1). Whatever legal defects the Order of 1950 might have suffered from were cured from the date of the issue of the said Notification.

14. With regard to Mr. Shukla's third contention I find it difficult to agree that there is inconsistency between Rules 1 and 17 of the Notification of 1936 (1926 ?). Rule 1 related to normal times, while Rule 17 made provision for 'the state of the traffic or any sudden emergency'. The Notification in question was issued by the Railway Board, and by virtue of Section 47 (1) both rules fell within the ambit of its powers.

15. The fourth contention of Mr. Shukla takes its origin in Sub-section (3) of Section 47, which provides:

'A rule made under this section shall not take effect until it has received the sanction of the Central Government and has been published in the Official Gazette'.

Now, the Order of 1950 was passed on the strength of the Notification of 1926, and it is not disputed that both that Notification and the Notification of 1958 have been duly published in the Official Gazette. But it has not been shown that they received the sanction of the Central Government. Nevertheless, this omission does not render them invalid. The reason is that Section 2 of the Indian Railway Board Act (Act IV of 1905) authorises the Central Government to invest the Railway Board with all or any of its powers and functions under the Railways Act, while in exercise of the powers conferred by this provision the Central Government issued Notification No. 801 dated 24-3-1905 investing the Railway Board with all its powers and functions inter alia under Section 47(3). In consequence the Notifications of 1926 and 1958 issued by the Railway Board prescribing rules under Section 47 are in the eye of law Notifications of the Central Government itself and accordingly fulfil the conditions laid down by Sub-section (3) of Section 47.

16. A similar consideration applies to Mr. Shukla's fifth contention that for purposes inter alia of wharfage the Railway Board is to be equated with the Central Government. The contention might have possessed force had Section 32 of the Act been in force, but that section has been repealed by the amending Act of 1957.

17. Mr. Shukla's sixth contention does not appeal to reason. By the Notification of 1958 the Railway Board has fixed annas four as the maximum rate of wharfage, and quite obviously Mr. Shukla could have had no grievance had this been the rate charged at Kaimganj. I fail to see what grievance he can have when by virtue of the Order of 1950 the rate there is admittedly less. In my opinion, since the issue of the Notification of 1958 there can be no valid objection to the Railway Administration Fixing any rate at any station under its control so long as the rate

does not exceed four annas and the free time prescribed by that Notification is not curtailed.

18. Mr. Shukla's last contention is based on Art 14 of the Constitution. It is now well established that while this Article forbids class legislation, it does not forbid reasonable classification for the purposes of legislation; in order however to pass the test of permissible classification two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and that that differentia must have a rational relation to the objects sought to be achieved by the legislation in question. It is a fact that the rate of wharfage is not uniform at all stations. This can by no means be termed unreasonable.

The rate of wharfage depends on factors which must necessarily differ from station to station, e.g. the density of traffic, the amount of warehousing space available, the habits of local traders etc. A classification made on taking these factors into account would be a reasonable one. What the law does not permit is for different rates to be charged from different persons at the same station. But it is indisputable that at each individual station owned by the Railway every person is charged precisely the same rate, and Kaimganj is no exception to this rule. Consequently the accusation of discrimination cannot be justified, and Article 14 cannot give Mr, Shukla any assistance whatsoever.

19. The Order of 1950 as it stands might conceivably have suffered from the infirmity pointed out in my discussion of Mr. Shukla's second contention, but since the coming into force of the Notification of 1958 the infirmity has been completely cured, inasmuch as a maximum limit has been prescribed. Consequently all his contentions fall to the ground, and no relief can be afforded to his client. The petition accordingly fails and is dismissed with costs.

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